

## DECONSTRUCTION OF EQUITABLE TAX AMNESTY

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**Abstract:** *This study aims to deconstruct modernity of tax amnesty policy. This study is qualitative research that uses postmodern paradigm. Pancasila values that have been marginalized are aligned with logocentrism values of modernity. This study found that tax amnesty as a politic evolution is more concerned with materialism, ignoring equity for tax payers to comply. The result is a deconstruction of tax amnesty policy based on the values of Pancasila in order to achieve a fair policy for all Indonesian people. The main principle of Pancasila value is Gotong Royong (mutual cooperation), as the base of tax amnesty. This research contributes to discourse that can be used as direction to design an equitable tax amnesty. The originality of this study is a research topic of current issues that is still under discussion in parliament.*

**Keywords:** *Deconstruction; Equitable; Pancasila; Tax Amnesty; Tax Compliance*

### 1. INTRODUCTION

Tax collection in Indonesia is in accordance with the Constitution 1945 article 23 A. Act is a law product proposed by the government with the approval of parliament. Normatively tax law has been approved by citizen through their representatives in parliament. This condition is the effect of a series of past events that began with the statement “no taxation without representation” that appeared in UK in 1215 as a form of rejection of the people to pay taxes to the king in the absence of representatives of the people who approved the law of taxation. Another statement is “taxation without representation is robbery” which is a protest of thirteen American colonies should pay taxes to the UK and they do not have representation (Soemitro & Sugiharti, 2010: 8).

Taxes have a large portion of the state budget. State budget in 2016 showed receipts from taxes increased from 2015 which amounted to 84.6% of the total state budget (State Budget, 2016). Tax officials become contemplative referring back the target of previous year that only reached 81.5% and in 2008 the target of tax revenue that could achieve the above targets which reached 106.8%. Achieving the target in 2008 is inseparable from the success of the *Sunset Policy program*.

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Currently a taxation issue is formulation of tax amnesty. This draft has been controversial because forgiveness that is considered to be targeted towards taxation need to be clarified. Compliance of tax payers' perspective is also unfair because tax evaders even get forgiveness. The government argument is showing the logic of this equitable tax amnesty, that only 40% compliant tax payers, thus tax amnesty policy will be able to improve the 60% data base of tax evaders (Depkeu.go.id, 2016).

The accountants' views on tax is based on the proprietary theory, which considers that profit for shareholders (Parikesit, 2012). Entity theory, which is a derivative of proprietary theory, considers that profit is for government, creditors, and shareholders. Entity theory considers that the income tax is not a burden but the distribution of profits (Parikesit, 2012). Proprietary theory and entity theory after the Washington Consensus are still being accountants' referenceces in looking at tax as a burden affecting their taxation practices.

Washington Consensus policies such as trade liberalization and privatization are the implicitly eliminating the state's role in the economy (Yustika, 2004). Liberalization and privatization of economic activity to the market are handed over to the individual business ownership. Liberalization and privatization are not in accordance with the character of the Indonesian nation that is filled with the spirit of mutual cooperation. The economy thriving in Indonesia is dominated by foreign companies in the form of limited liability companies (Andrianto & Irianto, 2008). Populist economic in accordance with Constitution 1945 article 33 has been marginalized by capitalism. Democratic economy is economy that is based on Pancasila ideology.

According to Rahardjo (2004), Pancasila economy is economy of the people who are moralitics, democratic, and independent. Epistemology of Pancasila economy exists at the practices of democratic economy in the village in the form of cooperatives embodying economic system compiled based on Constitution 1945 article 33. Axiology of Pancasila economy is prosperity and social justice for all Indonesian people. Equal to the tax philosophy of Pancasila economic axiology aims to achieve prosperity and social justice.

Reality is not in line with the top goal of Pancasila economy, taxes collection prefers to capital levy on company profits. It must be realized that the concept of capital in Pancasila economy is not interpreted in a narrow sense namely the financial capital, but it leads to social capital in the form of virtue values, cultural capital in the form of creativity and aesthetics, intellectual capital, and spiritual capital which is reflected in the confidence and spirit. The policy of tax collection that has only relied on liberal economy and the exclusion of people's economy is not in accordance with the ideology of Pancasila.

