

THE PENALTY OF TAX AMNESTY IN INDONESIA (FROM THE PERSPECTIVE OF TAX EXPIRY)

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Abstract: *The increase of transparency in global financial sector and automatic exchange of information makes many countries around the world establish tax amnesty program, including United States, Australia, Russia, and Indonesia. On July 1, 2016 the Indonesian government issued Law number 11 of 2016 concerning Tax Amnesty. In the context of tax amnesty, a state discharges its right in collecting liability taxes and discharges the taxpayers from their administration penalty and prosecution. The law also regulates tax penalty on tax-payers joining the tax amnesty program for their unreported incomes. The law regulation also consists of General Provisions and Taxation Procedures Law controlling tax expiry. Issued on January 1, 1985, it still exists when the tax amnesty is issued. In fact, now it still exists. Tax Amnesty law has no regulation on tax expiry and has no explicit details on retroactive tax penalty. Law also maintains the non-retroactive principle, the importance of legal certainty and legal justice. Hence, it is important to analyze further whether the regulation of tax penalty in accordance with Tax Amnesty Law is retroactive and contradictory with tax expiry regulated in General Provisions and Taxation Procedures Law. An analysis was done on the concept of tax expiry, the commonness of tax billing process in tax amnesty program in other countries, retroactive principle, law theories on tax, legal certainty and justice. If an inconsistency occurs, it is important to analyze its implication on tax payers. Eventually, it needs to find a solution which fulfills legal certainty and justice principles.*

Keywords: *Retroactive, Tax expiry, Tax amnesty, Tax penalty.*

INTRODUCTION

Before 2018, many countries around the world such as United States, Russia, Australia and Indonesia carried out tax amnesty program due to the increase of global financial sector and an automatic exchange of information. Tax amnesty program is able to boost state revenue in a short term and it is expected to increase tax revenue in the future. Tax payers who join the program disclose their incomplete or unreported incomes to tax

authority and the data will be added to the tax information system. The tax authority will monitor these newly reported incomes after the period of tax amnesty ends.

The state revenue target from the program is IDR165 trillion (Rappler, 2017). In the end of the tax amnesty program, the realization is IDR 135 trillion. The General Secretary of OECD (Organization for Economic Co-operation and Development) Angel Grurria considered the tax amnesty policy in Indonesia was properly implemented (Zatnika, 2016). During Indonesian tax amnesty program, the tax payers pay the redemption fee with set certain percentage multiplied by Redemption Penalty Basis. It is an object of tax amnesty including all of tax payers' unreported assets in the 2015 tax report reduced with 50% for enterprises and 75 % for individuals from tax liability on December 3, 2015 related with reported income). The following is the amount of redemption fee.

Table 1. The Amount of Redemption Fee

| Note | Redemption Fee | | |
|---|----------------|----------|----------|
| | Period 1 | Period 2 | Period 3 |
| Repatriation/ Domestic declaration | 2% | 3% | 5% |
| Foreign declaration | 4% | 6% | 10% |
| MSMEs* with asset declaration up to 10 billions | 0.50% | 0.50% | 0.50% |
| MSMEs with asset declaration above 10 billions | 2% | 2% | 2% |

Source: MSMEs (Micro, Small and Medium Enterprises) in the taxation regulations are taxpayers with a maximum business circulation of up to IDR 4,800,000,000, - a year in the last year (SPT PPh 2015 Tax Year).

The penalty will be given for tax amnesty participants, when in the future the tax authority reveals unreported assets until December 31, 2015 disregarding the time these assets purchased. The tax amnesty law has no clear description the time limit of the penalty. For those who do not join the program, for assets purchased from January 1, 1985 to December 31, 2015 and are not yet reported in the last tax report when the tax authority found this in the period April 1, 2017 to June 30, 2019, will be given penalty in accordance with General Provisions and Taxation Procedures Law.

The penalty regulation in tax amnesty law for tax amnesty participants who have not reported all of their assets on December 31, 2015 disregarding the time of the assets purchased and the penalty for tax payers who do not join the tax amnesty program for their unreported asset purchased before 1985 in 2015 income tax report are the factors lead the researcher to study the topic.

