Reformulation of Legal Policy to Support Indonesia's Online Gaming Industry Sector

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Abstract. Indonesia's online gaming sector is now the 16th largest in the world, with revenues of IDR 24.88 trillion, or 2.19% of the total national GDP. Indonesia is even expected to be among the top five worldwide online gaming markets in 2030, with a value of US$ 4.3 billion. However, local game creators only account for 0.4% of the domestic game market's total share. This research intends to investigate challenges in the online gaming business sector in Indonesia and offer policy recommendations to maximize state revenues while supporting the advancement of the Indonesian gaming industry. The analysis results reveal that there are still issues in Indonesia's online games business sector, such as the absence of tax obligations for foreign online game developers and the low quality of local games. On this premise, it is advised that the government demand the establishment of permanent business entities for foreign game production businesses to avoid evading tax duties and contribute a percentage of their tax revenues for local game industry empowerment programs. To complement these efforts, the government should establish a specific organization dedicated to monitoring and tracking foreign game developers' earnings from transactions in Indonesia. This initiative can be carried out in collaboration with the Ministries of Finance and Information and Communication, with coordination from the Tax Supervisory Committee.
Keywords: Tax, Legal Policy, Online Gaming

1 Introduction

Globalization is currently having a tremendous impact on people's lives. Its quick development brings about many changes in the economic, social, political, and cultural fields, not to mention information and communication technology. The use of the internet is one of the technological breakthroughs that the Indonesian people benefit from. In 2020, Indonesia became the third most internet-connected country in Asia, with 196.71 million users out of a total population of 266.91 million people [1]. Indonesia's internet user base continues to grow year after year. In 2021-2022, there were 210.03 million domestic internet users [2]. Jumlah tersebut meningkat sebesar 6,78% dibandingkan dengan tahun 2020 sehingga tingkat penetrasi internet di Indonesia menjadi sebesar 77,02% [3]. The enormous number of internet and smartphone users in Indonesia appears to be very appealing to digital entrepreneurs looking to market their digital products in Indonesia. Online games are currently in development. According to data from We Are Social and Hootsuite, 94.5% of Indonesian internet users utilize

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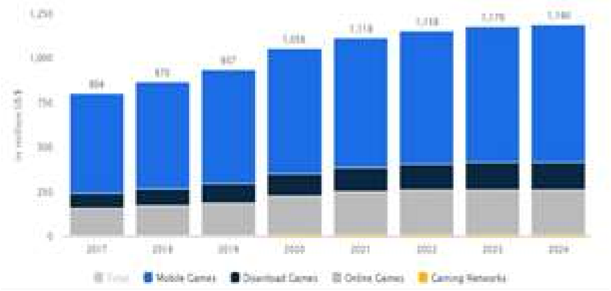
mobile game applications, with an average daily usage of 1 hour and 19 minutes [4]. The internet revolution, which allows websites to offer interactive audio, streaming, and video, is one of the elements that has affected the creation of online games. As a result of their quick development, online games are now being competed in a variety of national and international competitions. It's even featured in the electronic sports category [5].

Indonesia is also the primary driver of growth in Southeast Asia's e-sports business, accounting for 43% of total gamers and generating USD 2.08 billion, or IDR 30 trillion



However, local games account for only 0.4% of the total gaming market in Indonesia. This means that 99% of the revenue in the Indonesian game business goes to international game producers [6]. This shows that the domestic gaming industry is still less competitive, so intervention from the state is needed to improve its quality and competitiveness.

Indonesia, in particular, is currently working on legislative laws for the gambling industry's taxation, however, its efforts are regarded to be inadequate. Among these is Minister of Finance Regulation (PMK) Number 48/PMK.03/2020, which addresses value-added tax on the use of intangible taxable products and/or taxable services from outside the customs area within the customs area via electronic trade. If done ideally, taxation of digital-based economic activities will bring extremely large extra cash to the country. According to Statista, the circulation of money in the Indonesian gaming business is around US$1 billion each year, which is roughly equivalent to IDR 14 trillion. Assuming a 10% VAT rate, the Indonesian gaming industry has the potential to generate at least IDR 1.4 trillion for the state budget. Not factoring in potential PPh and/or PTE deposits, which will undoubtedly be far larger.

Indonesia is currently in the process of preparing for the golden Indonesian demographic bonus of 2045, with one of the goals being to optimize state resources to finance national development independently in order to create a just, wealthy, and prosperous Indonesian society. As a result, the government must maximize state earnings from the gaming business, which has enormous potential to benefit the country's economy. Aside from that, tax policy should be aimed at promoting and boosting the competitiveness of the domestic online gaming business.

2. Methods

Based on the research objectives, which are to examine legal policy issues and design new taxation policies for international game producers, a conceptual normative approach is utilized, which combines the examination of legal rules with ideas related to the problem issue. Research data is derived from main legal resources such as laws, regulations, and related policies, as well as secondary legal materials such as publications, scientific journals, research papers, and internet news. Data was acquired using literature review procedures and processed using descriptive-analytical presentation.