Liberal economy and privatization are not in accordance with Pancasila economy triggering their business activities that seek to avoid paying taxes.

“Panama Papers” case is one evidence of their liberal business practices that seek to evade taxes. Responding to incessant preaching about the leak of documents containing Panamanian businessman from Indonesia into one of the drivers of the parliament to discuss tax amnesty legalization which had been stopped several months.

Core precepts contained in the social justice for all Indonesian people is justice, which means containing senses of suitability and fair nature with nature. Consequently, every aspect of the organization of the state must always be based on the values of justice. Three kinds of relationship of justice are: 1) the community, the nation state is a party required to meet justice to its citizens; 2) The member of society or the citizen as the party required to meet the justice of the people, nation, or country; and 3) The form of justice embodied in the relationship between fellow citizens of the community, nation, and state, in the senses that there are reciprocal to each other shall meet justice among fellow citizens (commutative justice) (Kaelan, 2014).

**Based on the research background, the question in this research is how the equitable tax amnesty is based on Pancasila?** Formally entire taxation policy in Indonesia has by law. However, the value of Pancasila being the spirit of this policy still becomes a big question. Thus, this study aims to do deconstruction of equitable tax amnesty formulation by instilling values of Pancasila. Deconstruction of equitable tax amnesty is a building process (constructive) rather than destroying (destructive).

## **2. THEORITICAL REVIEWS**

### **2.1. Basic Assumptions of Tax Evaders**

Western economic system that is based on understand of homo economicus and prioritizing self interests, maximizing customer satisfaction and gain, and minimizing personal sacrifice, contrast to the morals of religion and nearby premises properties satanical and diabolic, far from Pancasilaisme (Swasono, 2005: 251). Globalization and capitalism are increasingly greedy, the invisible hand (Adam Smith) has turned into the imperfect hand, or even into the dirty hand. Originally expected to act as a fair queen turned out to be a greedy giant who do inequality and vandalism (Swasono, 2010:55). Liberal and neoliberal economic contrast to the Constitution 1945 article 33 of liberal economics and neoliberalism is a new colonialism. Liberalism and neoliberalism against Pancasila and the Constitution 1945 and reduce the integrity and sovereignty of the national independence meaning (Swasono, 2010b: 27).

Tax evaders perspective on taxes as a burden rather than an obligation (Mangoting, 1999). According to Accounting Standar 46, tax burden is the aggregate amount of current tax and deferred tax are taken into account in determining income

in the period. This view is a reflection of the concept of profit in accordance with Accounting Standar 1 (Institute of Indonesia Accountants, 2014) which represents the difference between revenues and expenses. Tax payers will attempt to raise revenue and suppress tax burden. The design of taxation policy that is likely to push the tax burden tends to get support and encouragement from the tax evaders.

Tax evaders take action to optimize profits by minimizing tax burden to encourage management action such as aggressive tax (Chen, Chen, & Cheng, 2010). Research by Modigliani & Miller (1963) found that funding from bank loans is one of the alternatives by the company to reduce tax burden. Bank interest is a burden to collect, maintain, and earn income according to the Income Tax Act was allowed as a deduction from taxable income. Research by Rusydi & Martani (2014) states that a company owned by the family tends to take no action on the assumption that tax avoidance of business owners is still holding oriental customs. While the research conducted by Hadi & Mangoting (2014) found that the ownership of a company spreading owned by the public provides an opportunity to the managers of the company to carry out tax avoidance.