The research aims to analyze whether the penalty of tax amnesty in Tax Amnesty Law is a retroactive one. What is the legal implication of the retroactive penalty? The researcher also tries to offer solution to achieve the penalty which fulfills legal certainty and legal justice for the society particularly tax payers.

Based on the discussion, the researcher will study legal problems namely: First, has the penalty regulation in Tax Amnesty Law given legal certainty and legal justice philosophically? Second, How does the penalty regulation of tax amnesty give a legal certainty and legal justice for tax payers? The research writing consists of introduction, discussion on tax amnesty in Indonesia, tax expiry in the General Provisions and Taxation Procedures Law, the implementation of tax amnesty in other countries such as United

States, Australia, and Russia, retroactive principle, law theories as analysis tools, the analysis of legal implication of penalty on tax payers and the last is conclusion and suggestion.

RESULTS AND DISCUSSION

Indonesia Tax Amnesty

Indonesia is a country that rarely provides Tax Amnesty programs. Since independence era, Indonesia has only provided Tax Amnesty programs several times. The first time was in 1964, the second one was in 1984 in the context of changing the tax collection system from official assessment to self-assessment and the third one was carried out in 2008 in the form of a sunset policy, where only the exemption from the imposition of administrative penalty in the form of interest while for the principal, the tax must still be paid by the taxpayer. The last time, it was carried out in 2016 which started on July 1st, 2016 to March 31st, 2017.

The 2016 Tax Amnesty is an amnesty program provided by the government to taxpayers by eliminating tax obligations that must be paid by taxpayers in the past until December 31st, 2015 and exempting taxpayers from the imposition of tax administration penalty and exempting taxpayers from criminal sanctions in taxation sector, by means of the taxpayer disclosing assets that have not been reported in 2015 Annual Income Tax Return, hereinafter, referred to as the latest return tax in income tax then the taxpayer pays the ransom as in the calculation in the Asset Declaration, hereinafter, referred to as the Statement Letter (Law of the Republic of Indonesia Number 11 of 2016 concerning Tax Amnesty). The tax Amnesty Policy is implemented in the form of a state releasing its right to collect taxes that should be owed.

In principle, all taxpayers have the opportunity to participate in Tax Amnesty program and it becomes the right for taxpayers to choose whether to raise their right to join Tax Amnesty program or not to participate in it.

Based on Article 11, 15, and 21 of Tax Amnesty Law, there are six advantages offered by Tax Amnesty Law for taxpayers who raise their rights to participate in the program and to be described as follows:

- Elimination of taxes that should be payable;
- Not to subject administrative sanctions and tax criminal sanction;
- No examination, preliminary evidence examination and investigation are not carried out;
- Termination of the examination process, preliminary evidence examination, or investigation;
- The guarantee of Tax Amnesty data confidentiality cannot be the basis for any criminal investigation and any criminal act;
- Exemption from income tax from transferring additional assets.

Furthermore, in Article 18 of Tax Amnesty Law regulates the imposition of sanctions. The essence of Article 18 of Tax Amnesty Law is to regulate the imposition in two groups, namely as follows:

For Taxpayers Participating in the Tax Amnesty Program:

For taxpayers who have participated in the Tax Amnesty program and have obtained a “certificate” (Certificate is a letter issued by the Minister of Finance as evidence of granting Tax Amnesty), if in the future after the Tax Amnesty program ends on March 31st, 2017 and the tax authorities find that there are assets that have not been disclosed in the Declaration Letter, then the assets are considered as additional income received or obtained by the taxpayer in data finding and / or information regarding the assets. The tax imposed above will be added with tax administration penalty in the form of the unpaid or underpaid Income Tax (Article 18 Paragraph (3) of Law of the Republic of Indonesia Number 11 of 2016 concerning Tax Amnesty).

The imposition of sanctions in letter (b) above does not state the time limit for imposing sanctions, in the sense that whenever the tax authorities find assets that have not been reported in the tax Amnesty program, sanctions can be imposed on the taxpayer.

For Taxpayers who do not Participate in Tax Amnesty Programs:

For taxpayer who do not participate in the tax Amnesty program, the tax authorities are authorized by the Tax Amnesty Law to impose sanctions on taxpayers’ assets acquired from January 1st, 1985 to December 31st, 2015 and have not been reported in the Annual Income Tax Return. This authority is the effect from April 1st, 2017 to June 30th, 2019. Taxes and tax penalty imposed according to the rates of Article 4 Paragraph (1) of Government Regulation Number 36 Year 2017, which is 25% for corporate taxpayers and 30% for individual taxpayers and 12.5% for certain taxpayers, plus interest penalties and is added by 48% according to Law Article 13 Paragraph (2) Taxation General Provision and Procedure Law (*KUP*).

