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TAX AMNESTY APPLICATION ON TAX OBJECTS THAT BECAME DISPUTES IN THE COURT IN INDONESIA

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ABSTRACT

The procedure for filing a tax amnesty application in the Tax amnesty program has been regulated in Act Number 11 of 2016 concerning Tax Amnesty, General Provision and Tax Procedures (KUP) Law. However, tax objects that are still in dispute in the court have different procedures and not regulated in detail in the legislation. Due to this reason, this study aims to examine tax amnesty application on tax objects that are disputed in court in Indonesia. This study used a normative legal approach which was conducted by the study of literature and documentation of legislation and policies relating to theories and principles of tax law, especially tax amnesty policies. The results showed that tax amnesty in the case of a tax object that is still in the process of dispute can be performed by the withdrawal of the lawsuit; the trial process is suspended until the issuance of a statement. Thus, it can be concluded that the application for tax amnesty related to the dispute object has its own rules and conditions which are supervised directly by the Director General of Taxes and the Ministry of Finance.

INTRODUCTION

The presence of taxes is a key point in regulating economic stability as well as with respect to Governance in a country (Epstein and Gang, 2019). Baranova and Janickova (2012) expressed that the existence of taxes is the foundation of the country's economy, because not only is it struggling with numbers, but taxes also seem to have an impact on various other state substances such as politics and government. This is in line with what Bohari (2002) stated that tax law, including in Indonesia, has the function of regulating, namely as a tool of government policy (fiscal policy) in carrying out its politics in all fields.

In relation to taxes, there is a term known as tax amnesty. Tax amnesty becomes a forgiveness program given by the government to taxpayers (Henderson, 2019). The program includes the elimination of taxes that should be owed, the

elimination of tax administration sanctions, and the elimination of criminal sanctions in the field of taxation on assets obtained in the previous year that have not been reported in the Annual Notification Letter (SPT) by paying off all tax arrears owned and paying ransom (Yudkin, 1971).

Based on Article 1 number 1 of the Law of the Republic of Indonesia Number 11 Year 2016 concerning Tax Amnesty, hereinafter referred to as Tax Amnesty Law or abbreviated as TA Law defines that tax amnesty is the abolition of taxes that should be owed, not subject to tax administration and criminal acts sanctions in taxation by disclosing assets and paying ransom as stipulated in this law. It is known that the tax amnesty of the object is not only stored abroad, but also originating from within the country where the report is not given correctly. It is known that the tax amnesty law only regulates taxpayers who are in dispute in the court, as contained in article 3 paragraph (3) of the Tax Amnesty Act. However, the law does not regulate in detail regarding the objects that are still in dispute in the court, thus all tax objects that are borne by taxpayers will not be erased their obligations even though the object is still in dispute in the court. Since the enactment of the Minister of Finance Regulation No.118/PMK.03/2016 concerning the Implementation of the Tax Amnesty Act, each taxpayer must report his wealth to the state to pay tax ransom without being charged with fines or sanctions as regulated in taxation laws. However, the length of the court process can be a barrier for taxpayers who want to pay taxes but still have assets in dispute in court. Not only due to the length of the court process but the relatively short period of tax amnesty also makes taxpayers unable to utilize the tax amnesty program effectively.

On the other hand, the procedure for filing a tax amnesty application in the Tax amnesty program has been regulated in Act Number 11 of 2016 concerning Tax Amnesty, the General Provision and Tax Procedures (KUP) law which is also strengthened by Regulation of the Minister of Finance No.118/PMK.03/2016 concerning the Implementation of the Amnesty Act Tax. However, tax objects that are still in dispute in the court have different procedures and not regulated in detail in the legislation. Therefore, this study aims to examine the tax amnesty request for tax objects that are disputed in the court in Indonesia.

RESEARCH METHODS

This study used normative legal methods conducted by using literature studies, documentation of laws, regulations, and policies relating to theories and principles of tax law, especially tax amnesty policies. Moreover, this study was categorized as descriptive research that did not intend to test hypotheses or theories, but was an activity of analysing and classifying or systematizing legal materials. Besides that, in this study the writers also used the method of interpreting the law in a grammatical manner. However, the approach adopted in the study was the statutory and the conceptual approach. Both were selected and used on an ongoing basis to obtain relevant legal research results and in accordance with the rules (Marzuki, 2014).

