



The Benefit Theory of Taxation *and Its Implications on the Nigerian Indigent Households*

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ABSTRACT. Tax reform in Indonesia occurred from 1983 to 2009. In the last few years, several changes have been made to the same tax law in a short period. This indicates the Indonesian government's intention to reform the tax system fundamentally, but inconsistencies in determining the direction of long-term tax policy. It is necessary to research the concept of tax legislation in Indonesia to provide legal certainty in the context of tax reform in the era of digitalization. The research method used is normative juridical, with a qualitative research approach, and the research specifications used are descriptive-analytical. The results indicate that the Indonesian government is not optimal and inconsistent in formulating firm policies regulating taxes on digital activities. Second, the concept of permanent establishment formulated in a series of national regulations needs to include significant economic presence criteria to be able to reach digital platform companies. Third, the significant development of information technology needs to be accompanied by developments in the legal field that aim to become a legal framework for digital tax collection to minimize the loss of potential state revenue from the digital tax sector. Fourth, national tax reform is needed to adjust the international tax reform that is still being drafted through the Organization for Economic Cooperation and Development Consensus. Therefore, the Government of Indonesia needs to develop a comprehensive tax regulation concept that can ensure certainty, and provide justice, economic efficiency,

robustness to avoidance, ease of administration, and incentive compatibility.

INTRODUCTION

Tax reform is a significant and comprehensive change in the tax system that includes revamping tax administration, improving tax regulations, and increasing the tax base (Satya, 2017). Indonesia's first tax reform was carried out on 1 January 1984 (Soemitro, 1992), as well as being the largest tax reform. The reason was that the previous law made by the Dutch Colonial Government was considered no longer by the conditions of the development of society at that time (Pohan, 2017). Tax reform at that time was also carried out to further uphold the independence of the Indonesian state in financing national development by mobilizing all the capabilities of the Indonesian Nation and as an effort to reduce dependence on oil and gas revenues as non-renewable natural resources (Soemitro, 1992). Afterward, tax law reform was carried out again, namely in 1994, 1997, 2000, and from 2007 to 2009 (Pratiwi, 2023).

The implementation of tax reform varies depending on the conditions faced by a country. Tax reform can be in the form of adding or reducing tax rates, changing the taxable income layer, changing the taxable income threshold, changing the tax base, enacting new taxes, eliminating old taxes, changing the composition of tax revenues, fundamental changes to tax administrative practices and procedures (Ukinobu, 2011).

In the 1980s, tax reform occurred almost all over the world. Some of the countries that carried out tax reform in that period included countries in Western Europe, the United States issuing the Tax Reform Act 1986, Canada enacting the Goods and Services Tax, New Zealand, Australia, and Japan (Ukinobu, 2011). One of the most important reasons for tax reform in many countries is to change the tax system to meet the requirements of a market economy to increase the ability to compete internationally (Rao & Rao, 2010). Indonesia's tax reform in 1983 through the National Taxation System Reform named PSPN introduced the principle of self-assessment, simplified and lowered income tax rates, and introduced VAT (Value Added Tax) as a substitute for PPn (Sales Tax). These fundamentally old tax reforms now require a renewal to face the digitalization of the economy.

Currently, advances in information communication technology have provided fundamental changes to people's behavior in utilizing technology. The combination of technology and its interaction across both physical and digital domains makes the Industrial Revolution 4.0 fundamentally different from previous revolutions (Rao & Rao, 2010). In terms of human knowledge construction, Stevan Harnad in *Post-Gutenberg Galaxy: The Fourth Revolution in the Means of Production of Knowledge* states that the characteristic of the Industrial Revolution 4.0 is the borderless way of thinking (Harnad, 1991).

Changes in social and economic life due to digitalization are marked by the rapid growth of Over The Top (OTT) (OECD, 2019a). OTT facilitates activities to provide products or services to users previously unknown in conventional business structures, such as marketplaces, search engines, social media, creative content outlets, app stores, and communication services (OECD, 2019b).

