

TAX AMNESTY POLICY IMPLEMENTATION IN INDONESIA

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***Abstract:** Indonesia is experiencing deficit in tax revenues due to relatively low tax compliance rate. To overcome this issue, the Government introduces tax amnesty policy. This study discusses tax amnesty policy which has been applied several times to expand the taxation base and increase voluntary tax compliance in Indonesia. The approach used is qualitative study using field and literature studies. In applying tax amnesty policy, we need to take into account four supporting factors, namely attractive facility, massive campaign, favorable placement of proceeds of tax amnesty and good data management. This study seeks to understand the application of tax amnesty policy in a comprehensive manner to expand the taxation base and increase tax revenues in Indonesia.*

***Keywords:** Policy Evaluation, Reinventing Policy, Sunset policy, Tax Amnesty*

INTRODUCTION

Tax is an important part of state revenue and taxation is an important issue Stewart (Nar, 2015: 580). Tax as the largest state income which is the mainstay of the country in supporting the economy has experienced frequent deficit especially after the economic crisis in 2008 in which the fiscal deficit has increased the need for tax revenue. Some countries have changed the direction of global cooperation in order to fight against tax loss and tax evasion. The 2015 tax revenue aiming at tax revenue optimization is done through the improvement of tax legislation, expansion and intensification of taxation, as well as finding of potential tax revenues based on the sectors in accordance with the legislations. The condition of budget deficit is the right moment to implement tax amnesty in Indonesia.

In 2016, based on the Memorandum of Finance and the 2106 Draft State Budget (NK-RAPBN), the government increases the tax revenue target from originally Rp1,489 trillion to Rp1,565 trillion. It is also in line with the target of increasing state revenues from Rp1,761 trillion to be Rp1,848 trillion. On October 30, 2015, the Ministry of Finance (2016) announced a slight change in the 2016 in which the state budget revenue target was lowered to Rp1,822 trillion and the target of tax revenue was decreased to Rp1,546 trillion.

The Ministry of Finance announced that based on the Treasury and State Budget System (SPAN), the temporary revenue as per December 31, 2015 was Rp 1,055.6 trillion (Ministry of Finance, 2016). Total tax revenue growth increased by 7.15% compared to 2014 that only reached 6.92%. The increase in the 2016 tax revenue target is a burden for the government, as in recent years, Indonesia has never reached the target of revenue in accordance with the target in the state budget.

The high tax revenue target is not in line with the level of compliance and public awareness in fulfilling their obligations to pay tax. To deal with this, the government requires an additional instrument as one of the efforts to achieve the target. The instrument is manifested by the government by providing tax amnesty facilities.

Indonesia has implemented tax amnesty a few years earlier, such as in 1964, 1984, 2008, and 2015. In 1964, Indonesia issued Presidential Decision No. 5 of 1964 on Tax Amnesty. The conditions experienced by Indonesia at that time were growing inflation, progressive tax rates, and obligation to do complete and correct bookkeeping which was difficult to do which then encouraged taxpayers to violate (Presidential Regulation 1964).

One of the policy packages offered by the Directorate General of Taxation (DGT) in the framework of development of taxpayers was the publication of the Finance Minister Regulation PMK-91PMK.03 / 2015 dated April 30, 2014 on Reduction or Elimination of Administrative Sanctions over delay in submission of the Notice, Rectification Notice, and Late Payment or Tax Deposit. This policy package is called "Reinventing Policy" or "Sunset policy Volume 2". This policy is called sunset policy 2 because the government has also issued a similar policy in 2008 with the name sunset policy using Article 37A of Law on General Provisions and Tax Procedures as a basis and this policy managed to contribute to the state revenue at that time. Reinventing Policy is a policy of reduction or elimination of penalties due to the oversight of taxpayers or which is not caused by their fault.

