



Volume 35 No 2, May 2020
DOI: 10.20473/ydk.v35i2.16873

Fakultas Hukum Universitas Airlangga, Jalan Dharmawangsa Dalam Selatan
Surabaya, 60286 Indonesia, +6231-5023151/5023252
Fax +6231-5020454, E-mail: yuridika@fh.unair.ac.id

Yuridika (ISSN: 0215-840X | e-ISSN: 2528-3103)
by <http://e-journal.unair.ac.id/index.php/YDK/index> under a Creative
Commons Attribution-NonCommercial-ShareAlike 4.0
International License.



FAKULTAS HUKUM UNIVERSITAS AIRLANGGA

Article history: Submitted 16 April 2019; Accepted 18 September 2019; Available Online 26 December 2019.

The Influence of International Tax Policy on the Indonesian Tax Law

Putri Anggia

putrianggia@umy.ac.id

Universitas Muhammadiyah Yogyakarta

Abstract

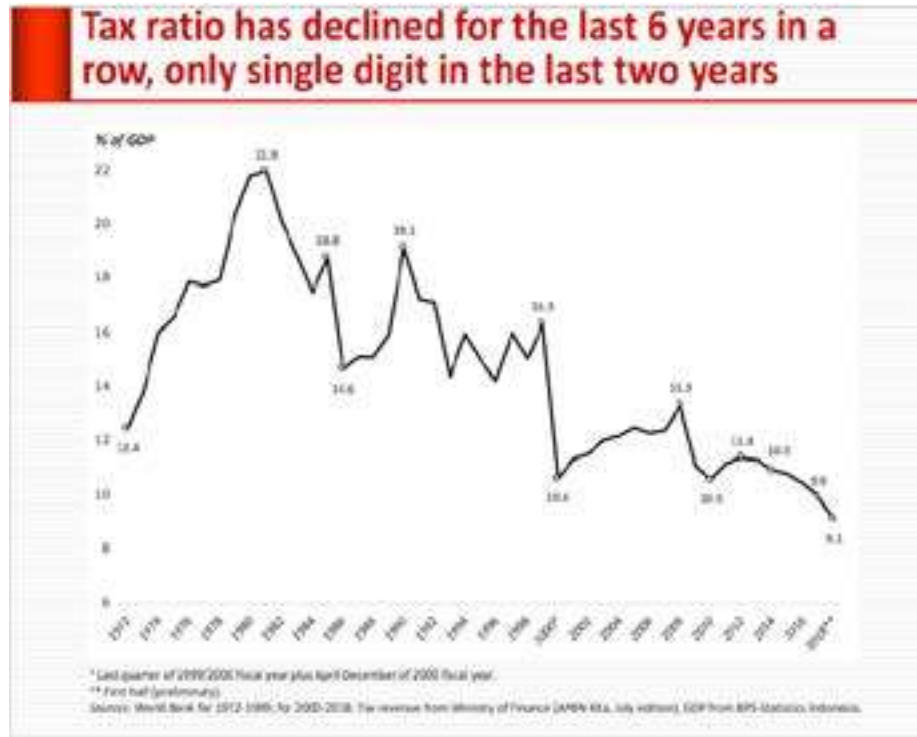
By 2012, the Indonesia government had validated Law Number 9 of 2017. One of the content is finance information government access to the customer bank and to the taxpayer. The government has considerations. First of all, Government will be open the access limitation of banking automatically that is necessary for taxation. The second, Indonesia has committed to international agreements of taxation which is obliged to fulfill the commitment. The commitment is to participate in implementing Automatic Exchange of Account Information (AEOI). Based on the policy, several managements and flow process around the banking area changed. Moreover as the customer bank are affected. The registration for the customer bank have been starting since 2018. By the earlier 2019, the progress of the administration needed to be checked and to be evaluated. This paper tries to discuss this issue based on the academic point of view. Data were obtained through library research. The library research was done by documentary study by collecting and analyzing selected laws and regulations, books, articles, journals and other documents which were relevant to the research. All datas were analyzed qualitatively. The implication of this research brings up a new idea about the theory of bank secrets. Initially, it is consisted of two theories, namely are absolute and relative. Despite of the two, there is a big affect in theory and academic knowledge about the validation of the agreement Indonesia government.

Keywords: AEOI; Automatic Exchange Information; Bank Secret Theory; International Tax Law; Tax Law.