Tax evader's action tax by placing funds abroad to avoid a national taxation information system is an effort to tax evasion. The next tax avoidance schemes by making loans from foreign banks which is actually a fund entrepreneurs themselves (Prastowo, 2016b). Prastowo statement is consistent with the research of Gupta & Newberry (1997) which states that there is a trend the company bank loans (leverage) as a tax avoidance efforts on companies with high effective tax rate. The results of research by Zalida & Martani (2016) concluded that foreign ownership affects the tax avoidance. A phenomenon that occurs in many multinational companies (MNCs) was allegedly involved in aggressive tax avoidance activity. Data from 7000 MNC, only about 3,000 who dutifully pay taxes (InsideTax Magazine - 26, 2014:63). Tax officers should uphold the rule of law than designing a tax amnesty as an effort to improve compliance with the MNC.

## **2.2. Self Assessment System**

Any public misunderstanding, even in academic circles regarding the taxation system in Indonesia, this term if it is associated with the current term is synonymous with "failed to understand". The taxation system in Indonesia is not Self Assessment System only, but there are two other systems, namely withholding Assessment System and Official Assessment System. Research conducted by Aneswari, Darmayasa, & Yusdita (2015) found that Withholding Assessment System is an effective system to increase tax revenues, given obligation to withhold on the third party, whereas only the tax officials are overseeing withhold, deposit and reporting. Unlike Self Assessment System, various studies found indications that Self Assessment System tends to be used by tax payers to commit acts of tax evasion. The result of research conducted by Wahyuni (2011) found that Self Assessment

System has an impact on tax payers that strive to perform actions with various consideration practices on tax evasion, tax avoidance measures with a variety of considerations.

Research by Darmayasa & Aneswari (2015) tried to link between Self Assessment System with tax consultant religiosity, and the study found that religiosity consultant to educate the client is able to increase the level of compliance in the realm of the implementation of Self Assessment System. Some researches tried to associate between religiosity tax payers compliance conducted by several other researchers, namely: Fidiana (2014); Torgler (2012); Widiastuti, Sukoharsono, Irianto, & Baridwan (2015). Their findings were the same that Self Assessment System can be dammed by the religiosity of the tax payers; tax payers' religiosity at least will reduce tax payers' intention to do tax evasion.

### **2.3. Tax Amnesty**

Several articles began to search the voluntary compliance which is supposed to be built to increase tax ratio, which is still low. Tax ratio is in the range of 11% to 13%, this is under the average of developing countries especially compared with Australia or Japan (Hidayat, 2014; InsideTax Magazine - 37, 2016:7). With the low level of voluntary tax payers' compliance, governments use their implementation policy of Automatic Exchange of Information (AEOI) to be applied simultaneously on the G-20 together with the Organization for Economic Cooperation and Development (OECD). AEOI will be implemented in 2018, while the United States and Indonesia will start the exchange of information on September 2017 (InsideTax Magazine - 37, 2016:15).

Research conducted by Sayidah (2015) which is a preliminary view of the tax amnesty policy question is lawful although the funds will be repatriated from abroad into the country. In the contrary to research of Ragimun (2014) which suggested that the tax amnesty policy is expected to improve tax compliance, research conducted by Darmayasa & Bagiada (2016) used postmodern paradigm to deconstruct tax amnesty by entering values that have been marginalized. Hindu-Bali concept used *Catur Purusha Artha* as analytical techniques. The result of tax amnesty policy deconstruction is expected to brighten the hearts of all tax payers in order to create voluntary compliance to improve the welfare of society both physical and spiritual.

The low of tax compliance and low of tax revenue experienced by many countries in the view of Alm (1998) can be solved by tax amnesty. In the United States, nearly forty states have implemented a policy of tax amnesty in various forms (Alm, Martinez-Vazquez, & Wallace, 2009; Borgne, 2006). According to Darussalam in (InsideTax Magazine - 26, 2014:15-16), tax amnesty preparation should consider: 1) an increase in tax revenue in short term, 2) improved compliance

upcoming tax payers, 3) a boost repatriation of capital (net assets), 4) process of transition towards a new national tax system.