The source of legal material used in the study used 2 (two) materials, namely primary legal materials and secondary legal materials. Primary legal material is a binding legal source related to the basis of this study, namely the 1945

Constitution of the Republic of Indonesia, Law Number 11 of 2016 concerning Tax Amnesty, Law of the Republic of Indonesia Number 16 of 2009 concerning Establishment of Substitute Government Regulations Law Number 5 of 2008 concerning the Fourth Amendment to Law Number 6 of 1983 concerning General Provisions and Procedures for Taxation into Law, Law Number 14 of 2002 concerning Tax Courts, and Regulation of the Minister of Finance of the Republic of Indonesia Number 141/PMK.03/2016 concerning Amendment to the Regulation of the Minister of Finance Number 118/PMK.03/2016 concerning the Implementation of Law Number 11 Year 2016 concerning Tax Amnesty. However, secondary legal material is an explanation of primary legal materials, such as research results, writing works from the legal community and so on. The collection of legal materials in this writing was conducted by searching, studying, and understanding books and scientific literature that contains the opinions of scholars, print media, and legislation relating to taxation.

RESULTS AND DISCUSSION

Tax Amnesty Registration Procedure against Tax Object that is in Dispute in the Court

As stated earlier, a tax amnesty is a forgiveness program given by the government to taxpayers. The tax amnesty has been in force since it was ratified on 31 March 2017, submitted by the Directorate General of Taxes (2017). which is then divided into 3 (three) periods, namely, period I, from the date of promulgation to 30 September 2016. Period II, from the date October 1, 2016 to December 1, 2016. Period III, from January 1, 2017 to March 31, 2017. Separation of tax amnesty within these 3 (three) periods is distinguished based on the tax disclosure rates and where the assets disclosed originated. This is in accordance with the regulations in Law Number 11 Year 2016 regarding Tax Amnesty which is then listed in the following comparison **Table 1**:

Table 1. Comparison table of tax forgiveness

	Domestic	Abroad
Period I	2%	4%
Period II	3%	6%
Period III	5%	10%

Tax amnesty is known as a part of the taxation policy, so the determination of the policy must be based on legal principles or principles (Huda and Hernoko, 2017). In order to meet the principle of justice, all taxpayers can take advantage of the tax amnesty policy. However, there are some exceptions regarding taxpayers who can take advantage of the program, as stated in Article 3 paragraph (3) of the TA Law that is exempted from the provisions as referred to in paragraph (1), namely the taxpayer being investigated and the file of investigation has been declared complete by prosecutors, taxpayers who are in

the process of trial or who are undergoing criminal penalties for criminal acts in the field of taxation.

As discussed, although taxpayers can be excluded from participating in the Tax amnesty program for those who are in dispute in the court, this does not apply to their tax objects. Thus, it is known that the taxpayer will not cancel the obligation to pay taxes on all objects owned including tax objects that are still in dispute in the court. In this case, the tax object that is still in dispute in the court can be submitted for tax amnesty application to the Directorate General of Taxes. This is due to no regulation regarding the exclusion of tax objects which are still in dispute in court. Based on the principle of legality that everything that is not regulated in the legislation is permissible, including the inclusion of tax objects in the tax amnesty program.

Besides that, assets disclosed by taxpayers cannot be transferred abroad for 3 years from the issuance of a certificate. As mentioned in the Regulation of the Minister of Finance of the Republic of Indonesia Number 141/PMK.03/2016 concerning Amendment to the Regulation of the Minister of Finance Number 118/PMK.03/2016 Regarding the Implementation of Law Number 11 Year 2016 Regarding Tax Amnesty in Article 13 paragraph (5).

Since the enactment of Law of the Republic of Indonesia Number 11 Year 2016 regarding Tax Amnesty, the taxpayer who has not or not yet fully disclosed the assets must disclose his/her assets in full. Since there will be sanctions for taxpayers who have not reported their assets, namely administrative sanctions in the form of a fine of 200% of income tax that is not or underpaid. As it has been regulated in Law Number 11 Year 2006 concerning Tax Amnesty in Article 18 Paragraph (3).