OTT has become very popular around the world because it makes many people's activities easier. OTT is often compared to a facility that is provided for free to everyone. The OTT company has given its technology and data storage facilities to be used for free by everyone around the world. Without realizing it, OTT benefits from the more users, the more user behavior data they get. At that point, the smarter the OTT company's artificial intelligence algorithms and products, the greater the potential revenue (Bornflight).

The diversity of forms of income from OTT can be seen from the business models carried out, such as advertising-based, subscription-based, and digital content provider business models that users pay for downloaded items (OECD, 2015). For example, Google's biggest revenue comes from an advertising application called Google Adwords (Sudibyo, 2021). Google Adwords depends on Google's ability to create a crowd, which is a crowd that accesses Google as a search engine for information, data, or news. This information, data, and news is rarely produced by Google itself but aggregated from other sources, including national online journalistic media sources. Google provides big data for everyone (Sudibyo, 2021).

Based on these conditions, Google does not need to have an editorial structure, does not need to pay journalists and editors, but can indirectly modify the news produced by journalists and editors from other media. Similarly, Facebook does not need to have journalists because Facebook's "journalists" are all Facebook account holders who actively share information through their accounts every day. This aggregation process happens automatically, without any agreements with content owners (Press Council with the Indonesian Media Sustainability Task Force, 2021).

It is in this context that the OTT business has changed the fate of a country's national journalism media. The more people get information from Google, the more Google benefits, because access to information brings traffic which is then monetized as internet user behavior data sold to advertisers and others.

Global trends show that search engines and social media receive huge revenues and largely undermine the revenues of conventional journalistic media, which also contributes to the search engine and social media companies. Some research shows that more than 70% of internet users access news portals indirectly through search engines first. Meanwhile, search engines depend on the productivity of journalistic media in producing news every day. On the other hand, both parties are media business institutions that compete for advertising and popularity. This competition is mostly won by search engine companies.

The problem of business competition can be minimized through taxation,

which has also become the focus of almost all countries in the world. Internet globalization is unilaterally controlled by only one country, the United States (Mueller, 2010). The forces that oligopolistically control global computerization and digitalization are Google, Apple, Facebook, and Amazon. The question is if you advertise on Google Adwords, is there any tax paid? If so, which country is it paid in, the country of the advertiser, the country where Google operates, or the country where the Google Adwords app is registered? Legal complexities arise here.

Rochmat Soemitro stated that tax is a debt of members of society to society (Soemitro, 1990). This is related to the loss of significant potential state revenue and is related to the sovereignty of a country. The imposition of taxes will also have an impact on healthy competition between conventional media and OTT companies. Without paying taxes, OTT companies can charge low advertising prices and thus earn more advertising revenue, while conventional media remain burdened with taxes and production costs. Search engines and social media can operate more efficiently, as they generally do not produce their information and only aggregate information and other sources. Legally speaking, they have the same status: media institutions.

In this condition, national tax law reform towards a more responsive and participatory direction is considered necessary to be carried out again to be able to reach tax imposition on digital business actors, aiming to provide justice for the community (Mayasari & Narsa, 2020) while remaining in line with the politics of tax law in its time (Santosa & Sesung, 2021). The position of the state, especially developing countries, in the face of globalization and digitization is weak. The global digital landscape that is characterized as monopolistic, unreachable by law, and America-centric has the potential to cause several problems with national sovereignty. This is where the state's fiscal sovereignty is needed to tax its people, both domestic residents and citizens domiciled abroad. For non-residents, they are only taxed as long as they have a territorial relationship with the state (Cahyadi et al., 2021).