3. Result and Discussion

3.1 Problems in Indonesia's Online Game Industry Sector: inadequate Revenue and Competitiveness

The gaming industry is an entertainment industry with a faster and more stable growth rate compared to other types of entertainment such as the film, music, and book industries [7]. With global revenue expected to rise from $67 billion in 2013 to $82 billion by 2017. Online games generate revenue through transactions of commodities or objects supplied in the game (microtransactions) [8]. According to data from the International Game Development Association (IGDA) Indonesia, there are now 70 active game development companies, up from 60. Games with varying levels of complexity can create high sales values while maintaining profitable margins [9]. The rise of internet-based services means that the services available are no longer limited to specific places. Foreign corporations can market their products across countries, even over extremely large distances [10]. There are also many online platforms coming to Indonesia, one of which is buying online games from associated producers (game makers). Over time, games have evolved to include Wide Area Networks (WAN) on the internet and Local Area Networks (LAN) on computer networks. The gaming business has enormous potential for a country's economic development.

Currently in Indonesia the most powerful game markets are Japan, China, and South Korea [11]. These three countries are currently enjoying the fruits of the hard work of the creative industries. Online game developers are referred to as application and/or content service providers via the Internet (over-the-top services), which operate based on the Circular Letter of the Minister of Information and Communication Number 3 of 2016. Unfortunately, some of these publishers do not have offices based in Indonesia. For example, the most popular mobile game in Indonesia is Mobile Legends, whose publisher, Moonton, only opened an office in Indonesia in September 2018. This means that since it first entered Indonesia in 2016, almost no Moonton operations have been carried out in Indonesia. In other words, almost all the money spent by players from Indonesia will go abroad.

The above phenomenon causes the flow of money from online game transactions which should be a profit for Indonesia or what is also known as Balance of Payments (BOP) instead of becoming a loss. If the BOP is negative, then it is certain that more money is leaving than money entering Indonesia. In this context, the flow of funds abroad through online game transactions can indirectly burden the Indonesian Balance of Payments (NPI). Senior Deputy Governor of Bank Indonesia Mirza Adityaswara explained that when someone downloads a paid online game whose publisher or studio is from abroad, it is the same as transferring funds abroad. Moreover, if this happens continuously, Indonesia's balance of payments deficit will widen even further. For example, if the price of one online game is IDR 7,000 to IDR 10,000 or around US$ 0.5, but when downloads reach two million people per day, of course the funds leaving Indonesia will be quite large.

The Newzoo Research Institute recorded that the total revenue of the gaming industry in Indonesia in 2017 reached US$ 880 million or the equivalent of Rp. 11 trillion. On the other hand, research conducted by a game developer from Indonesia, Agate, shows that Indonesia's game market share is only 0.4%. This means that local developers only get a share of US$ 3.52 million, while the remaining US$ 876.4 million is scattered to various other countries. China is recorded as the country that makes the most profits in this industry with an estimated total revenue of $9.7 billion in 2012. Based on the fact that the majority of games that are very popular today are game products from China such as PUBG, DOTA, League of Legends, Clash of Clans, and Fortnite which have spread to many countries.

According to the China Games Industry Report reported by Teachweb, online games for computers accounted for 90% of total revenue of around $9.1 billion, while the income of local game developers is so inversely proportional to that of foreign developers that it can be said that there is no equal distribution of local developer income with foreign developers. On that basis, the government should pay attention to the development of the growing gaming industry. If local developers are not given space and support to catch up, the potential outflow of money will be even greater.

The huge number of foreign game developers entering Indonesia presents a challenge for the government to maintain supporting local game developers so that they can showcase their talents in their home country. This is because, according to the Institute for Development of Economics and Finance (Indef), the quality of local games remains considerably inferior to that of foreign-made games. This is due to the lack of special education in Indonesia to foster the development of indigenous games. Indef scholar Bhima Yudshitira cites educational support as one of the explanations. One of the game manufacturers in China already has a college or vocational school to provide game application training. Meanwhile, in Indonesia, there are no formal educational institutions that specifically encourage multimedia skills for online games. Bhima also stated that Indonesia is 10 years behind China in terms of the gaming industry. The government has supported gaming companies in terms of aspects ranging from funding to education and infrastructure. In fact, many local Indonesian game developer talents have emerged, some of whose works are well known, such as Agate Studio, Altermyth Studio, Toge Production, Tinker Game, Touch Ten Game, and others.

3.2 Ideas for Policy Reformulation to Support the Indonesian Online Game Industry

Based on the previous description, there are two crucial problems in the online games industry in Indonesia: first, the high flow of funds (profits) to foreign developers abroad, which causes an imbalance in Indonesia's balance of payments to the country. Second, the quality of local games is still not able to compete optimally due to the lack of support for local game developers compared to foreign game developers, which are growing day by day. Based on this, policy reformulation will be directed at overcoming these two problems.

In the context of an imbalance in Indonesia's balance of payments in the online gaming sector due to excessively high outflows of money, this can be overcome by increasing state revenues from the online gaming sector. The policy instrument that can be optimized is on the tax side. Unfortunately, the online gaming tax policy in Indonesia still faces a number of challenges. One of them is related to the difficulty of imposing taxes on foreign game developers who are providers of over-the-top (OTT) services, namely a service model with content in the form of data, information, or multimedia that runs over the internet network.