To achieve the increased target of tax revenue in 2016 compared to the previous year, the government will implement a number of policies in the field of taxation, among others (NK-RAPBN 2016: 76):

1. To increase tax compliance, in particular the compliance of individual taxpayers (non-employee) and corporate taxpayers
2. To increase tax ratio and tax buoyancy through extensification, intensification, increased effectiveness law enforcement, improved administration, enhanced regulation and increased capacity of the Directorate General of Taxation (DGT)
3. To increase tax coverage by seeking prioritized taxation potential sectors such as the mining, processing industry, trade, and construction sectors as well as the financial services sector
4. To strengthen and expand the database of taxation, both internal and external data, through: (a) Digitalization of tax return and implementation of e-tax

return and e-filing; (B) Implementation of e-tax invoice throughout Indonesia; (C) Implementation of online cash registers and electronic data capturing (EDC) with the tax administration; and (d) Implementation of data collection from agencies, institutions, associations, and others.

The government has applied tax amnesty policy to increase income, level of compliance and basis of taxation.

LITERATURE REVIEW

Sunset Policy

In a meeting of Jobs and Growth Tax Relief Reconciliation Act of 2003 (JGTRRA) it was confirmed "sunset" is (Gale Orszag, 2003) *the role of tax provisions that expire at a given date*, the which are commonly known as 'sunsets'. In addition, the conclusions of this meeting that becomes the principle in Sunset 2 are, among others:

1. In principle, sunset can be justified under certain conditions. *Sunset* is suitable to be applied when it is done for a certain period of time / on a temporary basis. Sunset also allows flexibility in policy-making and can be useful for policy development to focus on fiscal issues. In practice, however, this cannot be justified to add or expand the *sunset*.
2. Sunset is previously motivated by the desire to manipulate the budget and hide the burden from new tax cuts. In practice, sunset is used to repair large annual tax cut in the budgets for a few years restricting policymakers as the effect of sunset is more difficult than giving tax cut in the future.

Sunset policy is provided only on a temporary basis, and should not be a permanent policy. In addition, sunset policy also covers the cost of reduction in the amount of tax payable. Gunadi (2008) describes in the sunset policy implementation in Indonesia, tax amnesty must have political messages. In the application of sunset policy in Indonesia, only the administrative sanctions are abolished while the criminal sanctions remain applicable.

Tax Amnesty

Nar (2015) explains that tax amnesty is a term used to describe an event which allows the taxpayers to pay the unpaid taxes under certain conditions without imposing extra fees or other penalties. According to Wisegeek (2016), tax amnesty is a term used to describe a one-time offer to settle an outstanding tax debt for an amount that is less than the current debt. Tax amnesty could be a helpful tool when government is trying to get out of the existing tax system to different tax systems or to increase the level of tax enforcement. The implementation of the tax amnesty must be matched by a commitment to give no more tax amnesty. Tax amnesty in Indonesia has four main

objectives, namely to increase revenues, improve compliance, repatriate capital, and to anticipate the transition period.

With regard to tax amnesty, Franzoni (1996: 3) explains there are three contexts contained in the regulations concerning amnesty, among others:

1. *Revision amnesty*

Amnesty is granted within a certain time which allows taxpayers to rectify the Tax Return (SPT) with a reduction of tax penalties. However, taxpayers are not exempt from audit and investigation.

2. *Investigation amnesty*

This amnesty gives taxpayers the privilege to be exempt from audit by paying amnesty compensation at a certain rate.

3. *Prosecution amnesty*

The amnesty gives taxpayers the privilege to avoid judicial examination if the taxpayers pay amnesty compensation.

B. Leonard and Zeckhauser (1987) explain there are several advantages of the amnesty, among others:

1. Merely considering the subject would give the issue new prominence, define it in new terms, get it on the policy agenda, and link it to the tax reform.
2. It might help strike a political balance and foster innovation by making the new outcome appear to be less of departure from the status quo.
3. The amnesty would represent a way to provide identifiable funds needed for an additional enforcement effort.