For this reason, the legal issue to be discussed is the concept and direction of tax legislation in Indonesia to provide legal certainty in the context of tax reform in the digitalization era. This research aims to find the concept of Indonesian tax reform with legal certainty for all parties affected by the enactment of tax laws in Indonesia, both domestic tax subjects and foreign tax subjects, especially OTT companies. A significant contribution to the development of legal science, especially Tax Law, is expected from the results of this discussion regarding the direction of taxation arrangements in Indonesia that fulfill the principles of justice, economic efficiency, resistance to evasion, ease of administration, and harmony of incentives. Practically, this research is expected to contribute ideas for academics, practitioners, and the Indonesian government, as well as other related parties in efforts to formulate policies for the direction of changes in tax regulations in the era of digitalization.

RESEARCH METHODS

Researchers use research methods with a qualitative research approach, namely research that refers to legal norms contained in laws and regulations as well as norms that live and develop in society. The purpose of this qualitative research is to gain understanding, develop a theory, and describe it in a complex manner (Ali, 2009). The analysis is presented in the form of descriptions, while if data is found and presented in the form of numbers, it is not intended to be tested statistically, but only to strengthen or sharpen the analysis.

Legal research generally has normative juridical and empirical juridical types (Soekanto, 1986). Considering that the Electronic Transaction Tax instrument has been regulated in Indonesian legislation, this research was conducted using a normative juridical approach, because the object under study is the norms or rules formulated in the law without excluding the empirical facts contained in the field. The research specifications used are descriptive-analytic, namely describing and analyzing secondary data supported by primary data relating to the urgency of formulating Tax regulations for cross-border Electronic Transactions in several provisions of Indonesian tax law. Furthermore, according to secondary data, this article aims to determine the development of Indonesian tax reform before economic digitization and the urgency of national tax reform in the era of digitalization. The data collection technique used is a literature study by utilizing library data or secondary data obtained through library research sourced from statutory regulations, books, official documents, publications, and research results.

RESULTS AND DISCUSSIONS

Definition Of Tax Law Reform

Tax reform is a process of continuous change undertaken by a country to continuously adapt the tax system to changes in the economic, social, and political situation (Owens & Jeffrey, 2006). The changes are intended to improve the function of taxes to achieve the set goals (Cambridge Business English Dictionary, 2017). According to Huu Ai and Denis Ushakov, tax reform can include reducing tax rates, making the tax system more or less progressive, or simplifying the tax system, and making the system easier to understand or more accountable. Tax reform is also carried out as an effort to reduce tax evasion and avoidance and enable more efficient and fair tax collection (Amarani, 2022).

Shirazi and Anwar Shah suggested the driving factors for tax reforms carried out by most developing countries (Shirazi & Shad, 1991), namely, First, the tax system is complicated because it is difficult to manage and comply. Second, inelastic, means that the tax system is not responsive to growth and changes in the

structure of economic activity. Third, the tax system is considered inefficient, causing serious economic distortions while often the increase in revenue is relatively small. Fourth, unfair such as treating individuals and businesses in similar circumstances differently. Fifth, not fair or reasonable such as because tax administration and enforcement are selective and favor those who can beat the system (Shirazi & Shad, 1991).

Tax reform can include revamping tax administration, improving tax regulations, adjusting tax rates, or simplifying the tax system, as well as creating a system that is easier to understand or more accountable. These changes involve economic variables and the study of tax policymaking. In general, tax reform is aimed at improving the efficiency of tax administration and maximizing the economic and social benefits that can be achieved through the tax system (Amarani, 2022). One of them affects the public finances of a country (Cram & Olbert, 2023). This is to uphold economic independence in financing national development by directing its ability, which is gradually expected to reduce dependence on foreign debt (Setiyaji & Amir, 2005).

In addition, there is a difference between optimizing tax reform and optimal tax design. Optimal tax reform depends on the starting situation, just as the current Tax Law could not have existed and been enacted long before that. Meanwhile, the optimal tax depends on the historical context (Feldstein, 1976). However, the issue in various tax literature does not fully recognize the difference (Feldstein, 1976), because it tends to state that there is always some kind of historical path dependency in tax reform (Vazquez, 2022).

