

# Obligations for Indonesian Banks to Report Its Customers Data to Tax Office Under Automatic Exchange of Information (AEOI) Stipulations

J. M. Atik Krustiyati, Diana Hugeng

Faculty of Law  
Universitas Surabaya  
Surabaya, Indonesia  
krustiyati@staff.ubaya.ac.id

**Abstract**—This study aims to determine the legal implications after Indonesia signed a Multilateral Agreement between authorized officials (Multilateral Competent Authority Agreement) on the Automatic Exchange of Financial Account Information (AEOI). The agreement requires the government to make regulations that authorize the tax authorities to access financial information where the obligations are contrary to the principles of banking law in Indonesia which are required to maintain the confidentiality of customer data. The method used is normative juridical approach to legislation and conceptual approach. The results of this study reveal that in the application of an exchange access policy for financial information that is contrary to the principles of banking law, the legal principle of *lexspecialis derogate legigeneralis* is used. The government collaboratively with Indonesian banks and financial institutions must promote these new requirements to the public, especially customers of banks and financial institutions.

**Keywords**—*tax amnesty; common reporting standart; automatic exchange of information*

## I. INTRODUCTION

The bank's obligation to report customer data according to AEOI is carried out in the context of Tax Amnesty. There are 4 basic principles that must be considered in tax collection, namely: justice (equity), juridical (certainty), economics and convenience of payment that the tax imposition should not be lethal or burdensome to the civil servants, it further motivates the development of a country's economy [1].

In 2007 United States of America (US) experienced financial crisis due to sub-prime mortgage or low quality mortgage, which causing few US banks declared bankrupt and being the burden for US government as they have to make bailout for those banks' depositors. This created deficit in the US state budget. Internal Revenue Service (IRS) as US Tax Office tried to increase tax income by chasing up offshore tax obligation from US tax payers. This initiative was the background for the issuance of US Foreign Account Tax Compliance Act (FATCA) which among others mandates any non-US financial institutions to report the account of US tax payers who becomes its customers.

Almost all countries in the world have implemented the tax amnesty program which is part of taxation policy by giving taxpayers amnesty in the form of exemption from criminal sanctions stipulated in the law.

Tax amnesty has been used repeatedly from time to time by all countries in the world regardless of their level of economic development. Developed countries include; Australia, Austria (1982, 1993), Belgium (1984), Finland (1982, 1984), France (1982, 1986) Greece, Ireland (1988, 1993), Italy (1982, 1984, 2002), New Zeland (1988), Spain (1977), and Switzerland. However, developing countries implemented tax amnesty policies such as: Argentina (1987,1995), Panama (1974), Peru, Mexico, the Philippines, the Russian Federation (1993, 1996, 1997) and Turkey. United States (78 Program until 2004) All states (42 out of 50) have implemented tax amnesty policies in the short term. The results of the International Monetary Fund study in 2008 showed the success rate of the tax amnesty was only 50% in developed countries and in developing countries [2].

Other countries in the world see that the efforts initiated by US in chasing the compliance of tax payers to pay tax obligations is truly a breakthrough. Accordingly, other countries follow the path taken by US by establishing Common Reporting Standard (CRS) for the purpose of Automatic Exchange of Information (AEOI) among participating countries.

A similar study was carried out by Mega Puspawati who revealed that an agreement on AEOI would bring Indonesia into an era of financial information disclosure which was carried out by exchanging data automatically with other countries related to reciprocal principles. Thus it is believed to be able to increase tax revenues by the Directorate General of Taxes [3].

## II. METHOD

In research in the field of law, there are two types of research methods, namely normative legal research methods and empirical legal research methods [4]. In this paper, normative legal research methods are used, namely research methods that use secondary data by conducting a

comprehensive study and analyzing primary legal materials, secondary legal materials and tertiary legal materials. The approach used is the statute approach and the conceptual approach

### III. RESULTS AND DISCUSSION

#### A. *Efforts Done by the Government of Indonesia*

Tax has significant role for any country as it is source of revenue to finance all expenditures, including development projects. With the increasing trend of tax evasion and tax avoidance in the past few years, many countries in the world try to increase the compliance of its respective tax payers in order to achieve higher tax revenues. The initiative became a global effort involving more than 100 countries to establish inter-governmental agreement on tax reporting.