One of the ways OTT works to earn income can be seen in the Google Adsense service, which provides calculations based on the number of visitors "clicks" per day. Social media sites such as Facebook also provide income from advertising on an account's page if the number of followers of that account exceeds the predetermined number of followers. Even though the OTT mentioned above earns income from the Indonesian market, until now Google, for example, only paid income tax under Articles 21 and 23, which are borne by employees and not corporate tax. This causes many online service-based companies to gain profits from digital services, advertising, and now electronic commerce or social commerce services, but cannot be subject to income tax as foreign taxpayers.

The problem that often arises is who has the authority to collect taxes on multinational companies in the OTT business model. This is related to determining the permanent establishment of an OTT entity. The cross-border nature of online gaming service models means that they do not require intermediaries or representative bodies (permanent establishments) in the countries where they operate. On the other hand, there is not yet a unified understanding in the global forum regarding tax policy models in the digital economy, especially on the concept of source country and country of domicile and on the issue of determining the type of income as an indicator for determining who has the right to tax multinational companies.

In this matter, firmness and alignment are needed from the Indonesian government. The solution is that the government needs to change its policy, which is too loose for the massive penetration of foreign game developers. In this case, the government must require taxes for foreign developers entering Indonesia. In fact, the government, through the Directorate General of Taxes itself, has given confirmation to e-commerce players to fulfill their tax obligations in the Circular Letter of the Director General of Taxes Number SE-62/PJ/2013 and the Circular Letter of the Director General of Taxes Number SE-06/PJ/2-2015 concerning Withholding and/or Collection of Income Tax on E-commerce Transactions. Both are based on the provisions of Law Number 36 of 2008 and PP Number 1 of 2012. However, there are still gaps for OTT-based business actors. For this reason, the government needs to reformulate the substance of the legal policies that regulate the online gaming industry, namely Government Regulation Number 80 of 2019 concerning trading via electronic systems and Minister of Trade Regulation Number 13 of 2023. The government needs to include provisions that require every actor to trade via electronic systems, such as online game developers, to form a permanent business entity (BUT) with a format that refers to the Law on General Tax Provisions and the Law on National Income Tax.

In this case, the BUT must be a branch of the company that is legally and formally one entity (not a separate entity) with tax subjects abroad or its parent company. Thus, every social commerce company operating in Indonesia, regardless of its location outside Indonesia, must be willing to become a foreign taxpayer. So in terms of tax obligations, online game developers not only collect VAT from transactions between sellers and buyers on their platforms but are also obliged to remit income tax (corporate income tax). This is in line with the source principle to determine which country has the right to collect tax from a taxpayer's income. Apart from that, citing the opinion of Arvid A. Skaar (1991), a business still benefits substantially from the availability of infrastructure, so it must continue to contribute in the form of paying taxes. The implementation of the obligation to form a BUT for all PSMEs for all social commerce from abroad will further guarantee legal certainty. Apart from that, this is in line with the formulation of Article 5 paragraph (1) of the OECD regarding BUT, or Permanent Establishment, as "a fixed place of business through which the business of an enterprise is wholly or partly carried on.".

Policy reformulation should not only affect state income but also their allocation, in order to foster the development of a quality and competitive online gaming industry. In this instance, the government must ensure that tax collection is carried out in an affirmative manner for both domestic and international online game makers. The government can reduce or waive tax provisions as much as feasible for the burgeoning domestic gaming business. The government can establish a policy requiring at least 30% of tax revenue from the online gaming sector to be directed into domestic online gaming industry empowerment programs such as capital assistance, business development, and education programs for local game producers. Empowerment programs should still be encouraged, especially in the start-up sector.

One of the reasons for poor tax collections in the e-commerce and social commerce sectors is that the government's ability to report the number of transactions in accordance with reality is suboptimal. The government requires big data that is aggregated based on the number of transactions and sold items estimated for each district/city in Indonesia. This may be a legitimate benchmark for the government to impose and compute the taxes received. In this instance, the government must develop cross-institutional procedures for disclosure, collection, monitoring, and supervision of tax-related transactions. This effort can be carried out by collaboration between e-commerce and social commerce service providers, as well as resources from the Ministries of Finance, Trade, and Information and Communication, all coordinated by the Republic of Indonesia's Tax Supervisory Committee.

4. Conclusion

As a creative business sector, Indonesia's online gaming industry has significant potential to boost the country's economy. This can only happen if the domestic gaming business grows and advances enough to compete with the significant penetration of the international online gaming market. On that basis, the government should reconsider its current approach, imposing proportional taxes on international game creators who market their products and profit from transactions in Indonesia. In this instance, the government can employ the required procedure to create a permanent establishment that meets the tax-subject conditions outlined in Indonesian tax legislation. This measure will eventually boost state revenue and help to balance the budget. On the other hand, the government can use tax dollars to encourage the local gaming industry through funding, infrastructure, and long-term investment in the form of educational scholarships focused on technology and online gaming business development.

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