The substance of tax amnesty draft that provides tax amnesty to tax payers and mischievous corporate is very disturbing the sense of justice. The substance is very possible for tax amnesty draft to sue wider community if it passed into a tax amnesty law (Lako, Kompas June 18 2016). The other view presented by Prastowo (Kompas June 17 2016) said that tax amnesty is eligible for consideration. Tax evaders will be included in the national tax system and have the same liability in the future to pay taxes.

### **3. METHODOLOGY**

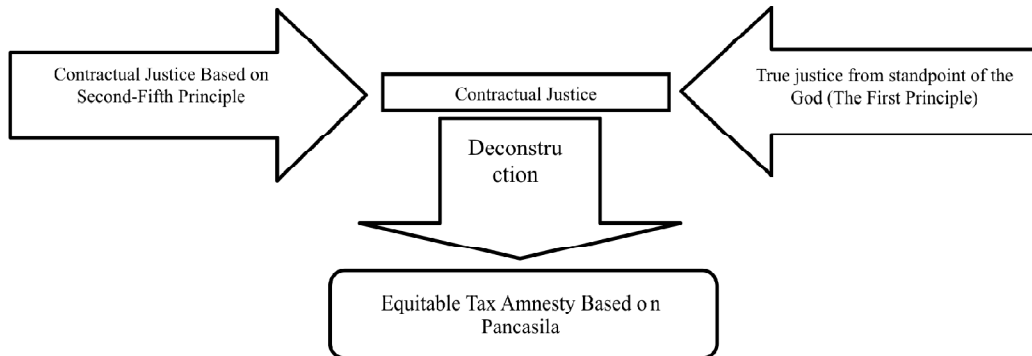
This study uses a postmodern paradigm. Postmodernism truth is not the main goal. Postmodernism rejects the theory because the theory reflects the truth, and the truth in the context of the social sciences has a character that is very theoretical. The claim on something creates a value; rules and order that are opposed by postmodernism. Assumption of truth is essential in modernism (Kamayanti, 2016).

This research is using Pancasila as a tool for deconstructing equitable tax amnesty policy. It uses Pancasila as sunglasses deconstruction because it is believed to be the most appropriate tool as a mean to obtain the truth about justice. Pancasila contains the value of God, community, unity and consensus, so that justice resulted in the complete deconstruction is justice which is the first contractual fairness, justice which is agreed upon by humans. It should be underlined that contractual justice emphasized is justice based on just and civilized humanity, the unity of Indonesia spirit, the spirit of democracy and justice for all Indonesian people; not a justice that only benefits some particular party and divisive. Both justices are essential from the standpoint of the Creator (God), as the first principle of Pancasila.

Pancasila is as sunglasses deconstruction because it is in accordance with the description in the introduction to the unfair tax amnesty that is inconsistent with the values of Pancasila. The highest hierarchy of legislation in Indonesia is the constitution 1945 followed by the underlying law: Government Regulation, Finance Minister Regulation, then the decision of Directorate General of Taxation, and the lowest is Circular Director General of Taxation. The legal position of the above Act is 1945 and the ideology of Pancasila, so using the values contained in Pancasila ideology as an analytical tool is highly relevant and contextual in this study.

### **4. RESULTS & DISCUSSION**

Appropriate tax amnesty policy is a prerequisite for the fulfillment of the tax revenue target. In the view of Prastowo (2015), good tax policy should be viewed from the perspective of compliance with the appropriate conditions. His concern



**Chart 1: Deconstruction of Equitable Tax Amnesty**

will arise when the policy deviates from the path, even loaded contains elements of injustice. Taxes are the most crucial source of income, budget 2016 sets the tax revenue from 84.6% (State Budget, 2016), that should be pursued policies designed to support state revenues without ignoring justice for all tax payers.

The principle of economical and financial is more prominent in the preparation of taxation policy in Indonesia. This is an evident that tax function is emphasized on budget function and the regulatory function of political economy (Mardiasmo, 2013:1-2; Rosdiana & Irianto, 2014:45). The emphasis on budget and economic function indicates that taxation policy formulation tend to refer the Smith's thought. In the article of The nature of Man, (Jensen & Meckling, 1994) cites Smith that the essence of man is homo ekonomikus. Human life and life will always pursue and maximize profits.

