

# Tax Amnesty as Policy in the Field of Taxation

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## Abstract

Article 14 (2) the Indonesian Constitution 1945 (hereinafter referred to UUD NRI 1945) should be compatible with Article 23A of UUD NRI 1945. Both articles manifest Article 1 (3) of UUD NRI 1945 to emphasize Indonesia as a legal state. The nature of the Law of Tax Amnesty is the rights of every tax-payers to receive the tax amnesty. However based on the consideration of the tax amnesty law, Article 14 (2) is excluded from the formal source of it as stipulated in the considering of the Law. It is derived from the formal sources of law contained within article 5 (1), article 14 (2), article 20, and article 23A of UUD NRI 1945. A legal consequence of it is that it has only function as the legal instrument providing amnesty as the authority of President of Republic of Indonesia in relation with the performance of government in exercising its roles.

**Keywords:** Tax Amnesty, Policy, Field of Taxation

## 1. Introduction

Tax amnesty is required to deal with country's obstacles in its income from the taxation sector. Amnesty is the authority of the President of Republic of Indonesia pursuant to Article 14 (2) the Indonesian Constitution 1945 (hereinafter referred to UUD NRI 1945).<sup>1</sup> In relation to the tax amnesty, the amnesty as the authority of the President of Indonesia should be compatible with Article 23A of UUD NRI 1945. It states that "*taxes and other levies of compelling character for purposes of the state shall be regulated by laws.*"<sup>2</sup> Legal norms in Article 23A of UUD NRI 1945 contains the phrases "taxes" and "other levies of compelling character", where each one shall be regulated by law. This is a manifestation of Article 1 (3) of UUD NRI 1945 emphasizing Indonesia as a legal state.<sup>3</sup>

Policy in the field of taxation is specified within the Law No. 11 of 2016 concerning Tax Amnesty. Determination of policy in the field of taxation established through the Law of Tax Amnesty is due to the status of Indonesia as legal state. It is pursuant to the Law of Tax Amnesty which is a written law as part of the laws in Indonesia. In other word, the Law of Tax Amnesty is a cooperative manifestation between President of Republic of Indonesia and The House of Representatives (hereinafter referred to DPR) considering both of them as authorized parties in exercising the sovereignty of the people in establishing the law of tax amnesty.

The essence contained in the Law of Tax Amnesty is the rights of every tax-payers to receive the tax amnesty. However, it implied the existence of an obligation for tax-payers that need to be fulfilled in order to receive the tax amnesty. It is reflected in the requirement that need to be fulfilled by the tax-payers in the form of submission of a letter of statement along with the proof of tax payment after paying the ransom that has been determined. The law of tax amnesty is not only providing rights but also it requires obligation for the tax-payers seeking to receive the tax amnesty.

## 2. Legality of Tax Amnesty Law

Basically, The law of tax amnesty is cooperative manifestation between President of Republic of Indonesia and DPR. It is derived from the formal sources of law contained within article 5 (1), article 14 (2), article 20, and article 23A of UUD NRI 1945. In fact, the establishment of Tax Law based on the consideration only relied on article 5 (1), article 20, and article 23A of UUD NRI 1945. Article 14 (2) is excluded from it. Therefore, a legal consequence towards the tax amnesty law for this position is only as the legal instrument providing amnesty as the authority of President of Republic of Indonesia in relation with the performance of government in exercising its roles.

The establishment of tax amnesty law without basis of article 14 (2) is initially giving juridical defect (invalid). Eventhough at the time it was enacted and promulgated with the Republic of Indonesia's gazette No. 131 of 2016 along with the state news of Republic of Indonesia No. 1161 of 2016, it does not automatically diminish its juridical defect. Such juridical effect may be examined in the Constitutional Court of the Republic of Indonesia. It has competent in examining any laws towards UUD NRI 1945 including their establishment and legal norms contained, in this case the law of tax amnesty.

The law of tax amnesty is being sue currently by the parties against this policy. The establishment of the Tax Amnesty Law grants amnesty for tax-payers who do not pay income tax and value added tax along as well

<sup>1</sup> See Article 14 subsection (2) the Indonesian Constitution 1945.

<sup>2</sup> See article 23 A the Indonesian Constitution 1945.

<sup>3</sup> See Article 1 subsection (3) the Indonesian Constitution 1945.

as sales tax on luxury goods. Muhammad Djafar Saidi<sup>1</sup> states “towards the tax-payers, the administrative and even criminal sanctions shall be imposed”. It is regulated within the Law No. 28 of 2007 concerning The Third Amendment of the Law No. 6 of 1983 on General Provision and Taxation Procedure

The parties who filed a lawsuit against the Law of Tax Amnesty to the Constitutional Court of the Republic of Indonesia are:

1. Serikat Perjuangan Rakyat Indonesia (SPRI), with registration No. 57/PUU-XIV/2016;
2. Yayasan Satu Keadilan (YSK), with registration No. 58/PUU-XIV/2016;
3. Leni Indrawati, Hariyanto, and Wahyu Mulyana Putra, with registration No. 59/PUU-XIV/2016; and
4. Dewan Pengurus Pusat Serikat Buruh Sejahtera Indonesia (DPP SBSI), Konfederasi Serikat Pekerja Indonesia (KSPI), and Dewan Pimpinan Pusat Partai Buruh (DPP PB), with registration No. 63/PUU-XIV/2016.