Meanwhile, according to Rochmat Soemitro, tax law is a collection of rules governing the relationship between the government as a tax collector and the people as taxpayers (Soemitro, 1992). Tax law explains tax subjects, taxpayer obligations to the government, objects subject to tax, the emergence and elimination of tax debts, how to collect, how to file objections, and so on. Tax law reform means revamping tax regulations in which it regulates the government's authority to take a person's wealth and hand it back to the community through the state treasury and regulates the rights and obligations of the community as taxpayers. Tax law reform is the basis for national tax reform because tax law serves as a reference in creating a tax collection system based on justice, efficiency, and legal certainty in tax law.

Tax Reform Before The Era Of Digitalization

The first phase of Indonesia's tax reform was carried out in 1984. Through tax reform, the prevailing tax system will be simplified, which includes simplification of tax types, simplification of tax rates, and simplification of tax payment methods (Soemitro, 1992). Quoting President Soeharto's speech on tax reform in 1984 as a continuation of what was contained in the decision of the People's Consultative Assembly of the Republic of Indonesia Number II/MPR/1983 on the

Outlines of State Policy, the tax payment system will be more fair and reasonable, with a wider number of taxpayers. Furthermore, tax reform also includes reforming the taxation apparatus, concerning procedures, work procedures, discipline, and mentality. With this tax reform, the tax burden will be more fair and reasonable, so that on the one hand it encourages taxpayers to carry out with awareness of their obligations to pay taxes and on the other hand close the holes that have been open to those who avoid taxes. In short, the Indonesian government is creating a tax system that is simple and easy for everyone to understand, a tax system that is based on the principles of justice and fairness, and a tax system that provides certainty for every taxpayer (Soemitro, 1992).

The important points of the reform of tax legislation will make fundamental changes that include (1) simplification of the number and types of taxes; (2) simplification of tax rates; (3) simplification of tax procedures; (4) improvement of the tax apparatus which includes procedures, discipline, and employee mentality; and (5) provision of legal certainty. Along with the 1984 tax reform, five laws were enacted, namely (1) Law Number 6 of 1983 on General Provisions and Tax Procedures; (2) Law Number 7 of 1983 on Income Tax; (3) Law Number 8 of 1983 on Value Added Tax on Goods and Services and Sales Tax on Luxury Goods; (4) Law Number 12 of 1985 on Land and Building Tax; and (5) Law Number 13 of 1985 on Stamp Duty. The 1984 tax reform changed Indonesia's fiscal posture. Before 1984, tax revenue was only able to contribute 24% to total domestic revenue. After the 1984 tax reform, its contribution increased consistently. This is confirmed by Indonesia's tax ratio performance before and after the tax reform (Asyir, 2020).

The second phase of tax reform was carried out in 1994 in order to perfect the tax system with the issuance of Law Number 9 of 1994 concerning Amendments to Law Number 6 of 1983 concerning General Provisions and Tax Procedures; Law Number 10 of 1994 concerning Amendments to Law Number 7 of 1983 concerning Income Tax as Amended by Law Number 7 of 1991; Law Number 11 of 1994 concerning Amendments to Law Number 8 of 1983 concerning Value Added Tax and Sales Tax on Luxury Goods; and Law Number 12 of 1994 concerning Amendments to Law Number 12 of 1985 concerning Land and Building Tax.

Tax reform in 1997 was carried out to improve the 1994 tax system, with the issuance of Law No. 17/1997 on the Tax Dispute Settlement Body; Law No. 18/1997 on Local Taxes and Levies; Law No. 19/1997 on Tax Collection and Forced Warrants; Law No. 20/1997 on Non- Tax State Revenue; and Law No. 21/1997 on Fees on Acquisition of Land and Building Rights.

Tax reform in 2000 was carried out by expanding and confirming the object and subject of taxes, simplifying and modernizing the tax administration system, exempting certain taxes in order to increase tax revenue and the quantity of new taxpayers, changing the income tax rate structure, and emphasizing the types of taxes and levies that are the authority of the Regional Government Level I and II.