Tax Expiration in Procedure Law

Before Tax Amnesty Law was enacted in Indonesia, there was a law regulating tax expiration. It is Law Number 6 Year 1983 concerning General Provisions and Tax Procedures as amended several times, most recently by Law Number 16 Year 2009 concerning Stipulation of Regulations of The Government in Lieu of Law Number 5 Year 2008 concerning the Fourth Amendment of Law Number 6 Year 1983 concerning General Provisions and Tax procedures into Law, hereinafter referred to as Taxation General Provision and Procedure Law (*KUP*). It was promulgated on January 1st, 1985 and is still in effect until the time of Tax Amnesty Law was enacted on July 1st, 2016 which also has still the effect today.

Based on Article 13, 15, 22 and 40 of Taxation General Provision and Procedure Law (*KUP*), it has regulated tax expiration. This tax expiration is calculated from the period of time when tax becomes due or the end of tax period, part of tax year or tax year. The forms of tax expiration are as follows:

- The expiration of official tax determination by the tax authorities is 5 years after the tax period becomes due or the end of it, part of tax year or tax year. For simplicity, it is 5 years from the time when the transaction took place;
- The expiration of the tax payable is 5 years after the tax debt arose; and
- The expiration of an investigation into a criminal act in the field of taxation is 10 years after the time of tax becomes due or the end of tax period, part of tax year or tax year.

The legislative ratio for tax expiration, from Taxation General Provision and Procedure Law (*KUP*) can be traced below:

- To provide a legal certainty for taxpayers, tax authorities and law enforcers.
- Tax collection is carried out by means of self-assessment; and
- The retention period for tax documents is 10 years;

Furthermore, Gunadi (2017) gave an opinion about expiration in taxation. He states that the expiration in taxation is a form of law that provides protection for the interests of the public in the form of loss or elimination of the right of the state or government to correct tax that should be owed, collect and exempt taxpayers from their tax obligations in the past after passing a certain period as regulated in the Law.

Rochmat Soemitro (1998) in his book entitled *Principles and Basis of Taxation 2*, argues "... once expires, it expires" and it is impossible for a right that has expired to come back. If the law has declared the expiration of an event or income that is due tax in the tax year or period in the past, then the provisions of the expiration should be obeyed and the taxpayer's tax obligations expire. So, the state has no right to collect back, even criminalize it, if the prosecution of tax penalty has expired. The philosophy of tax expiration is to end an uncertain situation to certain one by providing legal certainty (Soemitro, 1991).

TAX AMNESTY IN THE UNITED STATES, AUSTRALIA, AND RUSSIA

The program of tax amnesty in United States, Australia, and Russia is explained in the following.

Tax Amnesty Program in United States at the federal level provided to taxpayers in in the form of the "*Offshore Voluntary Disclosure Program*" abbreviated as "OVDP", which is a Tax Amnesty program provided to American taxpayers so that non-compliant American taxpayers are asked to disclose in a transparent manner for income and assets outside America that have not been reported to the federal tax office (Withersworldwide, 2018). The US federal tax office is known as the "Internal Revenue Service or abbreviated as "IRS".

OVDP program has been going on for almost a decade and ended on September 28th, 2018. There are four important messages from the IRS about OVDP before the program ends, such as:

- IRS has less tolerance for non-compliant taxpayers;
- IRS prioritizes American taxpayers to report assets held overseas that have not been reported to IRS;
- IRS considers to end OVDP program;
- Substitute OVDP program which provides more severe punishment."

OVDP participants in 2017 were only 600 participants, down a lot compared to 2011 which were 18,000 participants. The replacement for OVDP program will be made in a simpler form, but with severe punishment, and this is to make a room for taxpayers who accidentally commit violations because they do not report assets abroad.