The essence of the four lawsuits is addressed on the legal norms contained by the Law of Tax Amnesty. In the sense that such lawsuits are not addressed to the source of law concerning the establishment of the law of tax amnesty. In fact, the law of tax amnesty from the aspect of its establishment having juridical defect since it does not specified article 14 (2) of UUD NRI 1945 in its consideration. As stated before that article 14 (2) emphasizes “amnesty” as the authority of President of Republic of Indonesia in relation with the performance of government in exercising its roles to the citizens of Indonesia particularly tax-payers.

### 3. The Authority for Granting Tax Amnesty

The granting of tax amnesty in legal state of Indonesia is the authority of President of Republic of Indonesia in performing the roles of the state government. The source of the authority can be seen in article 14 (2) of UUD NRI 1945. It states that “*The President grants amnesty and abolition by paying regard to the consideration of the People's Representative Council*”. Pursuant to the article, President of Republic of Indonesia has authority in granting amnesty attributively from UUD NRI 1945 and in its implementation process must notice the consideration of DPR.

The scope of tax amnesty is not only focusing on criminal punishment, but also it can be addressed in the form of imposition to the tax-payers as known in tax law. Therefore, amnesty in the tax law called “tax amnesty” as ruled by law. Essentially, tax amnesty is the authority of President of Republic of Indonesia in embodying the policy in the field of taxation. Actually, the tax amnesty is a policy in the field of taxation regulated by laws which does not contain legal norms imposing the tax-payers to pay the tax. The payment of a sum of money for the tax-payers is aimed to receive tax amnesty in the form of “ransom” which is classified as non-tax revenues (PNBP) which is different with tax.

The authority of President of Republic of Indonesia in granting tax amnesty to the tax-payers is attributively devoluted to the Minister of Finance of Republic of Indonesia. The legal considerations of the authority devolution in granting the tax amnesty from the President to the Minister of Finance as the Head of the Ministry of Finance of Republic of Indonesia in charge of managing the state income particularly in the taxation sector as the imposition to the taxpayers, is:

- a) the national development of the Republic of Indonesia, which aims for the prosperity of all the people of Indonesia that is equitable and fair, require large funding sourced from the major tax revenue;
- b) in order to fulfilled the needs of tax revenue which keep increasing, it is required public awareness and compliance by optimizing all the potency and existing resources;
- c) public awareness and compliance in implementing the tax obligations still need to be improved because there is a treasure, both inside and outside the country who have not yet fully reported in the annual income tax notice;
- d) in order to increase state revenues and economic growth as well as public awareness and compliance in the implementation of tax obligations, tax amnesty policy is required; and
- e) pursuant to the consideration as defined under letter a, b, c, and to d, the Law of Tax Amnesty need to be established.<sup>2</sup>

The authority devolution to the Minister of Finance of Republic of Indonesia in granting tax amnesty towards the taxpayers need to be exercised by issuing “reference letter” when the statement letter from the tax-payers considered valid juridically. The authority of the Minister of Finance of the Republic of Indonesia in granting tax amnesty to the tax-payers is also devoluted to the officials appointed on behalf of the Minister of Finance of the Republic of Indonesia. The officials must be falling within the scope the Directorate General of Taxation which responsible for the management of taxes, including in the areas of tax policy in the form of tax amnesty. The devolution of the authority is based on “mandate” considering officials who received the authority

<sup>1</sup> Muhammad Djafar Saidi, 2015, *Renewal of Tax Law (Pembauran Hukum Pajak)*, 2nd ed., PT. RajaGrafindo Persada, Jakarta, pp. 249-250.

<sup>2</sup> See the Consideration of the Law No. 11 of 2016 concerning Tax Amnesty.

act on behalf of the Minister of Finance of the Republic of Indonesia.

#### 4. Elaboration of The Law of Tax Amnesty

The law of the tax amnesty as the form of regulation requires further elaboration to lower laws under it is. The presence of the lower laws is required because of legal norms under the Law of the Tax Amnesty requiring further elaboration in order to simplify and actualize the implementation of the tax amnesty. It is intended to prevent different interpretation in the implementation of it.

The lower laws as the elaboration of legal norms under the Law of Tax Amnesty are as following:<sup>1</sup>