The government of Indonesia did not want to lose the position in the effort of getting tax payment by joining the said global initiative and finally has participated in the inter-governmental agreement to implement automatic exchange of financial account information. The said agreement mandates the participating countries to immediately establish a law to stipulate access to financial information for tax purposes by 30 June 2017. The agreement has a very tight condition for its participating countries to immediately fulfill the obligation before the required timeline with consequence for any failure to fulfill this mandate will trigger a declaration of fail to meet its commitment.

For Indonesia, the status of fail to meet its commitment will bring significant losses, among others decrease of credibility as a member of G20, decrease in investors' confidence and has potential for disrupting the stability of national's economy, further, Indonesia may be seen as designating country for placement of illegal fund.

Accordingly, Indonesia has established government regulation in lieu of law which subsequently being ratified as a law. It is Law of the Republic of Indonesia No. 9 Year 2017 concerning Determination of Government Regulation In lieu of Law No. 1 Year 2017 concerning Access to Financial Information for Tax Purposes to be Law. The law marked a new era for implementation of common reporting standard (CRS) as part of automatic exchange of information (AEOI) for tax purposes in Indonesia.

However, before starting to implement CRS, the government of Indonesia introduced Tax Amnesty to provide opportunity for tax payers who did tax underpayment or made incorrect tax reporting to revise their tax returns by paying tax compensation.

Under CRS requirement in Law No. 9 Year 2017, the government of Indonesia mandates all banks and financial institutions to report the data of its customers to Tax Office for tax purposes. Basically this law overrides the banking secrecy that previously regulated under Law No. 10 Year 1998 concerning the amendment of Law No. 7 Year 1992 concerning Banking. However, it is important to note that such override is only applicable for tax reporting purposes.

Due to the necessity to immediately provide broad access to tax authority to receive and obtain financial information for tax purposes, therefore Indonesia follows the international standard of CRS with obligation for Indonesian banks and financial institutions to submit the data of tis customer to Tax Office.

From legal perspective, this is aligned with the legal principle applied in Indonesia, i.e. "*Lex Specialist de rogat Lex Generalis*" which means specific law override general law. CRS is specifically intended for tax purposes; accordingly, it may override the banking secrecy which is a general rule to protect the data of banks' customers.

Indonesian Banking Law No. 10/Year 1998 stipulates banking secrecy as information around banks' depositors and their deposits with exemption to disclose banking secrecy under certain circumstances, such as hearing in the criminal court, prosecution by attorney or investigation by police. Exceptions also cover civil litigation, inheritance-related matter and upon customer demand. Further, exemption can also be in relation to taxation case, however any data request from Tax Office to a bank on depositor and/or his/her deposit must be raised by Directorate General Taxation to Chairman of OJK and without approval from Chairman of OJK, bank cannot disclose the data to Tax Office with violation to this rule is a criminal offense.

Looking at the abovementioned arrangement to disclose banking secrecy for tax-related matter, it is deemed impractical and challenging for Tax Office requiring banks to report the data of all their depositors. Accordingly, government issued Government Regulation In lieu of Law No. 1 Year 2017 concerning Access to Financial Information for Tax Purposes to be Law which subsequently being ratified as Law of the Republic of Indonesia No. 9 Year 2017 concerning Determination of Government Regulation In lieu of Law No. 1 Year 2017 concerning Access to Financial Information for Tax Purposes to be Law

Law enforcement in the tax sector needs to be addressed by coordinating between financial services authorities, the center of financial transaction analysis reporting related to bank banking customer data, the Republic of Indonesia police, the attorney general's office to increase law enforcement in providing certainty in taxpayers [5].

The discussion around banking secrecy especially the dichotomy between protecting the individuals' interest for their financial data versus public interest for getting the said financial data is a long discussion and being very interesting debate [6]. The issuance of Law No. 9/Year 2017 ends the debate up and gave a solid legal base for Tax Office in mandating all Indonesian banks to submit the data of their depositors.

Tax violations in the past were considered simplistic and too formal whereas according to the new theory and philosophy tax violations no longer distinguish theft from the State and theft of individuals [7].

In practice both prosecutors and judges tend to apply the Law on the eradication of criminal acts of corruption against cases related to tax crimes, this violates the principle of *Lex Specialist derogate lex generali* [8].

## B. Discussion

The discussion about the issue of the obligation to report the bank reporting on customer data in relation to the tax amnesty program, then tried to see the implementation of tax amnesty in several countries. Those who have succeeded in dispensing with the tax amnesty program, for example Indonesia, South Africa, India and Italy.