Introduction

Taxes are the most critical source of state revenue and are levied on a basis the provisions of the applicable laws and regulations, and to implement them. Decree of the Minister of Finance is issued until the Decree of the Directorate General of Taxes as a government agency that carries out its duties and responsibility of collecting domestic revenues from the tax sector to finance budget for government

administration budget.¹ Indonesia as a country that relies on its state income from the tax sector, has various efforts to maintain the country's income to remain safe. However, the performance of Indonesia's tax ratio has actually declined from year to year, where in particular the last six years have reached a low percentage to only show one digit, as shown in the following graph, as follows:²



These efforts are reflected in the last decade in the dynamics of tax policy in Indonesia. The tax policy is influenced both by predetermined planning and ongoing economic, political, social and cultural conditions.³ The dynamics include the first and second Administrative Sanction Elimination, known as the

¹ Sarwirini, 'Impelementasi Restroactive Justice Dalam Penegakan Hukum Pajak' (2014) 29 Yuridika.[381].

² Faisal Basri, 'National Seminar Basic Principles of Radio Frequency Spectrum Management as Guidelines for Establishing the National Frequency Spectrum Law' (2018). "title": "National Seminar Basic Principles of Radio Frequency Spectrum Management as Guidelines for Establishing the National Frequency Spectrum Law", "type": "report", "uris": [{"http://www.mendeley.com/documents/?uuid=f1a596dc-1cd7-4cc5-aadc-81000ec84513"}], "mendeley": {"formattedCitation": "-Faisal Basri, 'National Seminar Basic Principles of Radio Frequency Spectrum Management as Guidelines for Establishing the National Frequency Spectrum Law' (2018

³ Mahfud M.D., *Politics of Law in Indonesia* (Rajawali Press 2014).[6].

Sunset Policy, Tax Amnesty or Tax Amnesty policy, which is currently underway regarding the regulatory policy on Tax Consultants and policy regarding financial information disclosure for tax purposes that has been ratified and entered into force April 2018. Generally tax reform is carried out with the economic goal of increasing revenue change is carried out with consideration of economic principles, namely to increase tax revenue.⁴

Indonesian Minister of Finance, Sri Mulyani stated that the existence of a policy of financial information disclosure for the interests of taxation, is expected to increase the state income from the tax sector in particular.⁵ One of the factors that influence tax revenue is the underlying policy of the implementation of the policy itself, since the tax and other levies that are forcing for State purposes are managed by law.⁶

Policies regarding tax information disclosure in Indonesia began with ratifying the Automatic Exchange of Financial Account. It was continued by the issuance of Government Regulation in-Lieu-of Law No. 1 of 2017 concerning Access to Financial Information for the Interest of Taxes and stipulated as Law No. 9 of 2017 concerning Determination of Government Regulations Substituting Law Number 1 of 2017 concerning Access to Financial Information for Taxation Interests into Law. This is the fulfillment of commitment to participate in implementing financial information exchanges automatically.⁷

Nowadays, in the rapidly changing era. The need for access information is a very important thing in people's social life.⁸ Moreover the needs in financial information, it is especially in a specific goal. One of the goals is financial information disclosure which the meaning is the authority to access banking

⁴ Iwan Suhardi, 'Penyatuan Hukum Pajak Formal Dalam Sistem Hukum Pajak Nasional' (2016) 31 Yuridika.[31].

⁵ okezone.com, 'Sah! Disahkan Jadi UU, Keterbukaan Informasi Pajak Bisa Dimulai' (*okezone.com*, 2017) <<https://economy.okezone.com/read/2017/07/27/20/1744965/sah-disahkan-jadi-uu-keterbukaan-informasi-pajak-bisa-dimulai>> accessed 15 October 2018.

⁶ Article 23A of the 1945 Constitution of the Republic of Indonesia.

⁷ Considerations Considering the letter c Law No. 9 of 2017 concerning Law No. 9 of 2017 concerning Determination of Government Regulations in lieu of Law Number 1 of 2017 concerning Access to Financial.