1. The Regulation of the government of Republic of Indonesia No. 34 of 2016 concerning Income Tax on Income derived from the Transfer of Rights of and / or Building, and Agreement on the Sale and Purchase of Land and / or Building along with its amendment;
2. The Regulation of Minister of Finance of Republic of Indonesia No. 118/PMK.08/2016 concerning Implementation of the Law of the Republic of Indonesia No 11 of 2016 concerning the Tax Amnesty;
3. The Regulation of Minister of Finance of Republic of Indonesia No. 119/PMK.08/2016 concerning Procedures for Transfer of taxpayers' Assets into the territory of the Republic of Indonesia and Placement of Investment Instruments in Financial Markets in the context of the Tax Amnesty;
4. The Regulation of Minister of Finance of Republic of Indonesia No. 122/PMK.08/2016 concerning Procedures for Transfer of taxpayers' Assets into the territory of the Republic of Indonesia and Placement of Investment outside of Financial Markets in the Context of Tax Amnesty;
5. The Regulation of Minister of Finance of Republic of Indonesia No. 123/PMK.08/2016 concerning Procedures for Transfer of taxpayers' Assets into the territory of the Republic of Indonesia and Placement of Investment Instruments in Financial Markets in the context of the Tax Amnesty;
6. The Decree of Minister of Finance of Republic of Indonesia No. 600/PMK.03/2016 concerning The determination of Bank Perception acting As Receivers of Ransom in the context of Tax Amnesty;
7. The Regulation of the Directorate General of Taxation No PER-06/PJ/2016 concerning The Fifth Amendment to the Regulation of the Directorate General of Taxation No PER-38/PJ/2009 concerning The Form Tax Payment Slip;
8. The Regulation of the Directorate General of Taxation No. PER-07/PJ/2016 concerning Document and Technical Guidelines on the Documents Completion in the Context of tax amnesty;
9. The Regulation of the Directorate General of Taxation No. PER-08/PJ/2016 concerning Registration and Reinstatement of individual taxpayer through specific place in the Context of the Tax Amnesty;
10. The Circular letter of the Directorate General of Taxation No. Nomor SE-30/PJ/2016 concerning Implementation Guidelines for Tax Amnesty;
11. The Circular letter of the Directorate General of Taxation No. SE-34/PJ/2016 concerning Guidelines for Reception and Follow-Up Statement of Assets for Tax Amnesty on Specific Sites;
12. The Circular letter of the Directorate General of Taxation No. SE-35/PJ/2016 concerning Guidelines Related to the Packaging and Delivery of Tax Amnesty Documents to KPDDP; and
13. The Instruction of the Directorate General of Taxation No. INS-03/PJ/2016 concerning Examination Policy in order to Support Law No. 11 of 2016 concerning Tax Amnesty.

The Decree of Minister of Finance of Republic of Indonesia No. 600/PMK.03/2016 concerning The determination of Bank Perception acting As Receivers of Ransom in the context of Tax Amnesty is basically not specified under the legislation. The Decree of Minister of Finance of Republic of Indonesia is classified as "decree" or "decision" issued by officials of the state administration in the implementation of tax amnesty. This shows that there is a principal difference between the legislation and a decision or decree, although both are geared to the implementation of the tax amnesty. Thus, implementation regulations of the Tax Amnesty Law, either in the form of government regulation, regulation of Minister of Finance, the Regulation of Directorate General of Taxation, or the Circular Letter of the Directorate General of Taxation aim to strengthen the implementation of the tax amnesty.

In addition, the legislation as the implementation of the Law of Tax Amnesty have binding force, both to the government and the tax-payers. Binding force to the Government is intended to provide services to the tax-payers who will obtain tax amnesty so there should not be any ignorance to legal norms that might cause the tax-payers finding it difficult to obtain a tax amnesty. Meanwhile, binding force to the tax-payers is intended to make them complying the applicable regulations so that the objectives of the tax amnesty can be fulfilled immediately. Finally, the tax-payers might be relieved from the imposition of legal sanctions, such as criminal sanctions as defined in the Law of Tax Amnesty.

The essence of the specification of the Law of Tax Amnesty by the lower laws is aimed to provide

<sup>1</sup> See Set of Regulations and Policy in the Context of the Implementation of Tax Amnesty, Ministry of Finance, Directorate General of Taxation, 2016, pp.1-2.

convenience for the tax-payers to fulfill their right in obtaining the tax amnesty. Therefore, the tax amnesty is a right and is not an obligation for the tax-payers. There should be no coercion in the fulfillment of the Law of Tax Amnesty even though it is the right of every tax-payer to obtain tax amnesty, specified requirements shall be met.

### 5. Principles and Objectives of the Tax Amnesty

Before providing the explanation regarding principles and objectives of the tax amnesty, the definition of the tax amnesty will be provided in advance. It is intended to avoid different legal interpretation based on the interests of the interpreter. The Tax Amnesty is the elimination of the owed tax without receiving tax administration sanctions and criminal sanctions in the field of taxation by revealing treasure and paying ransom.<sup>1</sup>

It indicates that the tax amnesty essentially is not only about the elimination of the owed tax without receiving tax administration sanction and criminal sanctions in the field of taxation, but also there is an obligation for the taxpayer to report the owned property, located both inside and outside the territory of the Republic of Indonesia. In other word, when the taxpayers do not report their owned property, located both inside and outside the territory of the Republic of Indonesia, it means that the taxpayers will not receive tax amnesty.

Implementation of the tax amnesty must be imbued with the principle of law. In this sense, the legal principle should not be disregarded because it might affect the legal norms in the tax amnesty. The principles of the law relating to the tax amnesty are:<sup>2</sup>

1. The principle of legal certainty means that the implementation of the tax amnesty should be able to embody order within the community through ensuring legal certainty.
2. Principle of Justice means that the implementation of the tax amnesty shall uphold the balance of rights and obligations of each party involved.
3. Principle of Usefulness means that the entire arrangement of tax amnesty policy shall be beneficial to the interests of the state, nation and society, especially in promoting the general welfare.
4. National Interest means that the implementation of the tax amnesty shall put the interests of the nation, the state and society above other interests.