Further investigating is known that participating in tax amnesty helps the government in accelerating economic growth and restructuring through asset transfers, which among others will have an impact on increasing domestic liquidity, improving the rupiah exchange rate, reducing interest rates, and increasing investment. In addition, participating in the tax amnesty program is a part of tax reform against a more just taxation system and an expansion of a more valid, comprehensive and integrated taxation database. Not only about the participation, but the tax amnesty program also increase tax revenue which among others will be used to finance development.

Hence, it can be seen that in the case of filing a tax amnesty, the taxpayer must play an active role in getting his rights to be able to follow the tax amnesty policy. Thus, the procedure for filing a Tax Amnesty has been arranged as follows, first, the taxpayer comes to the Tax Service Office where the taxpayer is registered to request an explanation regarding the filling and requirement of documents that must be attached to the statement, namely proof of ransom payment, proof of payment of arrears tax for taxpayers who have tax arrears, a list of asset details along with information on ownership of assets reported, list of debts and supporting documents, proof of payment of tax that is not or underpaid or tax that should not be returned for taxpayers who are examining preliminary evidence or investigation , photocopy of the latest PPT SPT, a

statement revoking all applications that have been submitted to the Directorate General of Taxes, a statement of transfer and investment of assets into the territory of the Unitary Republic of Indonesia for the shortest period of 3 (three) years from the date of switched. Even in the event that the taxpayer will carry out repatriation, attach a statement of not transferring assets outside the territory of the Unitary Republic of Indonesia for a minimum period of 3 (three) years from the issuance of the statement in case the taxpayer will claim the declaration and attach the statement letter concerning the amount of business circulation for taxpayers engaged in the MSME sector.

Second, taxpayers complete the documents that will be used to submit tax amnesty through a statement. Including paying a ransom, paying tax arrears and taxes that are not or underpaid or taxes that should not be returned for taxpayers who are checking the preliminary evidence or investigation. Third, taxpayers submit a statement to the Tax Office where the taxpayer is registered or other places determined by the Minister of Finance. Fourth, taxpayers will get a statement letter. Fifth, the minister or official appointed on behalf of the minister issues a statement within a maximum period of 10 (ten) working days from the date of receipt of the statement along with its attachments and sends a Tax Amnesty Certificate to the taxpayer. Sixth, in the case of a period of 10 (ten) working days as referred to in paragraph (4) the Minister or an official appointed on behalf of the Minister has not yet issued a Certificate, a Declaration Letter is deemed accepted. Seventh, the taxpayer can submit a Statement at the most 3 (three) times in the period from the date this Act takes effect until March 31, 2017 where the Second and Third Statement can be submitted before or after the Statement of the previous Statement issued Meanwhile, paying attention to the formulation of Article 1 paragraph (2) of Presidential Decree No. 26 of 1984 tax amnesty is granted on taxes classified as central tax only, which Muttaqin (2013) grouped with, first, income tax obtained in 1983 and before, as provided for in the P.Pd 1944 Ordinance. Second, Taxes the Company for the profits earned in the 1983 and prior tax years. Third, the Wealth Tax on assets owned on January 1, 1984 and before. Fourth, the Labor Income Tax (P.Pd.Ps. 17a) owed in 1983 and before. Fifth, the Interest Tax, Dividends and Royalties (PBDR) as stipulated in Law No. 10 of 1970 which was payable on interest, dividends and royalties paid or made available to be paid until 31 December 1983. Sixth, MPW Wapu was outstanding in 1983 and before. Seventh, Sales Tax payable in 1983 and before.