⁸ Hanum R. Helmi, 'Perlindungan Hukum Bagi Pengguna Jasa Operator Seluler Atas Adanya Short Message Service (SMS) Spam' (2011) 26 Yuridika.[1].

financial information. The Indonesian Government basically pre-arranges the access to banking financial information. There are two well-known theories in the banking access to financial information; the absolute secret theory and the theory of relative bank secrets.⁹ Indonesia adheres to the theory of relative secrecy bank, where access to information can be carried out in certain circumstances by parties outside the bank.¹⁰ However, by the implementation of Law No. 9 of 2017 concerning Determination of Government Regulation in-Lieu-of Law on Access to Financial Information for Taxation Interests of 2017, the access to information for tax purposes is easier because the Directorate General of Taxes can access the information without prior permission.

Therefore, the tax authorities can access the taxpayer's financial situation automatically. It was firstly implemented in April 2018. Obviously, in the implementation of policies in the banking and taxation that are different from the previous policy. There are various dynamics of either adjustments or deletions of procedures that had been running properly. One of the expectation with the implementation of the policy is certainly to have a positive impact on the state income from the tax sector. This is an interesting phenomenon to study on that Indonesia as a developing country has experienced a rise and fall against the performance of its tax ratio.

The author formulates the problem on how the implementation of the policy No. 9 of 2017 concerning Determination of Government Regulation in Lieu of Law Number 1 of 2017 concerning Access to Financial Information for Taxation Interests. The paper also will elaborate the impact of implementing the policy number 9 of 2017 concerning the Establishment of Government Regulations in lieu of Law Number 1 of 2017 concerning Access to Financial Information for Taxation Interests, towards Indonesian tax law. Especially, the impact on the theory of banking secrecy that develops in Indonesia today.

⁹ Hermansyah, *Indonesian National Banking Law* (Kencana 2005).[131-132].

¹⁰ *ibid.*

International Tax Law

Avi-Yonah categorizes the international tax law as a part of international law¹¹ even though "... in some ways international tax law is different from "regular" international law. For example, international tax lawyers talk about residence and source jurisdiction, not nationality and territoriality and how we see it, the different names also carry different content".¹² Therefore the provisions of international tax law creates legal consequences, as international law impact. One of the consequences of the implementation of the law is rights and obligations for subject of international law,¹³ especially in the scope of tax.

There are two definitions of International tax law, in the narrow and broadest sense. According to Ottman Buhler,¹⁴ international tax law in a narrow sense is the norms of disputes based on inter-nation law system. Aside of that, the law of disputes is the whole system that controls both international and municipal systems of a country, such as Intergovernmental Law, Interregional Law, International Private Law, International Tax Law. While, International tax law in the broadest sense is the legal principles between the nations with national regulations that have as their object the law of dispute in the field of taxation.¹⁵

Tax collection is required use the law, cause tax is a transfer of wealth from people to the government that does not exist in return, you can directly appointed.¹⁶ Whereas according to Prof. Dr. P.J.A Adriani, international tax law is the whole regulation that regulates legal rules and which regulates the desludging of purchasing power in each country. He said that (1) the definition

¹¹ Reuven S. Avi Yonah, *International Tax as International Law : An Analysis of the International Tax Regime* (Cambridge University Press 2007).[16].

¹² *ibid.*[1].

¹³ Elisa, 'Recognition in International Law' (*Universitas Gadjah Mada*, 2019) <[¹⁴ Rochmat Soemitro, *Hukum Pajak Internasional Indonesia Perkembangan Dan Pengaruhnya* \(Eresco 1991\).\[3\].](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=2ahUKEwi3qoHAn7jhAhU-7XMBHZlvD9EQFjACegQIBRAB&url=http%3A%2F%2Felisa.ugm.ac.id%2Fuser%2Farchive%2Fdownload%2F24029%2F477rph4lr7g0amjmmv2sjuck43&usg=AOvVaw1bJ9Nbbxk-t8yvYm-vevw3_> accessed 5 April 2019.</p></div><div data-bbox=)

¹⁵ *ibid.*

¹⁶ Binsar Sitorus, 'Independen Hakim Dalam Sistem Peradilan Pajak Di Indonesia' (2013) 28 *Yuridika*. [30].

of international tax law is an understanding broader than the definition of double taxation (2) that the national law tax is included in international tax law International tax law is a unity of law that examines an issue regulated in national laws regarding: (1) taxation of foreigners (2) national regulations to avoid double taxation, and (3) tracts.¹⁷