The series of tax amnesty was once undertaken in this country in 1964, 1984, 2008, and which will be planned in 2016 like a political evolution of tax amnesty. The legal basis for any tax amnesty period is getting stronger, starting from Presidential Decree No. 5 year 1964, Presidential Decree No. 26 year 1984, Section 37A of Law No. 28 year 2007 on General Provisions and Tax Procedures, and tax amnesty draft. Indeed, evolution towards a better tax system is a common hope, but the political evolution of tax amnesty that led to remission of the tax evaders can be counter productive; counter productive tax amnesty policy with hard work Transaction Reports and Analysis Center in the pursuit of criminals of financial assets (ICW, 2016). Even the existence of the leaks Panama that shook the world becomes one of the driving acceleration discussion and ratification of the tax amnesty draft (Tempo May 1, 2016).

#### **4.1. Pancasila as a Tool to Deconstruct Equitable Tax Amnesty**

Pancasila is the state ideology of a way of life of "Indonesian Land" to build the nation's commitment to the people living on it to live in harmony and prosperity.

Before Pancasila was used as sunglasses deconstruction of equitable tax amnesty, respectively precepts need to be dug up meaning.

First precepts: belief in the one and only God. The first precept of religion emphasizes whatever is the belief of Indonesian people, they believe in the same God and *Esa*. The first principle of Pancasila would be a way for the unification of all religions together, worked together as a citizen (Tanya, Parera, & Lena, 2015:4). Second precepts: just and civilized humanity. The second principle is the mutual assistance of the entire people of Indonesia to enforce the mechanisms of governance humane, civilized and fair (Tanya *et al.*, 2015: 4).

Third precepts: the unity of Indonesia. Third principle has meaning as a way for Indonesia citizen with all races, tribes and religions to maintain the unity and integrity (Tanya *et al.*, 2015:4). Fourth precepts: democracy guided by the wisdom of thought in the deliberation amongs representatives. Fourthly, implying meanings as a way to manage the state based on consensus (Tanya *et al.*, 2015:4). Fifth precepts: social justice for the whole of Indonesian people. Five precepts of Pancasila implies that duly citizens whether poor or rich to mutually work together to share and achieve social justice (Tanya *et al.*, 2015:5).

## **4.2. Deconstruction of Tax Amnesty**

### **4.2.1. Equitable Tax Amnesty Based on First Principle: Belief in the One and Only God**

First principle of Pancasila emphasizes the unity of God that leads to spiritual and religiousness. Tax amnesty draft currently has no value based on God. Justice created when this is contractual fairness, such as the agreement of human justice. Justice is justice created only in favor of some parties and it is not in favor of the other.

Entering the value of God will manifest intrinsic justice. Referring to the concept of oneness that everything in this world is united or merged with God or *Manunggaling Kawulo Gusti* (Triyuwono, 2009). *Manunggaling Kawulo Gusti* is the concept that everything comes from God and definitely returns to God anyway. *Manunggaling Kawulo Gusti* is not only being taught by a specific religion. For example in Hinduism, *Manunggaling Kawulo Gusti* is the end of man that is *Moksha* or fused to the Lord.

Similarly, formulation of tax amnesty policy, the value of God is the most important value to be included in consideration of the equitable tax amnesty policy. Based on the first principle of Pancasila, tax amnesty definition of justice is justice that is not only vertical or horizontal but justice that is directly centered under the laws of God. Position that human beings are all equal in God's eyes; none has the right to get more treatment than others.



#### ***4.2.2 Equitable Tax Amnesty Based on Second Principle, Just and Civilized Humanity***

After justice in formulation of tax amnesty policy has been centered and relied entirely on the order of God, the essence of the second principle of all elements that exist in Indonesia has to mesh together to justice. So, the definition of equitable tax amnesty by the second principle is the formulation of tax policy capable of realizing justice humane and civilized. As refer to Sitorus (2015) which is deconstructing accounting definition based on Pancasila. Then, justice resulting from this perspective is justice humanizing through state fiscal policy.