In conjunction with the enforcement program, the amnesty would reconfigure the tax penalty schedule in a manner that would probably increase revenues both in the short run (incentives to pay up) and in the long run (reduces future cost).

RESEARCH METHOD

This study uses qualitative approach to analyze the meaning of social phenomena, namely tax amnesty in a bid to increase the taxation base and increase tax revenues. This is a descriptive study with the aim of illustrating the application of tax amnesty in Indonesia in an effort to expand the taxation base and increase tax revenues. This research was conducted by applying the techniques of field research, in-depth interviews on informants to get information from multiple viewpoints related to tax amnesty.

This study uses successive approximation strategy, analytic comparison based on the statement of research with certain assumptions. This study then matches the concepts and reality. This study uses tax amnesty experiences in the past as a

comparison and reference in creating a successful and good tax amnesty policy in Indonesia.

RESULTS AND DISCUSSION

Application of Tax Amnesty in 1964

The year 1964 was the first time tax amnesty was applied in Indonesia (Lusiana, 2008: 64). The government issued a decree for tax amnesty through Presidential Decree No. 5 of 1964. The background of the policy is to facilitate Economic Declaration dated March 28, 1963. The Economic Declaration (Dekon) is the brainchild issued by President Soekarno at the State Palace on March 28, 1963 passed in the general assembly of MPRS and was a reference for the implementation of the guidelines for the Basic Development of Economics (Akhmadi). The objective of the Economic Declaration is to tackle the overall problems of the deteriorating national economy.

At that time, taxation principle has embraced substance over form principle meaning any income including tax object, irrelevance of the origin, will be taxed. It was inevitably that there were a lot of potential incomes from sectors not yet covered by the law. In addition, the number of tax officials at that time was still minimal because it was still under development preventing them from dealing with any violations. Through Presidential Instructions No. 2 / KOTOE of 1962 and No. 6 / KOTOE 1962, the government gave a guarantee that the capitals invested in productive enterprises would be exempt from tax demands and criminal prosecution so that the incoming data would not be questioned, investigated or audited.

Tax Amnesty was chosen to attract capital in the community that had never been subject to company tax, income tax and wealth tax before August 17, 1965. One appeal of the tax amnesty program in this period was the reported capital would not be the basis for the government to conduct investigations and checks on the origin of the capital. To use this facility, people were required to pay a compensation of 10% of the total capital reported. However, these rates could be lowered by 5% through the authority of the Minister in charge of Revenue, Funding and Oversight when the capital that had never been taxed was used in certain business sectors such as: agriculture, fisheries, and livestock; mining; industry; and transportation.

In addition to giving reduction facility, the policy also provided severe penalties for taxpayers who deposited and reported the amount of tax payable under the actual sum. The taxpayer would be penalized 400% of the shortfall paid. However, under the authority of the head of the Directorate of taxes, if the shortage was due to an oversight or excusable omission, the 400% penalty could be waived in part or entirely.

There are a lot of reasons that explain why the tax amnesty in that year failed. According to Hussein Kartasmita (Yuliana, 2008: 69), the amount of funds obtained from this program was not enough and the tax amnesty program was designed without careful thought. In addition, it was known the program in 1964 was unsuccessful

because of the G30SPKI incident (Jayabuana, 2016). Mekar Satria Utama, P2 Director of Public Relations of the DGT explained that Indonesia, at that time was headed by President Soekarno. The relatively strong political position of the government allowed the tax amnesty program to run although it was only performed under a Presidential Decree. According to John Hutagaol (Yuliana, 2008: 68), there were no measures of structural adjustment after the implementation of the tax amnesty. At that time law enforcement was not implemented properly, tax administration was disorganized and tax authorities were still susceptible to bribery. Based on interviews with Herman Butarbutar, Staff of Legal Assistance of the Directorate of Tax Regulation II of the DGT, there are several things that make the implementation of tax amnesty this year unsuccessful including insufficient administrative systems and poor dissemination program preventing the taxpayer from being familiar with the tax amnesty program.