Based on tax laws that are valid in the United States, taxes that must be paid in the last six years were never reported before (Xue, 2016). Those above six years have passed the "*statute of limitation*". As for tax debt, according to the United States tax regulations, in general, IRS is authorized to collect tax debts for ten years

(<https://landmarktaxgroup.com/irs-back-taxes/what-taxpayers-must-know-about-the-irs-10-year-statute-of-limitations>). If it has already passed ten years from the date, the taxpayer reports the tax to IRS, then IRS will no longer have the right to collect again from taxpayer. This case is also known as “*the 10 Year Statute of Limitations*”. In “*Internal Revenue Manual Section 5.1.19*” it regulates *Collection Statute Expiration* (https://www.irs.gov/irm/part5/irm_05-001-019).

Tax Amnesty program in Australia. The Australian government on March 27th, 2014 announced the granting of a tax amnesty program to Australian taxpayers whom they called as “Offshore Voluntary Disclosure Initiative / OVDI” which also mentioned as “Project DO IT” (<https://parlinfo.aph.gov.au/parlInfo/search/display /display.w3p;query =Id:%22media/pressrel/3075551%22>). The implementation of the Project DO IT Tax Amnesty program ended on December 19th, 2014 (<https://www.pwc.com/gx/en/hr-management-services/newsletters/global-watch/assets/pwc-australia-announces-tax-amnesty-offshore-income.pdf>). Through this Project DO IT program, taxpayers are asked to voluntarily disclose their income and assets on abroad that have not been reported to the ATO (*Australian Taxation Office*). Taxpayers who take part in the Project DO IT program will avoid severe tax penalties and criminal prosecution in the field of taxation (Parliament of Australia, 2014). ATO commissioner Chris Jordan also stated to media release 2013/08, which in the last few years, there has been a lot of improvement in the automatic exchange of information between countries in the world and towards global tax transparency. In the Project DO IT Program, the Australian government provides an offer to Australian taxpayers as follows:

- “Taxes are imposed for periods that are still open which are generally only the last four years;
- It is subject to a light fine, for example from no penalty to a maximum of 10%;
- It is charged interest on underpaid taxes;
- It is not entitled to fiscal losses for the year which is not assessed;
- It obtains a legal certainty over ATO tax on overseas assets transferred to Australia;
- A deed of settlement can be made to get additional a legal certainty if the taxpayers needs it; and
- When the assets disclosed, there will be no criminal investigation into the taxation field.”

ATO increases the focus on international tax avoidance by Australian taxpayers by increasing cooperation in automatic data exchange with other countries (Seymour, 2014). Switzerland and Cayman Islands have also opened up and collaborated with tax authorities in the world to increase financial transparency (Harris Gomez Group, 2014).

One of the advantages for taxpayers who take a part in Project DO IT program is that they are subject to a light tax penalty, a maximum of 10%, in which in normal regulations the fines can reach up to 75%. Another advantage for taxpayers is its simple process because there is no need to have meetings with ATO officers (https://www.pwc.com.au/private-clients/assets/pwc_projectdoit.pdf). For foreign income that is disclosed a maximum of up to AUD 20,000, it is exempted from the imposition of fines. For the obligation to disclose foreign income and excess claim for income tax deduction limited to four years, it means that ATO only imposes additional taxes and penalties in the last four years that must be voluntarily disclosed. ATO cannot backward more than four years (King & Mallesons, 2014). In Australian Law, the so-called

“Subsection (4) of Section 290-55 of the Taxation Administration Act 1953”, it is stipulated that ATO may only impose penalties for the last four years (Taxation Administration Act 1953, Section 290-55, Subsection (4)).

Tax Amnesty program in Russia. Alm., James; Vanquez, Jorge Martinez; Wallace, Sally (2009); in their Tax Amnesty journal in Russia describes the taxation system of the Russian federation. It is very complex in Russia and burdensome to business and individuals, resulting in low taxpayer’s compliance, decreased taxpayers’ trust and a severe tax burden on workers and capital. Russia launched its first Tax Amnesty program in 1993 against the backdrop of reforming taxation. This program failed because it only lasted one month (PPID Sekretariat Jenderal DPR RI).

In 1997, Russia re-implemented Tax Amnesty program, in which taxpayers were given the opportunity to participate in it by paying taxes that should have been owed along with an interest penalty of 30% per year for several tax years up to five tax years. This Tax Amnesty program also failed due to high interest penalty. In March 2007, Russia re-provided a Tax Amnesty program to tax payers by reporting unreported assets including those abroad with a tax rate up to 13% and exempting taxpayers from prosecution (Smolenskaya, 2007).

