

The Provision of Sanction in Tax Amnesty in Indonesia

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Abstract—After the issuance of Law no. 11 of 2016 on tax amnesty there is a provision that is set in the joint taxation gratuity with sanctions for violators of tax payment obligations. This paper aims to identify and describe the provisions of sanction of tax payment in tax amnesty in Indonesia. To meet this target, conceptual and statute approaches to legislation are used in the design of the implementation of this research and in the data collection. In analyzing and presenting the data, qualitative descriptive and quantitative methods were used. The results show that the provisions on sanctions in an amnesty in Indonesia has been for many times amended due to contradiction in human rights. In law No. 11 Year 2016 on the Remission of Tax, policy has been set out with main goal of equalize tax payments for nations for development needs of the country, which cover to meet fairness, certainty, and benefit for the nations. However, the provision has been in debates since it was believed inhuman by those who were not worth of welfare. The nations are recommended to not feel aggrieved when it comes to paying taxes.

Keywords—provision; sanction; tax amnesty

I. INTRODUCTION

Currently, the Republic of Indonesia is actively doing development to achieve a just and prosperous society based on Pancasila and the 1945 Constitution. As developing countries are still in development stage and for the development to proceed smoothly, considerable financing from the tax sector is needed. Taxes are levied unilaterally on merit and paid to the authorities (in accordance with generally defined norms) [1] in the absence of contra and solely to cover expenses-expenses public. Tax function is distinguished into two types, i.e. the budget-based function and regular function. However, this distinction is not purely dichotomous, because in many respects the both functions are applied simultaneously [2]. The law of taxation in its development cannot be separated from the criminal law. Thus, the reform of criminal law brings about civilization, especially the politics of criminal law [3]. Indonesia as a unitary state was formed on the basis of the aims and ideals of a country, as stipulated in the Preamble of the 1945 Constitution of the State of the Republic of Indonesia. In order to achieve its goals and ideals, the national development of law for the future that can be formulated in more form concrete in the form of legislation is required.

The effort of the renewal of the law in Indonesia had begun since the enactment of the Constitution of the Republic of Indonesia Year 1945 (called the 1945 CONSTITUTION) which cannot be released anyway from the Foundation and the objective to be achieved as reformulated in Preamble in 1945. The goals outlined in the briefly Preamble of 1945 Constitution was "to protect the Nations of Indonesia and to advance the general welfare based on Pancasila. This is the general policy line that became the cornerstone of base and political objectives in Indonesia [4]. The renewal of the law is a step policy law. According to politician, Diana M Dinito [5] social policy contains the policy fields of politics, economy, law, Defense Security, and processing natural resources and environment.

Jazim Hamidi [6] writes, "The proclamation text contains the need to follow up all regulations through national law and regional legislation." The provisions of articles 23 and 23 of the Law on Amendments to the Constitution of Taxation may include some notions of taxation. P. J. A. Adriani wrote "*Belasting noen ik de heffing, waardor de overheid zich door middel van juridische dwang middelen verscheft om de publieke uitgaven te berstrijden, zuls zonder enige prastatie daartegen overte stellen*" [7].

In Addition, Soemahamidjaja [8] wrote: "Tax is a compulsory contribution, in the form of money or goods, charged by the sovereign on the basis of legal norms, in order to cover the cost of production of goods and services collectively in achieving general welfare", need to avoid using the term coercion "so enough said that the Tax is a" mandatory contribution "and does not need to be given additional" which can be imposed", while regarding the cons achievement, thus to counter the achievements that need to be charged tax. In this case the Expenditure-Government spending for the conducting of security, prosperity, justice, development, and other stuff awarding cons achievement to the taxpayer as a society [9].

State Budget (APBN) is obtained from tax payments by Taxpayers, individuals, legal entities and third parties that become the main source of revenue of the State financial receipts amounted to approximately 80% (percent), so that taxpayers and third parties should be put in place in humane according please second Pancasila "just and civilized Humanity", in order to realize the fifth please of Pancasila "social justice for all the people of Indonesia".