Tax reform in 2007–2009 was motivated by the demand to realize revenue planning that is efficient, equitable, and competitive for foreign investment and economic growth enhancement of micro, small, and medium-scale businesses while maintaining special and large taxpayers.

The Urgency of national tax reform in the era of digitalization

The penetration of digital companies from the United States of America, such as Google, Microsoft, Amazon, and Facebook has a significant impact on the economic growth of the country of origin of the digital company. The phenomenon of digital company penetration encourages countries to reform tax arrangements for digital businesses operating in their jurisdictions, including in Indonesia, this is necessary to respond to the growth of economic activities that have moved to become digital. The growth of the digital economy in Indonesia is faster than in six other countries in Southeast Asia (Eka, 2019). Supporting factors for this development are Indonesia's vast geographical conditions and a large population with a very large number of digital users.

The contribution of taxes is very reliable in Indonesia's state revenue. This can be seen from the realization of more than 70% of state revenue from taxes (Ministry of Finance of the Republic of Indonesia, 2020). State revenues from 2018-2022 from the tax sector and the portion of Income Tax can be seen in table 1 below:

As a sovereign country whose revenue contribution is dominated by taxes, Indonesia is required to be visionary in formulating effective and efficient policies to regulate digital taxes by taking into account foreign tax subjects, whether they are individuals or entities and permanent establishments (if OTT has representatives in Indonesia). In practice, countries in the world use two approaches to tax trade transactions through cross-border electronic systems. First, they initiate their national regulations on trade transactions through cross-border electronic systems (unilateral measures). Second, through the formation of a joint consensus among countries in the world to collect taxes on trade transactions through cross-border electronic systems (global consensus) (Kurniawan, 2020).

Table 1. State revenue statistics 2018–2022

Year	State Revenue (trillion rupiah)	Tax Revenue (trillion rupiah)	Percentage of Tax Revenue (%)
2018	1,928.1	1,518.7	78.7%
2019	1,955.1	1,546.1	79.1%
2020	1,698.6	1,404.5	82.6%
2021	2,006.3	1,547.8	77.1 %
2022	2,435.8	1,924.9	79.0 %

Source: Ministry of Finance of the Republic of Indonesia and Central Bureau of Statistics.

In the unilateral measures approach, two types of taxes can be imposed on OTT providers as global digital platforms, namely direct taxes and indirect taxes. Direct taxes, can be done in the following ways, First, by applying Income Tax on payments to global digital platforms such as Malaysia, Mexico, Pakistan, Slovakia, Taiwan, Thailand, and Turkey (Kurniawan, 2020).

Second, the state can formulate policies to expand the meaning of Permanent Establishment into Digital Permanent Establishment as applied by India, Israel, and Nigeria. In this approach, the state will formulate regulations regarding Permanent Establishment criteria that do not refer to physical presence but refer to more applicable criteria, namely significant economic presence or significant digital presence as measured by the number of sales, the amount of traffic, and the number of active users on the OTT service provider (Kurniawan, 2020).

Third, by formulating a Digital Service Tax policy as implemented by Australia, Belgium, Brazil, and Canada. To be able to collect taxes on trade transactions through cross-border electronic systems, through this method, the state will formulate regulations outside of income tax about Digital Service Tax. With the formulation of Digital Service Tax, this provision is considered the most applicable to collect taxes on trade transactions through cross-border electronic systems, because it is not included in the tax treaty provisions so as not to cause double taxation (Kurniawan, 2020).

The unilateral measures approach can also be done by applying indirect taxes in the form of Value Added Tax (VAT) or Good and Service Tax (GST) (Muttaqin et al., 2021) The imposition of VAT is carried out on the consumption of goods and/or services, both tangible and intangible goods so that the imposition will be charged to consumers of the country where the global digital platform operates. Therefore, the imposition of VAT is relatively easier to apply (Febrianti et al., 2021)

Another alternative to reaching tax on trade through electronic systems across countries is by initiating the Global Consensus which is a global agreement between countries and jurisdictions in the context of taxation of digital economic activities promoted by the Organization for Economic Cooperation and Development Consensus/G20 Inclusive Framework with 137 countries in the world, including Indonesia (Kurniawan, 2020).