The essence of the 4 (four) principles of the tax amnesty is aimed to put the legal protection for the tax-payers while fulfilling the tax amnesty. The government as an executor of legal norms for the implementation of the tax amnesty is obliged to provide legal services so that the tax-payers can obtain the tax Amnesty. On the other hand, the tax-payers are obliged to report the property basen on reality when completing a statement letter equipped with attachments as specified in the Law on Tax Amnesty.

In addition to the principle of tax amnesty, there are also tax amnesty's objectives to be achieved. The objectives are:<sup>3</sup>

- 1) Accelerating growth and economic restructuring through the transfer of assets, which will have an impact in increasing domestic liquidity, improving exchange rate, lowering interest rates, and increasing investment;
- 2) encouraging tax reform towards more equitable tax system and the expansion of the data base of taxation becoming more valid, comprehensive and integrated; and
- 3) Increasing tax revenues, among others, will be used for financing the construction.

In respect with the objective of the tax amnesty, fiscal policy in the form of tax amnesty is not a legal instrument for the government to extort the tax-payers. The tax amnesty is essentially aimed to increase the taxpayer compliance towards the obligations of the state under Article 23 (A) of the UUD NRI 1945. In addition, it is a form of settlement to save the taxpayers who hide their wealth which located both inside and outside the country.

### 6. Subject dan Object of Tax Amnesty

The Tax Amnesty is regulated under Law No. 11 of 2016 which is having legal subjects and objects. The existence of the legal subjects and objects should not be disregarded because it is essential particularly when they have legal-relationship in the implementation of the tax amnesty. Actually, both the legal subjects and objects are the existence of Law of the Tax Amnesty as fiscal policy formed by Indonesia as a legal state. related to it, the interesting question is "who is classified as legal subjects in the implementation of tax amnesty?". The Legal subjects in the implementation of tax amnesty are the tax-payers. Affirmation of the tax-payers as the legal subjects specified under article 1 (2) of the Law of Tax Amnesty. The legal subjects is individuals or entities that have rights and obligations concerning tax in accordance with the provisions of tax legislation.

As the legal subjects, the tax-payers are entitled to the tax amnesty. Scope of the tax amnesty is the

<sup>1</sup> See article 1 (1) of the the Law No. 11 of 2016 concerning Tax Amnesty.

<sup>2</sup> Article 2 (1) of the the Law No. 11 of 2016 concerning Tax Amnesty.

<sup>3</sup> See Article 2 (2) of the the Law No. 11 of 2016 concerning Tax Amnesty.

elimination of the owed tax without tax administration sanctions and criminal sanctions in the field of taxation by revealing their wealth and paying the ransom as regulated in the Law of Tax Amnesty. The tax amnesty is granted to the tax-payers through disclosure any property in statement letter.

The tax-payers who are entitled to a tax amnesty are the taxpayers who have obligation to submit an annual notification letter of their income tax. In the case of the tax-payers have not have the tax-payers identification number, they need to obtain a taxpayer identification number by registering at the office of the Directorate General of Taxation where the tax-payers resides or are domiciled.<sup>1</sup> This is because the tax identification number is the identity of the tax-payers so that legal actions carried out by the tax-payers in order to obtain tax amnesty can be regarded as a legal act which is legal in the field of tax law.

Although obtaining the tax amnesty is the right of the tax-payers, not all of the tax-payers may be granted to the tax amnesty. This is due to the legal norms in Article 3 (3) of the Tax Amnesty Law granting exception for the tax-payers who are not entitled to the tax amnesty. The exception is addressed to the tax-payers who are currently: a) faced investigation and its file investigation have been declared as complete by the Attorney; b) in the judicial process; or c) served criminal penalties for a criminal offense in the field of taxation. The exception towards the tax-payers in obtaining the tax amnesty is essentially incompatible with article 27 (1) of UUD NRI 1945 stated that "All citizens shall be equal before the law and in government and shall uphold the law and government without exception".

In addition to these exceptions, the tax-payers, who are not entitled to the tax amnesty, are the tax collectors and tax cutters. Due to the collected or deducted tax is not their income, then, they can not entitle to the tax amnesty although they are burdened with the obligation to submit an annual notification letter of the income tax. It is not revealed in the form of legal norms in the Law on Tax Forgiveness. Non-disclosure of the legal norms in the Law on Tax Amnesty shows that Law of Tax Amnesty has not yet putted legal certainty for the taxpayer working as tax collector and tax cutters.

The Law of Tax Amnesty does not only govern a legal subject but also it governs a legal object. The object of the law focused on the value of additional assets that have not yet fully reported in the last annual report of income tax. Suharno<sup>2</sup> states that assets classified as additional assets are : (a) Inheritance; and/or (b) Congenital treasure earned by family (in blood) in the lineage of the degrees which have not yet fully reported in the last annual income tax report. He further points out that in the following circumstances, inheritance is not classified as object of tax amnesty if: (a) Treasure is received by heirs who have no income or have income below the standard of taxable income; (b) Inheritance has been reported in the deviser last annual income tax report.<sup>3</sup>

The tax amnesty essentially includes amnesty of tax obligations until the end of the last tax year, which is not or has not been fully resolved by the tax-payers. The tax obligations is consisting of income tax liability and value added tax or value added tax and sales tax on luxury goods. Meanwhile the object consists of the state tax which its collection and billing process are carried out by the tax authorities as an integral part of the Ministry of Finance of the Republic of Indonesia.