1) *Indonesia*: The potential for repatriation funds with the implementation of the tax amnesty will have an impact on the funds belonging to Indonesian citizens who are abroad can be withdrawn to Indonesia to benefit the State. McKinsey research to calculate the potential of state revenue from the tax amnesty, is projected that tax amnesty is able to attract home (repatriation) of assets abroad around Rp.2,000 trillion; Assuming, the 3% tariff from the "ransom", it is believed that this tax amnesty policy is able to contribute an additional minimum tax revenue of Rp. 60 trillion and the implementation of the tax capability policy will be the basis for tax base for 2017 and beyond which is certainly potential the acceptance will be much greater [2].

2) *Afrika*: In South Africa the success of the tax amnesty is caused by several things, including requiring residents of South Africa to adhere to the provisions of Exchange Control and tax issues; second, giving authority to the South African Reserve Bank to oversee assets belonging to South African nationals who are abroad; and third, facilitate the return of assets of taxpayers who are abroad and increase tax revenues in the future [9].

3) *India*: India has carried out a tax amnesty program since 1965 which has been implemented every 5 or 6 years. The policy that began on March 1, 1965 has provided government revenues of 60%. The interior minister is campaigning against corruption as a result of which large amounts of tax can be collected. In addition, provisions were also made to resolve serious dispute cases against tax assessments and tax officials [10].

4) *Italia*: From 1991 to 2014 Italy adopted a tax amnesty policy the government gave relief to taxpayers so that they pay lower rates until the end of 2015 the Italian government managed to reveal € 60 billion in wealth not declared. Declaring these assets, the government managed to explore tax revenues of around € 3.8 billion or US \$ 4 billion [11].

Indonesia must learn from the experiences of other countries such as India, South Africa and Italy in the implementation of tax amnesty. South Africa and India are

countries that are similar to Indonesia because they are developing countries and are experiencing a period of government transition. Both countries have large numbers of rich people. Indonesia must also learn from Italy because the country has considerable overseas assets such as Indonesia [12].

## IV. CONCLUSION

The government has followed up this agreement by issuing the law mandating Indonesian banks and financial institutions to provide the data of their customers to Tax Office. This specific law overrides the banking secrecy as a more general law. In ensuring the successful implementation of this requirement, the government collaboratively with Indonesian banks and financial institutions must promote this new requirements to public, especially customers of banks and financial institutions in order to avoid any confusion and complaints.

## REFERENCES

- [1] H. Irawan, *Pengantar Perpajakan*. Malang: Bayu Media, 2003.
- [2] Y. Prastowo, *Menimbang Manfaat Kebijakan teks Amnesty*. Jakarta: Center for Indonesia Taxation Analysis, 2016.
- [3] M. Puspitawati, "Karakter Multilateral Competent Authority Agreement On Automatic Exchange Of Financial Account Information Dan Implikasinya Pasca Program Tax Amnesty Di Indonesia," *Diponegoro Law Journal*, vol. 7, no. 4, 2018.
- [4] P.M. Marzuki, *Penelitian Hukum*. Jakarta: Kencana, 2007.
- [5] I. Farida and A. Prawira, "The Effect of Granting Tax Amnesty to Tax Revenues," *Research Journal of Finance and Accounting*, vol. 6, no. 4, pp. 158, 2015.
- [6] Y. Husein, *Rahasia Bank: Privasi versus Kepentingan Umum*. Jakarta: Pasca Sarjana Universitas Indonesia, 2003.
- [7] S.B. Diharjo, *Mengantar Ilmu Hukum Pajak*. Bandung: Eresco, 1995.
- [8] Sarwirini, "Perubahan Sikap Wajib Pajak dan Aparat Pajak Dalam konteks Perubahan Sistem Hukum Pajak Di Indonesia, Yuridika no 3 tahun III Romawi Juni Juli Surabaya," 1998.
- [9] Z. Muttaqin, *Tax Amnesty di Indonesia*. Bandung: Refika Aditama, 2013.
- [10] A.A. Josephine, "Tax Amnesty for Delinquent Taxpayers: A Clinche in Negeria," *Global Journal of Politics and Law Research*, vol. 3, no. 3, pp. 105-120, 2015.
- [11] I. Kurniati, "Memandang Negeri Seberang", in *Media Keuangan Transparansi Informasi Kebijakan Fiskal*, Edisi XI/No.103/April 2016. Jakarta: Kementerian Keuangan, pp. 18-19.
- [12] M.K. Huda, *Hukum Pajak 2018, Kontenporer Teori Praktek Dan Perkembangan*. Sidoarjo: Zifatama jawara, 2018.