It is known that in implementing the provisions of tax legislation, there are two opposing parties. They are taxpayers who are burdened to pay taxes and tax officials who are the authorities in overseeing the requirement of tax obligations and are given a target to collect taxes in order to finance state expenditure. In opposing positions, the two parties often disagree in certain matters. This difference is usually called a tax dispute. Tax disputes usually arise if the tax authorities issue legal products in the context of tax collection, namely Tax Collection Letter (STP) and Tax Assessment Letter (SKP), in the form of Underpaid Tax Assessment Letter (SKPKB), Overpaid Tax Assessment Letter (SKPLB), Nil Tax Assessment Letter (SKPN) or Additional Tax Underpayment Assessment (letter (SKPKBT). Therefore, to resolve tax dispute issues, KUP Law has provided several internal settlement procedures for the Directorate

General of Taxes such as rectification, reduction or elimination of administrative sanctions, reduction or cancellation of tax assessments, reduction or cancellation of Tax Collection Letters, cancellation of audit results, and objections. Meanwhile, if it is outside the Directorate General of Taxes, it can be resolved by appealing, suing and reviewing.

Referring to the tax amnesty registration procedure for the object in dispute in court, the researcher in this case focuses on the tax dispute that has just entered the filing stage in court, namely the inspection stage, preliminary proof examination, and/or investigation, and the tax dispute that is currently under justice process. That is because the status of the tax dispute can affect the tax amnesty registration procedure itself.

It is known that the tax amnesty is self-assessment, so that the assets reported in the Declaration are submitted entirely to the Taxpayer. This system gives full responsibility to taxpayers to meet tax obligations. The party that is obliged to pay tax is given the authority to calculate and report how much tax burden must be paid for each year. Due to this reason, it is fitting for taxpayers to report their assets independently and truthfully.

However, in the case of tax objects that are still in the process of dispute, especially those still in the stage of examination, preliminary evidence examination, and/or investigation of criminal acts in the taxation field, a claim can be withdrawn and the trial process is suspended until the issuance of the statement. This is regulated in Article 11 paragraph (3) of the Tax Amnesty Act which states that the examination, examination of preliminary evidence, and/or investigation of criminal acts in the taxation sector concerned is suspended until the issuance of the statement. Therefore, taxpayers must first make a letter of application to withdraw or withdraw the lawsuit over the dispute. After that, the Directorate General of Taxes will withdraw the lawsuit temporarily until the tax amnesty registration process ends.

Meanwhile, the procedure for registration of tax amnesty participation is carried out in accordance with the law. In this case there is no difference in the registration process. It's just that the assets disclosed in the affidavit must have supporting documents, but do not need to be attached to the affidavit. If the taxpayer does not have the supporting documents, the taxpayer concerned needs to make a statement about ownership of the asset. However, for tax objects that have entered the trial stage, they cannot be included in the tax amnesty program, because the proceedings that have proceeded cannot be stopped.

Exploring further, the implementation of transparent taxation is the main goal of the establishment of a taxation supervisory institution, so that in its implementation, the tax collection agency must be balanced with the taxation supervisory agency. As the name implies, institutions such as supervisory committees or ombudsmen are established in order to supervise individuals who carry out public activities as well as administrative procedures and public policies that deviate from the principle of good governance (Munir, 2018).

The formation of a tax ombudsman is intended to hear complaints from taxpayers who are treated arbitrarily and to facilitate their resolution in India. Indonesia itself has a tax monitoring agency named the Tax Supervisory Committee as stipulated in the Minister of Finance Regulation No. 54/PMK.09/2008 which was ratified since April 17, 2008. The existence of a tax monitoring agency, especially in Indonesia should be an illustration of the economic process, democracy, until politics and government occur in this country. Because each tax system and its supervision and regulation become an expression of the basic values of a country that includes the whole from the government to the people in it (Gribnau, 2013). The Tax Supervisory Committee is under the auspices of the Directorate General of Taxes in Indonesia.

Referring to the above description, it can be seen that normative supervision and guidance to the tax apparatus is still the authority of the Director General of Taxes and the Ministry of Finance. Therefore, those who are authorized to conduct administrative discipline and enforcement are the relevant Directorates and Departments. However, if the violations committed by the authorities have met the qualifications as a crime, then the violations should be related to criminal law enforcement.

CONCLUSION

Based on the previous description, it can be concluded that tax amnesty in the event that the tax object is still in the process of dispute can be withdrawn and the trial process is suspended until the issuance of the statement. Meanwhile, tax objects that have already entered the court stage cannot be included in the tax amnesty program, because the proceedings that have been proceeding cannot be stopped.

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