## 7. Procedures for Obtaining Tax Amnesty

In order to obtain the Tax Amnesty, first Taxpayers must meet the procedures as prescribed. The procedure to obtain the tax amnesty must be preceded by a legal act of the taxpayer in the form of the submission of a statement letter to the Minister of Finance of the Republic of Indonesia. If the statement letter is considered legal in accordance to the tax law of the Republic of Indonesia, the Minister of Finance or the appointed official on behalf of the Minister of Finance of the Republic of Indonesia will issue a certificate. When the certificate is not received legal challenge from the tax-payers, the tax-payers may earn amnesty for tax obligations.

In obtaining tax amnesty, the tax-payers must submit a statement letter of to the Minister of Finance of the Republic of Indonesia. A statement letter in accordance to Article 1 (9) Regulation of Tax Amnesty is a document used by the taxpayer to disclose assets, debts, the value of net assets, as well as the calculation and payment of ransom. The statement letter submitted by the taxpayer is signed by:<sup>4</sup>

- a) individual as a taxpayer;
- b) supreme leader based on deed of or other document that is equivalent to the taxpayer; or
- c) endorsee, in the case of supreme leader referred to in point b is absent.

In order to obtain the tax amnesty, the tax-payers must meet specified requirements. Those requirements to obtain tax amnesty under Article 8 paragraph (3) of Regulation of Tax Act, are as follows:

- a) owning a taxpayer identification number;

<sup>1</sup> See explanatory Article 3 (1) of the the Law No. 11 of 2016 concerning Tax Amnesty.

<sup>2</sup> Suharno, 2016, *Practical Guidelines of Indonesian Tax Amnesty (Panduan Praktis Amnesti Pajak Indonesia*, Kompas, Jakarta, p. 4.

<sup>3</sup> Ibid.

<sup>4</sup> See Article 8 (2) of the the Law No. 11 of 2016 concerning Tax Amnesty.

- b) paying ransom;
- c) settling all delinquent taxes;
- d) settling unpaid or underpaid taxes or settling taxes that should not be returned to the tax-payers which currently facing the preliminary evidence examination and / or investigation;
- e) submitting a letter of notification last income tax for tax-payers who already have the obligation to submit an annual notification letter of the income tax; and
- f) revoking the request:
  - 1. refunding the excess payment of tax, in which case the taxpayers are filing an application and the decision letter has not yet been issued;
  - 2. eliminating of tax administration sanction in tax assessments and / or mailing tax bills containing basic unpaid ta, in which case the taxpayers are filing an application and the decision letter has not yet been issued;
  - 3. cancelling of the tax assessment is incorrect; in which case the taxpayers are filing an application and the decision letter has not yet been issued;
  - 4. objection, in which case the taxpayer is filing an application and the decision letter has not yet been issued;
  - 5. correction on tax assesment and decree or decision letter; in which case the taxpayers are filing an application and the decision letter has not yet been issued;
  - 6. appeal; in which case the taxpayers are filing an application and the decision letter has not yet been issued;
  - 7. lawsuit; in which case the taxpayers are filing an application and the decision letter has not yet been issued;
  - 8. reconsideration; in which case the taxpayers are filing an application and the decision letter has not yet been issued.

Ransom payment to obtain the tax amnesty must be made in full to the State Treasury through the Bank Perception. Arrangements regarding the perception banks regulated in the Decree of the Minister of Finance of the Republic of Indonesia Number 600 / KMK.03 / 2016 on Appointment of Bank Perception acting as receivers of ransom money in the context of tax amnesty. The Bank Perception lists consist of:<sup>1</sup>

- 1. Bangkok Bank;
- 2. Bank ANZ Indonesia;
- 3. Bank Chinatrust (CTBC);
- 4. Bank Commenweath;
- 5. Bank DBS Indonesia;
- 6. Bank Ganesha;
- 7. Bank ICBC Indonesia;
- 8. Bank J Trust Indonesia;
- 9. Bank Maybank Indonesia;
- 10. Bank Mestika Dharma;
- 11. Bank Mizuho;
- 12. Bank Muamalat;
- 13. Bank of America;
- 14. Bank of Tokyo;
- 15. Bank QNB Kasawan;
- 16. Bank Resona Perdania;
- 17 Bank Sumitomo;
- 18. Bank Woori Saudara;
- 19. Citibank,N.A;
- 20. Deutsche Bank, A.G;
- 21. Hongkong and Shanghai Bank Corp;
- 22. JP Morgan Chase Bank;
- 23. KEB Hana;
- 24. MNC Bank Internasional;
- 25. PT Bank Artha Graha;
- 26. PT Bank Bukopin, Tbk;
- 27. PT Bank Bumi Arta;
- 28. PT Bank Central Asia, Tbk;

<sup>1</sup>Appendix of The Decree of the Minister of Finance of Republic of Indonesia No. 600/KMK.03/2016 concerning The determination of Bank Perception acting As Receivers of Ransom in the context of Tax Amnesty.