The imposition of Income Tax for foreign tax subjects has been regulated in the Income Tax Law, which consists of Law Number 36 the Year 2008 on the Fourth Amendment to Law Number 7 the Year 1983 on Income Tax. The Income Tax Law, which is supposed to be the basis for income tax collection in Indonesia, has been amended several times in a very short period, which is sequentially as follows:

Law number 2 of 2020

Although not expressly stated to be amended, the Income Tax Law has been

greatly affected by the provisions regarding Income Tax stipulated in Law Number 2 of 2020. The provision regulates material and very basic matters, namely related to the scope of permanent establishment which is interpreted as significant economic presence. Significant economic presence referred to in Article 6 is in the form of (1) consolidated gross turnover of business groups up to a certain amount; (2) sales in Indonesia up to a certain amount; and/or (3) active users of digital media in Indonesia up to a certain amount. Overseas traders, overseas service providers, and/or overseas Electronic Commerce Operators that meet the provisions of significant economic presence may be treated as permanent establishments and subject to Income Tax.

This significant economic presence criterion was previously formulated in Government Regulation Number 80 of 2019 concerning Electronic Commerce Operators. According to Article 7 of Government Regulation Number 80 of 2019 concerning Trading Through Electronic Systems, foreign business actors who are required to establish a permanent establishment in Indonesia are those who meet the criteria of (1) the number of transactions; (2) the value of transactions; (3) the number of shipping packages; and/or (4) the amount of traffic or access, are considered to have a physical presence in Indonesia and conduct business activities permanently in the jurisdiction of the State of Indonesia.

The concept of significant economic presence automatically expands the definition of permanent establishment which previously only required physical presence. The permanent establishment criterion is an important element in determining the taxation rights of the source country of income from business activities carried out by non-residents (Pomerleau & Jahnsen, 2017). William (in Bischel) (William & Bischel, 1978) and Patrick (Surrey & Hellawel, 1980) state that permanent establishment signifies more as a threshold or criteria that allows a source country to legally tax income from transnational (cross-border) businesses (and professions) (Gunadi, 2017).

Law number 11 of 2020

The Job Creation Law amends the Law on General Provisions and Tax Procedures, the Income Tax Law, and the Law on Value Added Tax on Goods and Services and Sales Tax on Luxury Goods. In November 2021, the Constitutional Court issued Decision Number 91/PUU-XVIII/2020 stating that the Job Creation Law is formally flawed so that the Job Creation Law is declared contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted as “no improvement is made within two years of the decision being pronounced” (Faculty of Law Gadjah Mada University, 2022).

The Job Creation Law is still valid until the specified deadline for rectification, if no rectification is made by the deadline, then the Job Creation Law is declared permanently unconstitutional and all laws amended and revoked by the Job Creation Law are declared valid again (Faculty of Law Gadjah Mada University,

2022). The Constitutional Court also ordered the government to suspend any action or policy that is strategic and has a broad impact and prohibits the issuance of new implementing regulations relating to the Job Creation Law. The Job Creation Law has the force of effect but has no binding force.

The Job Creation Law was later revoked and declared invalid by the enactment of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation, which has now also been enacted into Law Number 6 of 2023. The provisions regarding permanent establishment in the Job Creation Law still maintain the permanent establishment criteria that require physical presence.

Law number 7 of 2023

Similar to the Job Creation Law, the Taxation Harmonization Law amends three laws, namely the General Provisions and Procedures of Taxation Law, the Income Tax Law, and the Goods and Services Value Added Tax and Sales Tax on Luxury Goods Law. The Taxation Harmonization Law also maintains the permanent establishment criteria that require physical presence.