In 2016, Russia introduces a Tax Amnesty program ended on June 30th, 2016 and attended by less than 7,000 taxpayers submitting property declarations (<https://www.pwc.com/m1/en/tax/documents/2018/russian-tax-amnesty.pdf>). This program is for individual taxpayers with the following programs:

- Individual taxpayers disclose their assets that have not been reported both in Russia and abroad for their assets until December 31st, 2017.
- Individual taxpayers will not be asked by the authorities regarding sources of funds to acquire assets. Tax Amnesty is given free of charge except for profits from abroad companies (known as Controlled Foreign companies/ “CFC) are not subject to tax penalties.

Taxpayers who have participated in the first phase of the Tax Amnesty in 2016 may still participate in this second phase of Tax Amnesty program. However, there are fines that will be imposed.

In 2019, Russia re-granted the third Tax Amnesty program starting on May 1st, 2019 (<https://www.pwc.ru/en/tax-consulting-services/assets/legislation/tax-flash-report-2019-11-eng.pdf>).

NON-RETROACTIVE PRINCIPLES

The basis of law is the core of all legal norms and the basis of thinking of a law (ratio legis) (Rumokoy and Maramis, 2016). The basis of law is generally stated in the law as the basis of law, but it is sometimes implied in one or a combination of several articles. The practicality of a foundation is to provide legal certainty, so that in solving a problem, there should be no doubt to use the foundation as a solution (Ali, et al., 2012). The non-retroactive principle has been identified in Roman law (Corpus Iuris Civis) which governs “*Leges et constitutiones futuris certum est dare formam negotiis, non ad facta praeterita revocari*” (Apeldoorn in Rumokoy and Maramis, 2016). It means “the king’s laws and regulations apply to legal events that are done later, and do not apply to past legal events” (Rumokoy and Maramis, 2016).

Longman (1998) states “retroactive or retrospective is having effect on the past as well as on the future or concerned with thinking about the past”. “Retroactive or retrospective has the meaning of receding or having an effect on the past as it does in the future or related to thinking about the past”. From the discussion of non-retroactive principles, then the arrangement of the imposition of tax penalty in the Tax Amnesty Act which can impose penalty on property acquired at any time and see the rules in the Taxation General Provision and Procedures Law that have set the expiration of tax stipulations and penalties, according to researchers in this study, the regulation of the imposition of tax penalty in the Tax Amnesty Act explicitly is a form of law enforcement that is retroactive and contrary to non-retroactive principles.

THEORY OF LAW

For legal theory about taxes, Heru Ratno Hadi and Sudarsono (2019) in their book entitled *Tax Disputes (A Thought about Reformulation of Tax Dispute Arrangements in Indonesia)* state that "considerations made in tax collection in principle should pay attention to fairness and legality in its implementation".

"In his book entitled *Wealth of Nation*, Adam Smith provides guidelines in the framework of drafting a tax law, so that it meets the requirements of justice and humanity. A statutory regulation must meet four conditions known as “*The four cannons of Adam Smith or The four maxims*” as follows: *Equality and Equity; Certainty; Convenience of Payment; Economic of Collection Efficiency*” (Adam Smith in Negara, 2017).

The following part will discuss the theory of legal certainty. In legality, conceptually contains characteristics that must be fulfilled for a legal certainty, law enforcement, legism and social contract theory, as well as political ideas and power, as described by Michael Jefferson in Michael Jefferson in E. Manullang (2016) below, regarding a number of conditions and consequences in the principle and legality methods, that:

“laws must not be vague; the legislature must not create offences to cover wrongdoings retrospectively; the judiciary must not create new offences; and perhaps criminal statutes should be strictly construed”

Based on the previous principles and methods of legality, Michael Jefferson states that for the sake of legal certainty, the law must not be formulated vaguely and must be clear, the legislature is limited in power, so it cannot apply the law retroactively, also the judiciary is limited in its power to create new offenses and make interpretations in criminal law in a limited manner. If the four principles are fulfilled, legal certainty can be achieved. There are two points of view related to legal certainty, namely certainty in the law, and certainty due to law (Swantoro, 2017). “Certainty in law” means that every legal norm in a law must be formulated in clear sentences and no multiple interpretations.