One manifestation of this second principle is an analogy of zakat in taxation included in the fiscal countries proposed by Alim (2013). This analogy explains that if zakat is fully included in the government's fiscal policy, then zakat payment would reduce taxable income. The main purpose of zakat is for the welfare of the people. The parties that are not economically affording it in the perspective of God's rule are not obliged to pay zakat. So, tax is the official institutions, while charity is its spirit. The consequences of the implementation of this analogy is it needs to be a treasure sorting lawful and not to enter into this mechanism (Alim, 2013).

#### ***4.2.3. Equitable Tax Amnesty Based on Third Principle, the Unity of Indonesia***

Explanation of the third principle is that justice will not extinguish any form of distinction citizens. It has been explained that justice is not ethnicity, religion and race. When it is drawn in the concept of taxation, the tax payers justice does not discriminate based on the background of the tax payers. The concept of justice that should be raised is the concept that unites tax payers. Based on third principle, the definition of tax justice is justice not tendentious and justice that does not extinguishing tax payers background.

The concept of justice is when we connect with the tax amnesty draft, that would divide tax payers. Compliant tax payers will feel unfairly treated, for tax evasion minded who get preferential treatment through suppression of punishment.

#### ***4.2.4. Equitable Tax Amnesty Based on Fourth Principle, Democracy Guided by the Wisdom of Thought in the Deliberation Amongst Representatives***

Tax amnesty draft has a lot attention from all the related parties. Let's see how difficult and convoluted the process of tax amnesty draft that is being hammered out by the parliament. This is because of the refusal of the citizens if the draft passed into the tax amnesty law. Based on the fourth principle perspective, the definition of tax justice is justice that is able to protect all Indonesia people through the resulting formulation of a "consensus" that has been agreed upon by the citizens.

#### **4.2.5. Equitable Tax Amnesty Based on Fifth Principle, Social Justice for the Whole of the People of Indonesia**

Basic principles of tax collection is a must fulfill the vertical and horizontal equity. Justice in the vertical viewing angle of Pancasila in terms of taxation policy is equal treatment by the government against tax liability for tax payers with the level of income or ability to pay. The higher tax payers' income level, the higher rates charged will be, and vice versa. Horizontal fairness reflected in policies that deliver justice to tax payers with the same income but different burden of his life. Tax payers with a heavier burden of life are justified by non taxable income pay lower taxes.

Giving priority to the common interest is one of the religious orders (Sitorus, 2015). Mutual relation between the fifth and the first principle, that to meet the goal of justice is based on the first principle, the five precepts must also be met. So the justice of taxation based on the perspective of five precepts is the formulation of justice capable of equal justice for all Indonesian people.

### **5. CONCLUSION**

Taxation policy is now dominated with the values of modernity. Modernity is reflected in the mainstreaming of matter and excluded God from tax amnesty policy. Modernity became the forerunner unfair tax amnesty policy that is not in accordance with the ideology of Pancasila. The principle values of Pancasila is mutual cooperation. Should all taxation policies based on the spirit of mutual cooperation.

Pancasila values in modernity marginalized by logocentrism values of modernity. Policies that are prepared only based on rational that is objective regardless of the other (God) in the form of intuition will make a distance policy. Policy does not fully reflect the interests of society as a whole so that the principle values of Pancasila has not been adopted as a whole. Deconstruction result of tax amnesty policy by entering Pancasila values to produce policies that relied to God's laws, drafted with the humane sense of *tepa selira*, by nurturing the whole community by consensus to achieve justice for all Indonesian people.

Further study will developed through other paradigms. The paradigm that can be used for an example to deep interpretive meaning of justice in formulation of tax amnesty policy or interpretive transcendental experience phenomenology to deep tax payers who becomes the object of a tax amnesty policy that is loaded with injustice.

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