Permanent establishment is a representative of a foreign company located in Indonesia, which is used by non-resident taxpayers to run a business or conduct activities in Indonesia or as a means to obtain active income (Darussalam, 2007). Refers to Article 2 paragraph (5) Law Number 36 of 2008, permanent establishment is a form of business used by individuals who do not reside in Indonesia; foreign nationals who are in Indonesia for not more than 183 days within twelve months; and Indonesian citizens who are outside Indonesia for more than 183 days within twelve months and meet the requirements of residence, main activity center, place of habitual practice, tax subject status, and/or certain other requirements; and entities that are not established and have no domicile in Indonesia to conduct business or carry out activities in Indonesia.

The Income Tax Law provides examples of the form of a place of business in the form of a management seat; branch company; representative office; office building; space for promotion and sales; persons or entities acting as agents whose position is not free; and computers, electronic agents, or automatic equipment owned, leased, or used by electronic transaction providers to carry out business activities via the internet, and so on.

This provision is still the same as the permanent establishment criteria contained in Law Number 36 Year 2008 on the Fourth Amendment to Law Number 7 Year 1983 on Income Tax. The provisions regarding permanent establishment in the Income Tax Law are further regulated in the Regulation of the Minister of Finance of the Republic of Indonesia Number PMK-35/PMK.03/2019 concerning the Determination of Permanent Establishment. The main points of the Minister of Finance Regulation on Permanent Establishment are:

- a. Every foreign individual and entity conducting business in Indonesia

through a permanent establishment is required to have a Taxpayer Identification Number within a maximum of one month after the business activity runs. For foreign individuals and entities that do not register themselves, the Taxpayer Identification Number can be issued in the office by the Director General of Taxes.

b. Affirmation of the definition and criteria of permanent establishment. A permanent establishment is a form of business in Indonesia that is used by individuals and/or foreign entities with the criteria that the place of business used to run the business is permanent. The place of business includes space, facilities, or installations, including machinery or equipment used to do business in Indonesia, while what is meant by a permanent place of business is a place of business that is used on an ongoing basis and is in a certain geographical location.

c. In addition, a place of business is said to be a permanent establishment if foreign individuals or entities can access the place indefinitely. Meanwhile, if foreign individuals and entities have limited access to the place of business or the place is only used for electronic data storage or management, it is not categorized as a permanent establishment. The types of permanent business premises that fall under the permanent establishment category include places of management; branch companies; representative offices; office buildings; factories; workshops; warehouses; spaces for promotion and sales; mining and extracting natural resources; oil and gas mining working areas; fisheries, livestock, agriculture, plantations or forestry; computers, electronic agents, or automated equipment owned, leased, or used by foreign individuals or entities to conduct business via the internet.

d. Automatic permanent establishment. The four criteria for businesses that automatically become permanent establishments, even if they do not meet the criteria of permanent place of business and limited accessibility, include Construction projects, installation, or assembly projects; The provision of services in any form by employees or other persons, provided that it is performed for more than 60 (sixty) days within a period of 12 months; Persons or entities acting as agents whose position is not free; and An agent or employee of an insurance company not established and not domiciled in Indonesia who receives insurance premiums or assumes risks in Indonesia.

e. Exemptions. In relation to the tax treaty, foreign individuals or entities whose business activities are preparatory or auxiliary, in order to facilitate essential and significant activities, are excluded from the permanent establishment criteria, even though the place of business is permanent and they have full access to the place. The essential and significant activities referred to in this provision include Core activities of foreign individuals or entities; An integral part of the core business or

activity; Generating income directly to foreign individuals or entities; and Using a significant amount of treasure or human resources.

Although Indonesia has a law that regulates Income Tax on trade transactions through electronic systems, these provisions have not been applied to the majority of global digital platforms, because they collide with Article 2 paragraph (5) of Law Number 36 of 2008 concerning the Fourth Amendment to Law Number 7 of 1983 concerning Income Tax which requires physical presence at a permanent establishment in Indonesian territory as a condition for organizers of trade through electronic systems originating from abroad to be charged with Income Tax (Oktavianus & Ramadhan, 2020).