The principle of legal certainty is also known as the legality principle (Ali, et al., 2012). The principle of legality was created by a criminal expert from Germany named *Paul Johan Anselm von Feurbach* (1775-1833) in his book entitled *Lehrburch des penlichen recht* in 1801 (Bambang Purnomo in Hiariej, 2002). The principle of legality was first regulated in American Constitution 1776, then regulated in Article 8 of *Declaration de droits de l’homme et du citoyen* 1789 (Widayana, 2010) which is in Latin read: *nulla poena sine lege; nulla poena sine crimine; nullum crimen sine poena legali* which is popular with *adagium nullum delictum, nulla poena sine praevia legi poenali*

(Bambang Purnomo in Hiariej, 2002). The principle of legality is that no act can be punished, except on the basis of the strength of the criminal provisions according to a predetermined law (Hiariej, 2002). There is an adage “*non obligat lex nisi promulgata*” which means a law is not binding unless it has been enforced in law before the event occurred.

According to Hiariej (2002), the principle of legality in criminal law can be grouped into material criminal law and formal criminal law, so that it has two functions, namely a protective function and an instrumentation function. The function of protecting in criminal law is to protect the people against the unlimited power of government. Meanwhile, the function of the instrumentation of government power is that the government can employ the powers that have been confirmed in law.

The Declaration of Human Rights in Hiariej (2002), in Article 11 is expressly regulated as follows:

“Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial which he has had all the guarantees necessary for his defense. No one shall be had guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.”

Article 1946 of the Civil Code regulates expiration, which is a means of obtaining something or being freed from the engagement with the passing of time and with conditions determined by law (Subekti & Tjitrosudibio, 2009). Furthermore, there are two types of time passage in the expiration date according to Article 1946 of the Civil Code, namely (Muhammad, 2014):

“Acquisitiieve verjaring, which is the passage of time to acquire property rights over an object;

Extinctiieve Verjaring, namely the expiration of time, so that it is exempted from an engagement or exempted from prosecution.”

The following part will describe the theory of justice. Justice according to Socrates is when a good understanding is created between the government and the people (Gie, 1982). Where the Government has obeyed and practiced the provisions of the law properly, then the leaders of the country will act wisely and provide good role models for their lives. Strictly speaking, justice is created when every member of the community feels that all government officials have carried out their duties properly.

For Plato justice is an absolute matter (Kusumohamidjojo, 2017). The essence of Plato's justice is a justice that is associated with benefit in accordance with goodness, because goodness is the substance of justice (Salim and Nurbani, 2014). As for Plato's opinion as follows:

“Justice has a good and fair relationship which is determined by the statement that the latter becomes useful only if previously used; that states that the notion of justice produces the only value of the idea of justice.”

According to Plato, perfect justice in a country will be realized if the country is led by an aristocrat (philosopher), that is, someone who is clever and wise (Ali, 2013). Through a leader who is an aristocrat, justice for society is still created even though the country is lawless. However, if the country is led by non-aristocrats, justice can only be realized if the country is regulated by law.

For Aristotle, legal justice must be understood as equality for everyone and the law binds everyone (Bernad, et al., 2013). Aristotle's formulation of justice is based on the main principles of justice in three essence of natural law, namely *honeste vivera, alterum non laedere, suum quique tribuere* (Live respectfully, do not disturb others, and give to everyone who is due).

Positive law gets the strength of law because it is defined as law, while natural law gets the power of law from the same human nature anywhere and anytime (Soetiksno, 2013). Aristotle also defines law as a set of regulations that bind officials and the people, namely "Law is different from the provisions governing and expressing the form of the constitution, is the role of law to guide the behavior of officials in carrying out their duties and to punish offenders" (Prasetyo and Barkatullah, 2016).

Cicero teaches the concept of "*a true law*" which is adjusted to "*right reason*" (correct reasoning) and in accordance with nature; and those that spread among humanity and are "*immutable*" and "*eternal*" (Ali, 2015). All laws must be sourced from "*true law*". Cicero also stated that humans are born for justice, law is not based on opinion, but on "*man's very nature*". Cicero stated that if there is a law that is not good, then it is not a law (Atmadja, 2013). To prove that a law is good is if the law is made in accordance with the laws of nature (*nature*).