Application of Tax Amnesty in 1984

The year 1984 was the second tax amnesty implementation in Indonesia. The government issued Presidential Decree No. 26 of 1984 on Tax Amnesty. There are three points behind the tax amnesty policy in this year, among other things: First, the year 1983 was a year of tax reform with the enactment of some tax laws including the General Conditions and Procedures of Tax, Income Tax and Value Added Tax on Goods and Services and Sales Tax on Luxury Goods. They aim to enhance the role of the people in order to finance the state and national development.

Second, that year was the tax reform year in which many new regulations were established. To support the reform, it needed a clean standard based on honesty and openness of the public. The target of the tax amnesty program is the openness. The program was open to taxpayers either individual or registered or unregistered businesses. The tax that can be pardoned was the tax that had not been or was not fully charged or levied under the applicable regulations.

The facility obtained by the taxpayer was the income that had not been or was not fully charged was levied based on the ransom rate of 1% of the amount of asset used as the basis for calculating the amount of tax sought for forgiveness and the taxpayer has delivered Income / Corporate / Wealth Tax Return on the stipulation of Presidential Decree No. 26 of 1984, or 10% if at the time of enactment of the Presidential Decree, the taxpayer has not delivered the tax return. The wealth referred to in this program is the total net assets listed in the list of assets / balance sheet as per January 1, 1984 with total net assets stated in the Income Tax / Corporate Tax Return in 1983 and 1984. The amount of wealth would be incorporated into the capital of the company and the increase in the share capital was exempt from capital stamp duty. The addition of share value to shareholders was also exempt from income tax. In addition, the asset report from the program would not be used as a basis for investigation and criminal prosecution of any kind against the taxpayers.

The tax amnesty in 1984 was successful in expanding the taxation base because there were 20% of taxpayers who participated in the program. However, the tax amnesty program was considered less successful because even though the period had been extended for six months, taxpayers' participation remained low. At this time were financing alternatives for the country other than revenue from taxation, namely oil and gas sector, international trade, and foreign debt so that the dependence on the taxation sector was not as big as today. According to Susanto (2007: 85), there are several reasons why the application of the tax amnesty in that year failed, among other things:

1. The legal basis for the implementation of the program is not based on laws but rather a presidential decree. This is clearly contrary to Article 23A of the 1945 Constitution which states that taxes and other coercive charges for the interest of the state are governed by laws;
2. Lack of dissemination or campaign from the government to the public;
3. Lack of openness and increased access to public information so that the DGT could not control this program;
4. Unpreparedness of the tax administration system and DGT employees in implementing tax amnesty program

Application of Tax Amnesty in 2008

The year 2008 was the third time of application of tax amnesty in Indonesia. However, for 2008, tax amnesty was referred to by another term namely sunset policy. This program was grounded by Article 37 A of the KUP Law stated that taxpayers are entitled to a reduction or elimination of administrative sanctions in the form of interest on late payment of tax underpayment. This program applied to taxpayers who submitted income tax returns rectification before the tax year 2007 which resulted in the taxes accrued to be bigger than ever before. The duration of this legislation was one year after its promulgation on July 17, 2007.

Individual taxpayers voluntarily registered themselves to obtain a TIN no later than 1 year after the enactment of the KUP Law were given administrative sanction abolition of the tax not paid or underpaid and would not be subject to audit. The derivative regulation of this article is contained in Finance Minister Regulation No. 18 / PMK.03 / 2008. This rule reinforced the provisions contained in Article 37A of the KUP Law. The taxpayers that could participate were taxpayers who submitted corrections on income tax returns for the tax year before the tax year 2007. The underpaid tax by this rectification had to be repaid no later than the time of filing the revised tax return while the tax return had to be submitted no later than March 31, 2009. The tax return reported would not be examined. However, for some conditions, examination could be carried out if, among others, the SPT stated overpayment or there is data or information that indicated the tax return submitted was inaccurate.