There are several sources of Indonesian international, namely (1) the methods of national/unilateral tax law that contain foreign elements, such as among others: regulations to prevent double taxes on income tax and wealth tax. (2) Methods derived from treaties: bilateral agreements and multilateral agreements. (3) Decisions of national judges or international commissions on international taxes. The power environment and jurisdiction of international tax law include the basis of the authority to collect taxes. The two principles used by the State as the basis of their authority to collect taxes (jurisdiction) are the status of the taxpayer and the source of her income. Countries that use taxpayer status as a base, usually base levies on the relationship between taxpayers and the State, namely: citizenship, residence, and domicile.¹⁸ While the scope or dimensions of international taxation is quite broad, it also provides a not much different picture, which includes international tax rules that already exist in the Indonesian Tax Law, tax rules that are in other State Tax Laws that intersect and tax avoidance agreements (tax treaty) that Indonesia has made with other countries.¹⁹ So that when Indonesia attaches itself to international organizations that provide policies for each member of the organization, then the concern is that Indonesia sets these international laws in the national environment. The OECD (Organisation for Economic Co-operation and Development) is an international organization that applies the AEOI policy, in which Indonesia is one of the OECD members and the AEOI policy specifically on taxation.

¹⁷ *ibid.*[3].

¹⁸ *ibid.*[22-23].

¹⁹ Anang Muay Kurniawan, *International Tax* (State Accounting College (STAN) 2010).

Theory of Bank Secrecy

Generally, the bank is a financial intermediary institution, which is an institution that carries out activities to raise funds from the public in the form of credit or financing.²⁰ Bank secrets are all things related to the information about the Customer Deposit and Customer Deposits.²¹ who place their funds in the form of deposits based on bank agreements with the relevant customers.²² Depositors are subject to banking activities. Whereas customer deposits are funds entrusted by the community to the Bank based on fund deposit agreements in the form of demand deposits, deposits, certificates of deposit, savings and/or other similar forms,²³ customer deposits are in the form of objects stored in banks. The place for storing the object of customer deposits by the subject of the depository customer is the bank. Where The definition of a bank is as a business entity that collects funds from the public in the form of deposits and distributes them to the public in the form of loans and/or other forms in order to improve the lives of many people.²⁴ The bank as an intermediary institution in carrying out its business activities always relies on the element of public trust, especially the trust of the Perverted Customer who places his savings in the bank. As a trust institution, the bank is required to keep everything related to the information about the customer of depositors and deposits at the bank.²⁵ So that the bank has the responsibility for maintaining the confidentiality of the bank's customers who have entrusted to the bank. In principle, bank secrecy are needed as a factor to maintain the trust of deposit customers.²⁶

²⁰ Aldira Maradita, 'Karakteristik Good Corporate Governance Pada Bank Syariah Dan Bank Konvensional' (2014) 29 Yuridika.[192].

²¹ Number 6 Article 1 Bank Indonesia Regulation Number: 2/19 / PBI / 2000 concerning Requirements and Procedures for Granting Written Orders or Permits to Open Bank Secrets.

²² Number 4 Article 1 Bank Indonesia Regulation Number: 2/19/PBI/2000 concerning Requirements and Procedures for Granting Written Orders or Permits to Open Bank Secrets.

²³ Number 2 Article 1 Bank Indonesia Regulation Number: 2/19/PBI/2000 concerning Requirements and Procedures for Granting Written Orders or Permits to Open Bank Secrets.

²⁴ Number 1 Article 1 Bank Indonesia Regulation Number: 2/19/PBI/2000 concerning Requirements and Procedures for Granting Written Orders or Permits to Open Bank Secrets.

²⁵ Part I General Explanation of Bank Indonesia Regulation Number: 2/19/PBI/2000 concerning Requirements and Procedures for Granting Written Orders or Permits to Open Bank Secrets.

²⁶ Section weighing letter b Bank Indonesia Regulation Number: 2/19/PBI/2000 concerning Requirements and Procedures for Granting Written Orders or Permits Opening Bank Secrets.