Conclusion of analysis. From the discussion of legal theory, the researchers conclude:

Tax expiry rights owned by taxpayers under the Taxation General Provision and Procedures Law need a legal protection. The Tax Amnesty Law which can impose tax penalty on past income which is more than 10 years based on the Taxation General Provision and Procedures Law has expired, in which the income has changed its form into assets that have not been reported in the tax amnesty program, surely it is contrary to the legal theory of tax, namely principle of certainty conveyed by Adam Smith.

The principle of legality applies in national law and international law. Moreover, Michael Jefferson has also emphasized that it is not justified to enforce laws retroactively. Furthermore, Article 1946 of the Civil Code has also stipulated that expiration is a means of obtaining something. Therefore, the Tax Amnesty Law which can impose tax penalty on assets obtained from any time without paying attention to the expiration of taxes in the Taxation General Provision and Procedures Law which is still valid is contrary to the theory of legal certainty.

The regulation of Tax Amnesty Law penalty that ignores expiration based on the Taxation General Provision and Procedures Law is surely: Not a good legal practice according to Socrates; Not according to justice which is an absurd element according to Plato; not in accordance with one of the formulations of justice according to Aristotle, where the government should provide expiry rights that taxpayers already have under the Taxation General Provision and Procedures Law; which according to Cicero, a bad law is not a law.

Therefore, according to researchers in this scientific research, the regulation of the imposition of tax penalty in the Tax Amnesty Law on assets obtained at any time, which ignores the tax expiry rights owned by taxpayers under the Taxation General Provision and Procedures Law has created legal uncertainty and philosophically created legal injustice.

Implication for Taxpayer

The regulation of Tax penalty based on the Tax Amnesty Law which can impose tax penalty on assets obtained at any time and ignore the expiration of taxes under the Taxation General Provision and Procedures Law, will have implications for taxpayers who have previously been exempted from tax obligations in the previous tax year because they have expired under the Taxation General Provision and Procedures Law, must bear the burden of tax penalty based on the Tax Amnesty Law. This is surely contrary to the principle of non-retroactivity, legal certainty, and legal justice.

Imposition of Tax Amnesty Penalty that are Just and Lawful

From the previous analysis, the researcher states, that in the tax amnesty program, the United States only collects taxes for the last 6 (six) years that have not been reported, Australia collects for the last 4 (four) years that have not been reported. Indonesia imposes a ransom on assets obtained at any time.

Regulations for the imposition of tax amnesty penalty should still pay attention to the provisions of tax expiration in the Taxation General Provision and Procedures Law; this is to provide legal justice and legal certainty. Legal certainty is very important to gain the trust of the public and investors. Guaranteed tax law certainty will attract investors to choose Indonesia as an investment destination country; beside that, it will also encourage increased voluntary compliance from taxpayers. Legal uncertainty will reduce public and investor confidence in the government. This will be very detrimental to the government in the long term, especially as it can cause investors to avoid Indonesia from its investment destination country.

CONCLUSION

From the previous discussion and analysis, the researchers in this study conclude that:

- The regulation of the imposition of penalty in the Tax Amnesty Law on assets obtained at any time, regardless of the expiry rights held by taxpayers under the Taxation General Provision and Procedures Law, is a form of retroactive imposition of tax penalty. The imposition of tax penalty that is retroactive in nature is contrary to the non-retroactive principle upheld by national and international law. It has created legal uncertainty and philosophically has created legal injustice. Legal uncertainty will be very detrimental to the government in the long term, because it can cause investors to avoid Indonesia as an investment destination country.
- It is necessary to regulate the imposition of tax penalty in the Tax Amnesty Law which is in sync with the Taxation General Provision and Procedures Law.

From those conclusions, the researchers provide suggestions to the government as follows:

- The government needs to respect the tax expiry rights that taxpayers have by recognizing the expiration of tax obligations that have been given by the Taxation General Provision and Procedures Law to taxpayers in order to ensure legal justice and legal certainty; and

- The government needs to increase legal certainty by harmonizing the imposition of tax penalty in the Tax Amnesty Law in the future which is in sync with the Taxation General Provision and Procedures Law.

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