General provisions of laws and Ordinances regulating taxation criminal acts can be differentiated into two parts namely: violations and crimes. In a criminal law setting the crime is not only as the impact of suffering alone against the culprit, but often also contain positive values [10]. In order for an act declared as a criminal act, the deed must be in accordance with the provisions given in the formulation of legislation [11]. Crime in the field of taxation is much related to the application of tax law to direct the employees of the tax, taxpayers, tax officials, or the other party in order to obey the provisions of the regulations. It is based that the tax law cannot provide a usability when the parties in the position of stakeholders did not have a sense of Justice in fulfilling our obligations or duties or law respectively [12].

The Law on Taxation regulates tax collection rather than taxpayer imprisonment. However, the formulation of policies, implementation, and implementation of sanctions of it against the perpetrators of taxation crime has prioritized criminal sanction of imprisonment as a penalty for criminal case of income which is detrimental to state revenue. This is very unfair to taxpayers as it is against Law no. 11 of 2016 on Tax Amnesty and with the policy of formulating the third amendment of taxation of the criminal law of the Republic of Indonesia number 28 of 2007 on General Provisions and Tax Procedures. This condition shows the uncertainty of legal certainty and justice. In addition, if examined in-depth the state's interest of the taxpayer is his contribution to income that is useful for the development of taxes on payments. Such a thing is reflected in the contradictory view of jurists, tax experts and law enforcement officers.

Article 39 paragraph (1) letter I of the Laws of General Provisions and Procedures of Taxation (UU KUP) 28 of 2007 Number has an emphasis that actions that may cause the loss of state income are punished by imprisonment and/or fines. Juridical problem in terms of lack of sense of justice in the norm with the enactment of Law No. 11 of 2016 on Tax Amnesty is the first problem. This of course becomes an injustice to the taxpayer who is honest in his tax payment.

Based on the description of the above facts, this study aims to examine the formulation of sanction policy with the issuance of taxation law no. 11 of 2016 on Tax Amnesty in improving taxpayer compliance and to review the tax reformation policies issued after the enactment of Law no. 11 of 2016 on Tax Amnesty in Indonesia.

II. METHOD

This study is a normative study that examines and reviews the laws and the provisions contained therein, especially those that govern the world of taxation before, during and after the enactment of the Tax Amnesty Law of Taxation in Indonesia. The conceptual and statute approaches to legislation were applied in the design of the study. The data that have been collected and analyzed are data in the form of articles of the law related to taxation, including the advantages and disadvantage details. To obtain the data, documentation studies covering the activities of studying and collecting data from libraries have been conducted. Data were analyzed and presented descriptively qualitative and quantitative.

III. RESULT AND DISCUSSION

A. Policy Formulation of Sanctions with the Introduction of Taxation Law No. 11 Year 2016 Aristoteles' theory of Justice

Aristotle's theory of justice contained in the paper entitled Nicomachean Ethics [9,13]. The concept of Justice in Aristotle's perspective is as a theory of justice law, because the law can only be defined in relation to justice [14]. Aristotle's view of Justice intended is "*justicia est costans et perpetua voluntas ius suum cuique tribuendi*". That is to say, justice is none other than will of steady and settled to give each of its parts [15]. It is therefore understandable that justice cannot be identified with the equation, because it does not mean that every person obtaining the same part, but proportionate.

J. Bentham's Theory of Justice, A very popular phrase is *the greatest happiness for the greatest number of people*. Bentham said [16]:

I am an adherent of the principal of utility, when I measure my approval of disapproval of any act, public or private, by its tendency to produce pains and pleasures: when I use the term just, moral, immoral, good, and bad, as comprehensive term which embrace the idea of certain pains and pleasures, and have no other meaning whatsoever.

Rests on the foundation of the theory of the law of Justice, that policy formulation of taxation after the enactment of sanctions law No. 11 Year 2016 on the remission of tax (a tax Amnesty) arrangements giving rise to the conflict of laws of the legal function, exposing the injustices against the honest taxpayer and as long as it conformed to pay taxes, and this policy seems to be giving legal protection to the perpetrators of the crime tax.