29. PT Bank CIMB Niaga, Tbk;
30. PT Bank Danamon;
31. PT Bank DKI;
32. PT Bank Ekonomi Raharja;
33. PT Bank Jasa Jakarta;
34. PT Bank Maspion Indonesia;
35. PT Bank Mayapada;
36. PT Bank Mega;
37. PT Bank Negara Indonesia (Persero), Tbk;
38. PT Bank Nusantara Parahyangan, Tbk;
39. PT Bank OCBC NISP;
40. PT Bank Panin;
41. PT Bank Permata, Tbk;
42. PT Bank Rabobank Internasional Indonesia;
43. PT Bank Rakyat Indonesia (Persero), Tbk;
44. PT Bank Sinarmas;
45. PT Bank Sinhan Indonesia (d/h PT Bank Metro Express);
46. PT Bank Syariah Mandiri;
47. PT Bank Tabungan Negara (Persero), Tbk;
48. PT Bank Tabungan Pensiunan Nasional, Tbk;
49. PT Bank UOB Indonesia;
50. PT BNI Syariah;
51. PT Bank Mandiri (Persero), Tbk;
52. PT Standard Chartered Bank;
53. BPD Aceh;
54. BPD Bali;
55. BPD Bengkulu;
56. BPD Jabar Banten;
57. BPD Jambi;
58. BPD Jawa Tengah;
59. BPD Jawa Timur;
60. BPD Kalimantan Barat;
61. BPD Kalimantan Selatan;
62. BPD Kalimantan Tengah;
63. BPD Kalimantan Timur;
64. BPD Lampung;
65. BPD Maluku;
66. BPD Nusa Tenggara Barat;
67. BPD nusa Tenggara Timur;
68. BPD Papua;
69. BPD Riau Kepri;
70. BPD Sulawesi Selatan dan Barat;
71. BPD Sulawesi Tengah;
72. BPD Sulawesi Tenggara;
73. BPD Sulawesi Utara;
74. BPD Sumatera Barat;
75. BPD Sumatera Utara;
76. BPD Sumsel Babel;
77. BPD Yogyakarta.

The statement letter submitted by the tax-payers contain at least information on the identity of the tax-payers, assets, debts, net property value, and counting the ransom. The scope of information on the identity of the tax-payers includes information regarding the name, address, taxpayer identification number, passport number, employee identification numbers, and the business license.<sup>1</sup> In addition, the statement letter submitted by the tax-payers shall be accompanied by:

- a) proof of payment of delinquent of tax for taxpayers having delinquent tax;
- b) detailed list assets along with asset ownership information reported;
- c) debt registration list along with supporting documents;

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<sup>1</sup> See Explanatory Article 9 (1) of the the Law No. 11 of 2016 concerning Tax Amnesty.

- d) proof of payment of unpaid or underpaid taxes or settle taxes that should not be returned to the taxpayer which currently facing the preliminary evidence examination and / or investigation;
- e) photocopy of the last income tax report; and
- f) statement of the petition withdrawal, in the form of:
  1. refunding the excess payment of tax, in which case the taxpayers are filing an application and the decision letter has not yet been issued;
  2. eliminating of tax administration sanction in tax assessments and / or mailing tax bills containing basic unpaid ta, in which case the taxpayers are filing an application and the decision letter has not yet been issued;
  3. cancelling of the tax assessment is incorrect; in which case the taxpayers are filing an application and the decision letter has not yet been issued;
  4. objection, in which case the taxpayer is filing an application and the decision letter has not yet been issued;
  5. correction on tax assesment and decree or decision letter; in which case the taxpayers are filing an application and the decision letter has not yet been issued;
  6. appeal; in which case the taxpayers are filing an application and the decision letter has not yet been issued;
  7. lawsuit; in which case the taxpayers are filing an application and the decision letter has not yet been issued; and
  8. reconsideration; in which case the taxpayers are filing an application and the decision letter has not yet been issued.<sup>1</sup>

If the statement letter has met the requirements and has specified attachment, it then will be submitted to the office of the Directorate General of Taxation where the tax-payers are registered or any other place determined by the Ministry of Finance of the Republic of Indonesia. This is intended to avoid delivery errors in the statement letter that may cause the failure for the tax-payers in obtaining the tax amnesty. Therefore, the tax-payers should be careful to the statement letter that is going to be delivered to the office of the Directorate General of Taxation where the tax-payers are registered or any other place determined by the Ministry of Finance of the Republic of Indonesia.

Minister of Finance of the Republic of Indonesia or authorized officials on behalf of the Minister of Finance of the Republic of Indonesia is obliged to issue a certificate of tax amnesty. The certificate of tax amnesty, hereinafter referred as certificates according to Article 1 (11) of Law of Tax Amnesty is a letter issued by the Ministry of Finance of the Republic of Indonesia as proof of granting tax amnesty. The certificate is issued within a period of 10 (ten) working days from the date the statement letter and attachments received. The note must be sent to the taxpayer who has submitted the statement letter and attachments.

Obligation to send a letter to the tax-payers within 10 (ten) business days is absolute and should not be overlooked. Considering Article 10 (5) Law of Tax Amnesty affirming that "*In terms of a period of 10 (ten) business days, the Minister or appointed official on behalf of the Minister has not issued a certificate, a statement letter is considered acceptable as a certificate*". Legal norms in Article 10 (5) of Law of Tax Amnesty is essentially putting a legal certainty to the the statement letter submitted by the taxpayer to Directorate General of Taxes office where the taxpayer is registered or any other place determined by the Ministry of Finance of the Republic of Indonesia.