The provisions of bank secrecy are essential for depositors and their savings as well as for the interests of the bank itself, because if the depositors do not trust the bank where the savings are stored, customers will not be the customers. Therefore, as a financial institution that functions to collect funds from the public in the form of deposits, it fits for banks to apply the bank's confidential provisions consistently and responsibly in accordance with applicable laws and regulations to protect the interests of their customers. According to Muhammad Djumhana, there are two theories regarding bank secrets, namely the absolute secret theory and the theory of relative bank secrets.²⁷

Theory of absolute bank secrecy has an obligation to keep secrets or statements about its customers that are known to the bank because of their business activities under any circumstances, under normal circumstances or in extraordinary circumstances. Theory of relative bank secrecy means that is relative, banks are permitted to disclose information about their customers, if for urgent purposes, such as State interests or legal interests.²⁸ The existence of exceptions in the provisions of bank secrets allows for certain interests of an agency or agency to be asked to ask for information or data about the financial condition of the customer in accordance with the applicable legal provisions. The laws and regulations governing bank secrets are listed in several legal products:

1. Law Number 23 PrP than 1960 concerning Bank Secrets;
2. Law Number 14 of 1967 concerning Banking Principles;
3. Law Number 7 of 1992 in conjunction with Law No. 10 of 1998 concerning Banking²⁹

In its development, there are exceptions to bank secrecy provisions according to Law Number 7 of 1992 in conjunction with Law Number 10 of 1998 concerning Banking, namely:³⁰

²⁷ Hermansyah (n 9). [132].

²⁸ *ibid.*[132-133].

²⁹ *ibid.*[133-139].

³⁰ Part I General Explanation of Bank Indonesia Regulation Number: 2/19/PBI/2000 concerning Requirements and Procedures for Granting Written Orders or Permits to Open Bank Secrets.

1. For tax purposes;
2. For settlement of bank receivables that have been submitted to BUPLN (Badan Urusan Lelang Nasional/The State Agency for Receivables and Auctions);
3. For the sake of justice in criminal cases;
4. In a civil case between the bank and the customer;
5. In exchanging interbank information;
6. Upon request, approval or power of attorney from the depositing customer or his heir.

There are exceptions outside the above provisions, namely exceptions governed by the Supreme Court Letter No.KMA/694/R, 45/XII/2004 concerning legal considerations for the implementation of the authority of the Corruption Eradication Commission in response to the Letter of Governor of Bank Indonesia NO.6/2/GBI/DHk/Secret that gives authority to the Corruption Eradication Commission (KPK) in implementing investigation, investigation and prosecution assignments. Based on these provisions, the permit procedure for opening bank secrets as stipulated in article 29 paragraph (2) and paragraph (3) of Act Number 20 of 2001 in conjunction with Article 42 of Act Number 7 of 1992 concerning Banking as amended by Law- Law Number 10 of 1998 does not apply to KPK.³¹

Recently, the theory of banking secrecy is not changing to the exception of access. However, the changes are more in the means to get information of the detail information concerning banking secrecy. It is related to the international policy and Indonesia has to be bounded to the agreement, which is Automatically Exchange of Information. Moreover, this policy is concerned with tax administration.

AEoI Background and definition

The development of technology and information has a significant influence on the development society and law.³² The implementation of the AEoI in Indonesia was motivated in advance by the implementation of the tax amnesty program. The Tax Amnesty program is an extraordinary step in the form of a policy

³¹ Hermansyah (n 9).[140].

³² Aris Hrdianto, 'Manfaat Analogi Dalam Hukum Pidana Untuk Mengatasi Kejahatan Yang Mengalami Modernisasi' (2016) 31 Yuridika.[1].

breakthrough to transfer assets into the territory of Republic of Indonesia while providing security guarantees for Indonesian citizens who wish to transfer and wish to disclose their assets in the form of Tax Amnesty. The policy breakthrough in the form of Tax Amnesty on the transfer of property was also driven by the smaller possibility of hiding wealth outside the territory of the Unitary State of the Republic of Indonesia due to the increasingly transparent global financial sector and the increasing intensity of information exchange between countries.³³ Official tax amnesty ends on March 31, 2017, right at 00.00 WIB. It was noted, the total assets declared from domestic and abroad reached Rp.4,881 trillion, with the details as follows reached Rp. 1036.3 trillion, domestically reached Rp. 3697.94 trillion, and repatriation of Rp. 146.69 trillion.³⁴ The amount itself is considered to have exceeded the target of Rp.4,000 trillion or reached a percentage of 121.37%. Although the value is quite significant, the acquisition of the state does not succeed in achieving the tax redemption target.