The absence of significant economic presence criteria in a series of Indonesian tax laws does not necessarily create a legal vacuum that regulates taxes on the activities of the global digital platform. The Harmonization of Tax Regulations Act provides a legal framework for global tax issues. Provisions related to global tax include the arrangement of global tax collection assistance stipulated in Article 20A of the Harmonization of Tax Regulations Law; the Mutual Agreement Procedure (MAP) arrangement in Article 27C of the Harmonization of Tax Regulations Law; the arrangement of tax avoidance prevention instruments stipulated in Article 18 of the Harmonization of Tax Regulations Law; and the arrangement of global taxation consensus in Article 32A of the Harmonization of Tax Regulations Law.

Provisions that are directly related to the effort to impose Income Tax for digital platforms are provisions regarding global taxation consensus, particularly related to efforts to anticipate the implementation of the Organization for Economic Cooperation and Development Consensus/G-20 international agreement related to global minimum tax rules ensuring that MNEs pay a minimum level of tax (GloBE) and tax on digital transactions; anticipate the effect of GloBE implementation on the utilization of tax facilities such as tax holiday and super deduction received by multinational taxpayers; and implement and anticipate other agreements, such as BEPS (Directorate General of Taxation, 2021).

The Government of Indonesia is authorized to establish and/or implement agreements and/or treaties in the field of taxation with the governments of partner countries or jurisdictions bilaterally or multilaterally, through legal instruments that apply specifically (*lex specialis*), in the context of avoidance of double taxation and prevention of tax evasion, prevention of tax base erosion and profit shifting, exchange of tax information, tax collection assistance, and other tax cooperation. The agreement and/or agreement in the field of taxation referred to is an agreement and/or agreement in a certain form and name in the field of taxation, which refers to the law that is effective before, since, or after the Taxation Regulation Harmonization Law comes into effect. This provision is also regulated in Government Regulation Number 55 Year 2022 concerning Adjustment of Regulations in the Income Tax Sector as one of the implementing

regulations of the Harmonization of Tax Regulations Law.

CONCLUSION

These conditions indicate the urgency of Indonesia's national tax law reform at this time. In brief, the reason why national tax law reform is needed is that, first, the frequent changes in tax laws in a short period indicate the government's intention to reform the tax system fundamentally, but what has been enacted indicates the government's hesitation and inconsistency in determining the direction of medium and long-term tax policy. The process of drafting new tax laws is also done unsystematically, resulting in several changes to the law on the same provisions in a short period. Such changes create legal uncertainty because they regulate matters incompletely and thoroughly.

Second, the expansion of the concept of permanent establishment by including the criteria of significant digital presence is an effort to fulfill the government's need to reach digital platform companies with tax regulations. Harmonizing the definition and scope of permanent establishment stipulated in the Income Tax Law with that stipulated in Law Number 2 of 2020 to create legal certainty.

Third, the rapid development of information technology needs to be accompanied by developments in the field of law. The understanding is that as long as the desired changes in society are to be carried out in an orderly manner, there is always a place for the role of law (Kusumaatmadja 20,002). The regulation in the field of taxation aims to minimize the loss of potential state revenue from the digital tax sector.

Fourth, national tax reforms are needed to adjust to international tax reforms that are still being developed through the Organization for Economic Cooperation and Development Consensus Consensus. Pillar One will begin to be implemented in 2024, therefore it will be necessary to adjust national legal provisions to be able to implement these provisions.

Based on the explanation above, the Government of Indonesia needs to conduct a comprehensive study and prepare a map of Indonesia's medium and long-term tax regulations, so that it can formulate tax laws and regulations that can guarantee certainty, provide justice, economic efficiency, robustness to avoidance, ease of administration, and incentive compatibility that applies to both domestic tax subjects and foreign tax subjects. This tax reform is expected to realize Indonesia's tax sovereignty and minimize the potential for disputes in the tax sector with other jurisdictions.

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