According to Aristotle legal purposes are fairness, certainty and benefit for the nations. Justice must have the position of the first and the most important of on legal certainty and benefit. In the value of the benefit, the law serves as a tool to photograph the phenomenon of society or social reality. Can benefit or Sepik (utility) for the community.

B. Tax Reformation Policy Efforts after the Enactment of the ACT of Remission of Tax Amnesty

To dissect the second problem the theory of legal certainty is used in the process of applying criminal sanctions after the enactment of the Act of Remission of Tax against taxpayers who have committed a criminal offence. It is found on tax policy. The formulation of punishment sanctions needs to be treated more humanely with more emphasis of non-penal sanctions (penal administration and condemnation as *ultimum remidium*). Given the tax payers are the ones that contribute directly to the State by setting aside part of its revenues to the benefit of social welfare development is Indonesia.

Further in the discussion related to the formulation of the problem, the theory of the Norm Reconstruction, Subsequently with orientation of policy is also used. This is particularly relevant to know the legal policy of the Government in the

recovery of the functions of the Act which reflects the sense of Justice of COUP in philosophy to the taxpayers. Reconstruction Theory is also the norm to do in the reconstruction or repair against the norms of conflict, whereas the consequence is logical from the enactment of Law of Tax Amnesty in setting it up so that it gives rise to a conflict of legal norms and the purpose of philosophical dressed in taxes for taxpayers. However, at the same time it also provides criminal sanctions of imprisonment for taxpayers, but after the enactment of the Act of Remission of Tax the taxpayers who have been subject to criminal sanctions feel unfairly treated. Thus, it sounds unfair, whereas the basic goals of the formation of taxation law theory combines the construction law, criminal policy and theory and legal benefits in order that positive law formed reflect fairness, certainty and have benefits for the community.

Actually there are many ways and strategies that can be used to optimize the Government's policy of tax amnesty. Now live how the Government utilizes it and use the momentum of reforms in all sectors that are already awakened it to package a product the right policy for the welfare of the nation of Indonesia.

C. Disadvantages and Advantages of a Tax Amnesty

Going on the pros and cons of adding rules regarding the tax amnesty, the pros' opinion said that the policy of tax amnesty could be an effective solution to increase the number of new taxpayers and tax revenue. However, there are cons that argued that the policy is a desperate measures from the Government. In addition, the enactment of a tax amnesty could encourage citizens that obey the tax being naughty because there are factors of jealousy.

For a deep understanding, the existence of a tax amnesty can provide benefits to parties. It is advantageous for the government, developers, as well as to investors. The following are benefits of the existence of a tax amnesty for some of the parties:

1) *To the government:* With the enactment of a tax amnesty, it will add to the income receipts where the number is proved quite effective in reducing the State's acceptance on the wane. By implementing a tax amnesty, it will automatically withdraw funds contained in foreign countries to Indonesia which makes entry into the recording to the new tax sources. The tax amnesty which is assumed by the government as much as Rp. 60 trillion in 2016 State Expenditure Budget. The nominal rate is derived from the ransom of 3% of the incoming funds amounting to about Rp. 2,000 trillion.

2) *For developers:* With the enactment of the tax amnesty, it will make the property sector experienced growth for the next year. This policy relates to taxes that make the indicators for revival of a business property that existed in Indonesia. Tax amnesty is highly trusted to deliver an impact on developers to be able to keep in touch with investors. Investors during at this mood do not want to infuse capital in Indonesia because it has the property tax with a very high rate.

3) *For investors:* Not just from Governments and developers that are advantaged from tax amnesty but also the investors. The existence of a tax amnesty or a pardon for tax provide the investors with an advantage against business activities. This tax amnesty can make the consumer as well as the daring investors to make the purchase of the properties. Thus, investors are undoubted anymore to do it.

D. The Level of Compliance of Taxpayers in Indonesia

The level of adherence to taxpayers play an important role toward the success of the government in determining the magnitude of the acceptance of the tax sector. The Directorate General of Tax records the taxpayer compliance ratio in delivering the notice of Annual as in Table 1 [17].