## 8. Facilities of Tax Amnesty

The tax amnesty is essentially ended in facilities that may be used by the tax-payers. The facility is a reflection of the benefits as an element in the positive law, for instance the Law of Tax Amnesty. Actually, the facility of tax amnesty can only be granted to taxpayers who comply with the legal norms in Law of Tax Amnesty in obtaining tax amnesty considering Law of Tax Amnesty as a policy in the field of taxation providing facility of tax amnesty which may be granted to the taxpayers compying it.

A taxpayer who has submitted a statement letter that has meets the requirements and has attachments, marked with proof of receipt. The proof of the receipt is given by the Minister of Finance of the Republic of Indonesia or authorized officials on behalf of the Minister of Finance of the Republic of Indonesia. Taxpayers who have obtained proof of receipt will gain facilities of tax amnesty. The tax amnesty facilities are as follows:<sup>2</sup>

- a. no assessment, for the tax period, part of the tax year, or tax year until the end of the last tax;
- b. no assessment on preliminary evidence, for the tax period, part of the tax year, or tax years until the end of the last tax year; and / or
- c. no criminal investigation in the field of taxation, for the tax period, part of the tax year, or tax years

<sup>1</sup> See Explanatory Article 9 (2) of the the Law No. 11 of 2016 concerning Tax Amnesty.

<sup>2</sup> See Article 11 (2) of the the Law No. 11 of 2016 concerning Tax Amnesty.



until the end of the last tax year.

Another situation, when the tax-payers have obtained a proof of receipt which currently facing, as following:<sup>1</sup>

- a. examination; for the tax period, part of the tax year, or tax years up to the end of the last tax year, the examination is suspended until the certificate issued;
- b. examination of preliminary evidence; for the tax period, or the tax year to the end of the last tax year, the preliminary evidence examination is suspended until the certificate issued;
- c. investigation of criminal offenses in the area of taxation; for the tax period, or the tax year to the end of the last tax year, the investigation of criminal offenses in the area of taxation is deferred until the certificate issued; and

When the certificate has been issued to the tax-payers who are being facing examination, preliminary evidence examination and / or investigation of criminal offenses in the field of taxation for the tax period, or the tax year to the end of the last tax year must be terminated. Termination is carried out on the basis of command laws. If the termination not carried, then the parties conducting the examination, examination of preliminary evidence, and / or investigation of criminal offenses in the area of taxation have violated tax law, particularly the Law on Tax Amnesty.

The Tax-payers who have been issued a certificate may obtain tax amnesty in the form of:

- a. the elimination of unpaid taxes that have not issued tax assessments will not received tax administration sanction, and is not subject to criminal sanctions in the field of taxation, for tax obligations in tax period, part of the tax year and the tax year, until the end of the last tax year;
- b. elimination of tax administration sanction in the form of interest, or penalties, for tax obligations in tax period, part of the tax year and the tax year, until the end of the last tax year;
- c. tax audit, preliminary evidence examination and investigation of criminal offenses in the area of taxation are not carried out, on tax obligations in tax period, part of the tax year and the tax year, until the end of the last tax year; and
- d. termination of the inspection, preliminary evidence examination, or investigation of criminal offenses in the area of taxation, in which case the taxpayer is facing tax audits, preliminary evidence examination and investigation of criminal offenses in the field of taxation on tax obligations, until the end of the last tax year, which had previously been suspended as referred to in Article 11 paragraph (3), which deals with tax obligations referred to in Article 3 (5).<sup>2</sup>

## 9. Legal Efforts of Tax Amnesty

Even though obtaining a tax amnesty is the right of the tax-payers, sometimes it might also causes tax disputes. It takes place because the issuance of the certificate as proof of submission of a statement letter from the tax-payers does not conform to legal norms of Law of Tax Amnesty. Such discrepancy is due to certificates are:

1. Not issued by the Minister of Finance of the Republic of Indonesia;
2. Not issued by authorized officials on behalf of the Minister of Finance of the Republic of Indonesia;
3. Containing juridical flaws in the form of typographical errors; and / or miscalculation.

The initiative to file a tax dispute is on the tax-payers. This happens due to the tax-payers are the one who suffered losses that prevent them in obtaining tax amnesty. Such losses caused by mistakes made by tax officials in providing services to the tax-payers to obtain tax amnesty. Obviously, the taxpayer should be received proper services that will not lead to any harm which ended in the form of tax dispute between the taxpayer with the Minister of Finance of the Republic of Indonesia or authorized officials on behalf of the Minister of Finance of the Republic of Indonesia.

When there is a tax dispute occurred in the implementation of the Tax Amnesty, law might allow the legal effort taken by the taxpayer in the form of lawsuit instead of objection. What is meant by lawsuit? The lawsuit is a legal action that can be carried by the taxpayer against the implementation of tax collection or the decision filed through a lawsuit based on the applicable tax laws and regulations.<sup>3</sup> In accordance to definition of the lawsuit, it means that the certificate issued by the Minister of Finance of the Republic of Indonesia or authorized officials on behalf of the Minister of Finance of Republic of Indonesia is a decision and not a tax assessment.