Then, on April 29, 2008 was published PMK No. 66 / PMK.03 / 2008, which revoked PMK No. 18 / PMK.03 / 2008, which contained procedural ordinances related to the delivery or rectification and the requirements that had to be met in order to use this facility. The taxes to be reported in the income tax returns were PP 29, Income Tax article 4, paragraph (2), and / or Income Tax Article 15.

The Sunset policy in 2008 was a tax modernization program in the period 2001 to 2007 and was considered a success because it managed to increase the number of taxpayers and achieve the target of tax revenue. The 2008 Sunset policy has successfully expanded the taxation base as there were 5,365,128 new TINs issued which could be the basis of taxation of the DGT to impose tax in the subsequent tax year. One of the factors behind the success of sunset policy in 2008 was the dissemination factor. A study conducted by Rakhmindyarto in 2011 proved there was a strong relationship between the dissemination and the amount of tax revenue gained from the sunset policy program in 2008.

On the other hand, there is the view that the sunset policy was considered unsuccessful. The tax revenue target achievement was considered due to the commodity boom and not because of the sunset policy. It was also because the DGT has not had a good data management, even though the tax revenue target could be realized. There were at least three things that became obstacles in the sunset policy implementation in 2008, among other things: the amnesty only covers administrative sanctions; unpreparedness of the tax administration system; and the implementation period was too short.

Application of Tax Amnesty in 2015

The year 2015 is the fourth time tax amnesty was implemented in Indonesia. The program is known as the re-inventing policy or the Taxpayer Development Year (TPWP). Tax amnesty in 2015 was almost identical to the tax amnesty in 2008 because its focus was to abolish the administrative sanction. What distinguishes the tax amnesty in 2015 with the tax amnesty in 2008 was the incentive given to all types of taxes to taxpayers who delivered tax return for the first time or tax return rectification, as well as delay in payment or delay in reporting tax return in 2015. (DGT, 2015).

The tax amnesty policy was guided by the KUP law namely Article 36, paragraph 1 (DGT, 2015). This article states the Director General of Taxes due to office or at the request of the taxpayer can reduce or eliminate sanctions such as interest, penalties, and increase payable in accordance with the provisions of the tax law in the case of sanctions imposed because of an oversight taxpayer or not because of his faults. There are two implementing regulations of the tax amnesty policy this year, namely: PMK No. 29 / PMK.03 / 2015 and PMK Number 91 / PMK.03 / 2015.

The first implementing regulation is PMK No. 29 / PMK.03 / 2015 on reduction or elimination of interest administrative sanction imposed under the KUP Law Article 19 paragraph (1). This regulation was made to raise state revenues through a policy

instrument to encourage taxpayers to settle their tax debts. The tax debt in question is the tax debt incurred prior to January 1, 2015 and the tax debts must be paid before January 1, 2016. Taxpayers must make application to get this facility.

The request for the removal of sanctions can be done at most twice with a grace period of three months from the date of the first delivery of letter. To be able to use this facility, the taxpayer must have paid off the tax debt and there are still administrative sanctions in unpaid STP.

The second implementing regulation is PMK-91 / PMK.03 / 2015 on reduction or elimination of administrative penalties for the late submission of tax return and payment or tax payment. The reason behind this policy is to meet the program's main objectives in 2015, namely the Taxpayer Development Year. Under this rule the DGT has the authority to reduce or eliminate administrative sanctions in terms of sanctions due to oversight of taxpayer or his fault. The administrative sanction is limited to a few things, namely late submission of tax returns either for periodical or yearly tax return for tax year 2014 or earlier, late payment or tax underpayment for annual or monthly tax return for the tax year 2014 and earlier, and voluntarily rectification on the annual income tax return or tax debt resulting in future increases. To enjoy this facility, taxpayers had to submit a written application to the Director General of Taxation in Indonesian and to the tax office where the taxpayers are registered.