It should be noted that the concept of tax amnesty is the elimination of taxes that should be owed, not subject to tax administration sanctions and criminal sanctions in the field of taxation, by disclosing assets and paying redemption as stipulated in the law.³⁵ From the data of the Directorate General of Taxes, the collected redemption is only around 81.8% of the target or Rp135 trillion, still lower by Rp30 trillion or around 18.2% of the target of Rp165 trillion. Previously, the government and the Director General of taxes were targeting to be able to get a tax redemption of up to Rp 165 trillion. For information, from the declaration of more than Rp.4,000 trillion, the majority came from Indonesia, namely Rp3,676 trillion, while from abroad only Rp1,031 trillion of the potential that could be obtained which was

³³ Part Iz General Explanation of the Law of the Republic of Indonesia Number 11 of 2016 concerning Tax Amnesty

³⁴ Directorate General of Taxes, 'Disclosure of Voluntary Assets with Final Rates' (*Directorate General of Taxes*, 2019) <<http://www.pajak.go.id/sites/default/files/PASFINAL-Presentasi Eksternal-PJ091PPHS009201700.pdf>> accessed 8 April 2019.

³⁵ Number 1 Article 1 of the Law of the Republic of Indonesia Number 11 of 2016 concerning Tax Amnesty

around Rp.4,000 trillion.³⁶

In addition to the Tax Amnesty program, the application of the consequences in the Law Tax Amnesty began to be implemented, continuously the Law number 9 of 2017 began to be implemented concerning Access to financial information for tax purposes. Which is the starting point for the era of financial information disclosure and including banking for tax purposes. There is no more room to hide as is known in the Tax Amnesty program that there are still assets that have not yet been revealed.³⁷ For this reason, the government through the Directorate General of Taxes (DJP) will start running an Automatic Exchange System of Information (AEOI) facility between countries to track potential taxes abroad.

In addition to the above, the background that supports the implementation of AEOI is (1) low level of compliance with cross-country transactions (Low offshore compliance), (2) Limited tax administration capacity/tax authority to oversee taxpayer compliance, (3) AEOI on Request and Spontaneous AEOI are deemed ineffective to monitor WP Multinational Enterprise compliance and High Wealth Individual Tax Payer.³⁸

Indonesia is one of the countries that must fulfill its commitment to carry out financial information exchange automatically for the benefit of taxation or Automatic Exchange of Information (AEOI). Based on a multilateral agreement called the Global Forum on Transparency and Exchange of Information for Tax Purposes, 100 countries or jurisdiction will implement the AEOI policy in 2017 and 2018. A total of 50 countries or jurisdictions will conduct the AEOI for the first time in September 2017, while 50 countries or other jurisdictions will first apply in September 2018.³⁹

³⁶ Cermati.com, 'Getting to Know AEOI, the Program That Makes Tax Evaders Can't Escape' (2017) <<https://www.cermati.com/artikel/mengenal-aeoi-program-yang-membuat-pengemplang-pajak-tidak-bisa-kabur>> accessed 1 March 2019.

³⁷ The Directorate General of Taxes, 'Disclosure of Voluntary Assets with Final Rates' (*Pajak.go.id*, 2017) <http://www.pajak.go.id/sites/default/files/PASFINAL-Presentasi_Eksternal-PJ091PPHS009201700.pdf> accessed 8 April 2019.

³⁸ Directorate General of Taxes, *Towards Automation of Access to Financial Information, Media Financial Taxes Vol. XII. No. 117* (Ministry of Finance of Indonesia 2017).[16].

³⁹ *ibid.*[12]

Some countries that are bound by the AEOI agreement are often regarded as tax havens, such as Hong Kong, Singapore, Switzerland, and Australia. The involvement of these countries shows that the era of financial information disclosure is in sight. Every customer of banks and non-bank institutions in hundreds of countries that are part of the agreement must understand that financial data will be accessible and exchanged by the tax authorities of each country. A number of countries that will implement the AEOI policy in 2017 are India, Britain, British Virgin Island Cayman Islands. Apart from Indonesia, several countries that will run it in 2018 are Hong Kong, Japan, Australia, Panama, and Israel.⁴⁰

Countries that participate in the AEOI must be declared eligible by the Organization for Economic Cooperation and Development (OECD), namely the requirements for implementing a system of openness and access to information exchange (AEOI). These conditions are the existence of primary and secondary rules in policy implementation in the national environment and readiness for the Information and Technology system.⁴¹ Indonesia has Perppu Number 1 of 2017 concerning Access to Financial Information for Tax Examination and Minister of Finance Regulation (PMK) Number 70 of 2017 concerning Technical Guidelines on Access to Financial Information for Tax Examination. Where the Law (Perppu) Number 1 of 2017 concerning Access to Financial Information for Tax Examination has been promulgated into Law Number 9 of 2017 concerning the Establishment of Legislation Regulations Number 1 of 2017 concerning Access to Financial Information for Tax Examination.