Tax assessment issued by the Director General of Taxation in the framework of the tax collection, therefore it does not related to tax amnesty. Such tax assessments are as follow:<sup>4</sup>

1. assessments for underpayment tax;

<sup>1</sup> See Article 11 (3) of the the Law No. 11 of 2016 concerning Tax Amnesty.

<sup>2</sup> See Article 11 (5) of the the Law No. 11 of 2016 concerning Tax Amnesty.

<sup>3</sup> See Article 1 (3) of the the Law No. 14 of 2002 concerning Tax Court.

<sup>4</sup> See Article 25 (1) of the the Law No. 28 of 2007 concerning the Third Amandement of The Law No. 6 of 1983 Concerning the General Provision and Taxation Procedure.

2. assessments for additional underpayment tax;
3. assessments for overpaid tax; and
4. assessments for zero tax.

The legal basis for the tax-payers in filing lawsuit contained within Article 19 of Law of Tax Amnesty states that:

- 1) All disputes relating to the implementation of of this Law, can only be resolved through the filing of a lawsuit.
- 2) The lawsuit as described in paragraph (1) may only be submitted to the judicial tax court.

Lawsuit filing against the certificate contained judicial flaws should be filed and addressed to tax court. However, the tax court is not specified within Law of Tax Amnesty. Nevertheless, it does not mean there is a legal gap in the settlement of tax disputes in the form of filing a lawsuit. Tax Court is specified within Law No.14 of 2002 concerning Tax Court. Its decision culminates to the Supreme Court of the Republic of Indonesia in the form of judicial review.<sup>1</sup>

## 10. Criminal Provisions

In relation to the implementation of the tax amnesty, Law of Tax Amnesty does not regulate administrative sanctions, but only stipulates criminal sanctions. The existence of criminal sanctions is addressed to any person violating the provisions as described Article 21 (2) of Law of Tax Amnesty. The scopes of any person described in Article 21 paragraph (2) of the Act Tax Forgiveness are as follows:

1. Minister of Finance of Republic of Indonesia;
2. Vice Minister of Finance of Republic of Indonesia;
3. Employees of the Ministry of Finance of the Republic of Indonesia; and
4. Other Parties.

Activities prohibited for everyone are divulging, distributing, and / or notifying the data and information known or disclosed by the taxpayer to the other party. Criminal sanction for any person committing the offense is imprisonment for a period of 5 (five) years. However, the prosecution of the offense is only performed upon complaint from people whom the confidentiality has been violated.

The legal basis for the imposition of criminal sanction is governed though Article 23 of the Law of Tax Amnesty, which sets:

- 1) Any person who violates the provisions referred in Article 21 paragraph (2) shall be punished by imprisonment of five (5) years;
- 2) Prosecution of the offenses as described in paragraph (1) is only performed upon complaint of people whom the confidentiality has been violated.

Article 23 of Law of Tax Amnesty basically contains complaint delic with “premiun remedium” character. It is in contrast with the criminal provisions specified within Law No. 28 of 2007 concerning General Provisions and Tax Procedures (Law of Taxation General Provisions) which has criminal provisions with “Ultimum Remedium” character.<sup>2</sup> In other words, criminal sanctions can be applied followed the application of administrative sanctions against taxpayers and tax officials committing violations of tax laws.

The applicability of “premium remedium” in criminal provisions within Law of Tax Amnesty is essentially accelerating the fulfillment of taxpayers rights in obtaining tax amnesty. This is due to the policy in the field of taxation in the form of tax amnesty are not always provided by state. Tax amnesty is momentarily occurred in short period of time that has been specified. Thus, offenses under the Law of Tax Amnesty is classified as an exception compare to the crime stipulated in the Law of Taxation General Provisions.

## 11. Conclusion

The Tax Amnesty is governed by UUD NRI 1945 and the Law of Tax Amanesty. Article 1 (3) and 23 A of the Constitution stipulates as the fundamental regulation. Article 1 (3) of UUD NRI 1945 emphasizes Indonesia as a legal state and Article 23A emphasizes "taxes" and "other levies of compelling character", where each one shall be regulated by law. The Law No. 11 of 2016 concerning Tax Amnesty itself is the spesific Laws concernig of the Tax Amnesty.

The Law of Tax Amenesty then is deemed as a cooperative manifestation between President of Republic of Indonesia and DPR to fullfill the rights of every tax-payers to receive the tax amnesty. However, it implied the existence of an obligation for tax-payers that need to be fulfilled in order to receive the tax amnesty. All matters related to the tax Amnesty can be seen practically in the Law No. 11 of 2016. However, there is contradiction in the Law No. 11 of 2016 in which article 14 (2) of the Constitution is excluded from the formal sources as

<sup>1</sup> Muhammad Djafar Saidi, 2013, *Procedural Law of Tax Court (Hukum Acara Peradilan Pajak)*, 2nd ed., PT RajaGrafindo Persada, pp. 5-6.

<sup>2</sup> Muhammad Djafar Saidi and Eka Merdekawati Djafar, 2012: *Crimes in the field of Taxation (Kejahatan di Bidang Perpajakan)*, 2nd ed. PT. RajaGrafindo Persada, Jakarta, p. 8.

considered in the consideration of the Law No. 11 of 2016. Therefore, some experts states that the Law No. 11 of 2016 is invalid.

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