The targets of the reinventing policy program 2015 were taxpayers not delivering tax return, underpaying taxpayers, and taxpayers making corrections. From this goal, it appears that the expansion of the taxation base of this year leads to intensification. Basically taxpayers have tax obligations, but because of various things, they do not meet the tax obligations so that they are given facilities.

The 2015 tax amnesty program is voluntary disclosure program (VDP) that could not force taxpayers to participate in this program needing an incentive to encourage the participation of the taxpayers. However, the tax amnesty incentive facility of 2015 was only a removal of sanctions. In contrast with the 2008 program, this program does not guarantee that a taxpayer will not be subject to audit, making it less attractive for taxpayers.

Application of Tax Amnesty in 2016

In July 2016 the Indonesian government issued Law No. 11 of 2016 concerning Tax Amnesty). The application of Tax Amnesty in 2016 is motivated by several factors, namely: the tax revenue targets are not achieved from year to year, low number of registered taxpayers, low tax compliance in implementing obligations, low economic growth and enactment of Automatic Exchange of Information (AEOI) in September 2018.

The purpose of Policy 2016 Tax Amnesty is to repatriate Indonesian people's funds kept abroad as well as to provide an opportunity for taxpayers who have not reported

their assets in the tax return income tax in 2015 and earlier to declare by paying low compensation. The implementation of Tax Amnesty is divided into three periods, namely: first period (June 2016-September 2016), second period (October 2016 - December 2016) and third period (January 2017-March 2017).

The amount of compensation to be paid is differentiated according to the period, namely: 1). the rate of compensation of declaration of domestic and overseas repatriation is 2% for the first period, 3% for the second period and 5% for the third period. The rate of compensation for overseas declaration is 4% for the first period, 6% for the second period and 10% for the third period.

The Tax Amnesty application in the first period gives a satisfactory result, especially for the declaration of assets at home and abroad while the repatriation of overseas assets has not been satisfactory. According to the statistics, the total compensation as per October 2016 has reached 57% (Rp 94 trillion) if the target set by the government (Rp 165 trillion) is dominated by domestic declaration and overseas declaration. Meanwhile the amount of compensation for overseas declaration has only reached Rp 142 trillion or 3.6% of the target.

Some of the factors that hinder the implementation of the Tax Amnesty include: 1). Delays in the dissemination and education to taxpayers making so many taxpayers are not aware of the intent of the Tax Amnesty (Justin, 2016), 2). Confusion and ambiguity of information resulting in the assumption that the Tax Amnesty is only intended for taxpayers who own property abroad (Ferdinand, 2016), 3). Complexity of the bureaucratic and administrative processes, thereby making taxpayers reluctant to repatriate. From the legal perspective, taxpayers can choose to repatriate or declare assets and as the result, taxpayers tend to choose to declare than repatriate their overseas assets. One inhibiting factor is that there are still doubts of the taxpayers of the management of the repatriated funds at home. In addition, the problem of dissemination to the Indonesian people who have funds abroad is still insufficient.

CONCLUSION

The implementation of tax amnesty in Indonesia aims at broadening the taxation base, which can be done by two things namely expansion and intensification. Tax amnesty may be an attempt of extending the taxpayers who do not have TIN for the program as the will be issued TIN. In addition, it can also be an intensification of efforts for taxpayers who already have TIN to disclose assets so that they can be the basis for taxation in the future. The Tax Amnesty policy Indonesia in 1964, 1984 and 2015 were considered unsuccessful because they could not sufficiently increase the number of taxpayers and increase the tax revenues targeted by the Government. Meanwhile The Tax Amnesty policy in 2008 (known as the Sunset Policy) is considered successful as the registered taxpayers, amount of Income Tax (Annual Tax Return) and amount of tax revenue increased significantly. Lastly, the Tax Amnesty policy in 2016, especially the first period (July to September 2016) is considered a success with regard the

declaration of assets at home and abroad because it produced significant amount of compensation, but the repatriation of assets kept abroad is not considered successful because the percentage of revenue from the ransom is very little compared to the target set by the Government.

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