TABLE I. THE LEVEL OF COMPLIANCE WITH TAXPAYERS IN 2013-2015.

| Year | The level of Compliance (%) | A total of taxpayers conveying tax letter indebted (person) | Taxpayers are obliged to convey tax letter indebted (person) | Total tax payers registered (person) |
|------|-----------------------------|---|--|--------------------------------------|
| 2015 | *) 62,50 | 9.033.233 | 18.116.000 | 19.410.174 |
| 2014 | 58,16 | 8.202.309 | 14.101.933 | 15.911.576 |
| 2013 | 54,15 | 5.413.144 | 10.289.590 | 15.911.576 |

Source: Director General of tax, and some sources, processed data

Taxpayer compliance in Indonesia each year has increased along with the increased number of taxpayers. Increasing the number of taxpayers is not directly proportional to the increase in the amount of tax revenue. However, the increased realization of tax compliance provide a positive impact against a target that has been set.

On the other hand, the level of compliance of payment of tax of the rich until recently haven't been fullest or still low. That is why the efforts to attract wealthy taxpayers continue to do including Tax Service Office have made the Director General of for taxpayers rich or High Net-Worth Individual (HNWI). Tax Service Office Taxpayer (KPP BOP) is one of Service Office that serves to attract a mainly wealthy taxpayers is Jakarta. KPP BOP serves about 1,200 wealthy individuals with a wealth of over Rp. 100 billion.

One of the targets of compliance needs to be done including prosecuting the tax that comes from wealth abroad. One of his efforts is to arouse the awareness of taxpayers and candidate/ex-taxpayers through the remission of tax amnesty.

Taxpayer compliance ratio in Indonesia is still classified as below average when compared to the ratio in developed countries. Some of the factors that cause the low ratio are low level of public awareness in carrying out the obligations of the remittance and reporting of taxes, the lack of number of state tax, and so on.

There are some steps that the government of Indonesia. These procedures cover the Directorate General of Tax improve the State's acceptance of the tax sector, among other things carrying out National Tax Census program. Besides, the refinement rules to deal with acts of tax evasion (tax avoidance), acts of tax evasion through transfer pricing, and taxation.

Other step was the internal reforming and revamping the tax system. This was also done on tobacco, which is priced up from 2014 with an average of 12.2%. The next step was to improve the accuracy of customs value research and the classification of imported goods as well as to improve the effectiveness of physical inspection of goods, including the implementation of the improvement of Indonesia National Single Windows as well as the development of automation services in the field of customs and excise [17].

In addition, one form or other innovative effort in a useful tax system increases tax revenues without adding to the burden of both new taxes as well as the existing tax rates for the public, the business community and workers is the Amnesty Tax program. One of the objectives of this action is to reduce the negative image on the tax authorities that are always considered to behave arbitrarily and should always be avoided, turning into a more "user-friendly" relationship. Basically this effort or innovation can be applied in Indonesia.

Excellence expected when the tax amnesty policy is implemented is that it be able to encourage the entry of funds from abroad which can eventually be used as an investment driving force which in turn is beneficial to stimulate the national economy.

On the other hand the losses incurred when the tax payable is applied i.e. there is no guarantee for the increase of performance deposit tax to the State Treasury. This potentially reverses the onset of fraud, manipulation and other moral acts. Entrepreneurs who receive tax bleaching will commit tax evasion. Unless the tax amnesty is conditional. For example, tax amnesty from conditional taxpayers must be transparent to their assets and earnings. This is done to avoid the confusion that occurred in 1984 not repeated, namely the lack of access to information to the public and the lack of openness / transparency and dissemination of this policy.

Resources are owned in instances of current tax reform is already sufficient to support the existence of the application of the tax amnesty. Likewise, other supporting infrastructure. Recorded Tax year 2014 Director General of tax employees is amounted to 32,000 people, so that when taxpayers currently numbered 20 million people means ratio is 1.625. Although forward very need to plus it remembers the taxpayer each year has increased.

If the taxation policies like tax amnesty is applied then it will create the readiness of

the community to register themselves to become tax payers and completed obligations of taxation as the previous Government with the sunset policy as well as tax exempt treatment for citizens of Indonesia wishing to travel abroad on condition that has a Number of tax Payer.

The condition of the national economy is currently stable with an average economic growth of over 5 percent. This can ensure the enactment of the tax amnesty. Some, such as South Africa, South Korea and others, enacted a tax amnesty at a time when the economy is in a stable condition.

With the holding of the Census tax years 2011 then it can be known to an idea of the condition of the taxpayer, the potential as well as the characteristics of taxpayers who can paint the input to decision makers in order to specify Yes or No implementation of tax amnesty implementation.

E. Opportunity

The program is expected to increase the incoming funds to Indonesia which is quite a lot in store in abroad. In addition, the funds that had parked outside the country can back into the homeland when the Government immediately implement tax amnesty. Potential funding flows is estimated to range from US \$20-40 billion or equivalent to Rp 360 trillion. (No data, 2009) Funds are deposited in a number of banks in Singapore and Australia. A number of countries have successfully enacted a tax amnesty, one of which is South Africa, South Korea and India. The community's level of confidence still high is one of the opportunities to realize the ultimate goal in order to secure the acceptance of State tax.

Currently Indonesia still has other problems associated increase in tax ratio of tax revenue to Gross Domestic Product (GDP). Tax ratio of Indonesia until now is still low ranges of 12 percent when compared to some neighboring countries, so that the policy of tax amnesty is one of the efforts to enhance interest in the payment of taxes among the public. Development of the Tax Ratio when viewed from the year 2010 up to 2015 are as in Table 2.

TABLE II. TAX RATIO INDONESIA 2010 – 2015 [18].

| No | Description | Year | | | | | |
|----|-------------------------------|----------|----------|-----------|----------|----------|----------|
| | | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
| 1 | Tax Center (Trillion rupiah) | 347,03 | 409,20 | 490,99 | 658,70 | 641,38 | 744,06 |
| | a.Domestic Tax | 331,79 | 395,97 | 470,05 | 622,36 | 622,71 | 715,21 |
| | b.Tax Trade Intl | 15,24 | 13,23 | 20,94 | 36,34 | 18,67 | 28,85 |
| 2 | On the basis of GDP | 2.784,30 | 3.365,90 | 3.950, 90 | 4.951,40 | 5.613,40 | 6.422,91 |
| | Price Apply (Trillion rupiah) | | | | | | |
| 3 | Tax ratio , % (1:2) | 12,46 | 12,16 | 12,43 | 13,30 | 11,43 | 11,57 |

Source: BKF, X_ROBINFAN_X, BPS, processed, *) Tax Ratio = (tax: GDP) x 100%

From this data are visible only in the year 2013 tax Indonesia ratio higher than the 13 percent. Target 2014 tax ratio reached 12.2 percent and the year 2015 is reached 12.6 percent. With low tax ratio, the required government efforts to

increase the tax ratio, among others in the form of granting remission of tax in the short term is to be expected in the long term an increase in tax or mandatory a tax receipt.

IV. CONCLUSION

Tax amnesty has been a serious hottest debate that needs concentration in Indonesia. The provision of has been put into the effort of making the taxpayers loyal and honest in the payment of the tax. However, prior the Law of the Remission of Tax after the implementation of the Law on Tax Amnesty, the system of punishment to the disobedient taxpayers has been to imprisoning the disobedient taxpayers that it resulted not in the increasing the awareness of the taxpayers to obedient and honest. Other strategies to be set out as to seek the taxpayers to submit their duties which are effective could be found by the government, such as the rules for increasing the rates of the tax after the violation on the existed deadline of the payment and others that need the creativity of the government to discover. This has much focused on the chronological events in amending the legal provisions of tax amnesty but has not reached the long extent to which discussion in other contexts may take place. Thus, it is open for further investigators to conduct related study, particularly on the realization of the continuity of tax amnesty provisions.

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