AEOI implementation

The implementation of AEOI depends on the policy from OECD, the organization that issued the AEOI policy, in which Indonesia is part of the members of the world organization. The Organization for Economic Cooperation and

⁴⁰ *ibid.*

⁴¹ Sidharta Akman, 'Automated Exchange in Information: Political Economy Perspective' (2017) 10 Journal of International Relations.[38].

Development (OECD) has requirements that must be met by countries that want to join in implementing the AEOI policy. These requirements are broadly based on the law that covers the policy that takes place domestically as well as influencing the bilateral, multilateral and international environment. The next requirement is regarding technological infrastructure that supports the exchange of information. The OECD requires countries involved in AEOI's commitment to preparing regulations to support the implementation of information exchange in their respective countries. Therefore the President has signed Government Regulation in lieu of Law (Perppu) Number 1 of 2017 concerning Access to Financial Information for Taxation purposes. This Perppu is in accordance with the international spirit, in which each country or jurisdiction agrees to close tax avoidance spaces including places or jurisdictions that provide privileges for tax avoidance. The countries and jurisdictions involved will be asked to comply with the international agreement. The government explained that it would guarantee that the overall governance of all taxation in Indonesia could be the same as the tax authorities in other countries.⁴² As is known, the Perppu has been promulgated by Law Number 9 of 2017 concerning the Establishment of Legislation Regulations Number 1 of 2017 concerning Access to Financial Information for Tax Examination, as well as having implementation tools, namely Minister of Finance Regulation Number 70 of 2017 concerning Technical Guidelines regarding Access to Financial Information for Tax Examination.

The issuance of the Perppu is required before Indonesia implemented the AEOI in 2018. If the Government does not issue regulations as required, the impact is that Indonesia gets a non-cooperative jurisdiction meaning that if it does not join, then Indonesia is in a disadvantaged position because it cannot get access to financial information from taxpayers (WP) Indonesia, which has funds and assets abroad and other jurisdictions.⁴³ Countries or jurisdictions that have implemented AEOI commitments are deemed to have legislation concerning tax authority

⁴² Dwinandha Ardhi, *Welcome to the Era of Financial Information Openness, Vol. XII /No. 117* (Tax Finance Media 2017).[12].

⁴³ *ibid.*[14].

access to financial information and reporting standards and information exchange transmission systems. For countries that do not follow this commitment, the country will not receive information from other countries or jurisdictions, but only give.⁴⁴

In addition to regulations related to tax authorities' access to financial information, the domestic legal framework also requires every country to have reporting standards and information exchange transmission systems.⁴⁵ The data exchanged in this AEOI is the identity of the financial account holder, financial account number, financial service institution identity, financial account balance or value, and income related to financial accounts. As is known that Indonesia has previously regulated the exception of access to banking information for tax purposes with a prescribed mechanism, namely written permission by the Minister of Finance to the Chairperson of Bank Indonesia.⁴⁶ Not only the taxation area but also there are some exceptions:⁴⁷

Table 1. Banking Information Exceptions

Exception	Submission of permission
Taxation	Written by the Minister of Finance to the Chairperson of Bank Indonesia
Settlement of bank receivables that have been submitted to the Receivables Affairs Agency and the State Auction / Committee for State Receivables Affairs	Written permission from the Head of the State Debt and Auction Agency/Chairperson of the State Debt Affairs Committee for receivables Affairs
Justice interests in criminal cases	Written permission from the Chief of Police of the Republic of Indonesia, Attorney General of the Republic of Indonesia or chairman of the Supreme Court of the Republic of Indonesia
Judicial interests in civil cases between the Bank and its customers	
Exchange information between banks	

⁴⁴ *ibid.*[15].

⁴⁵ Sidharta Akmam (n 42).[38].

⁴⁶ Paragraph (1) Article 4 Bank Indonesia Regulation Number: 2/19/PBI/2000 concerning Requirements and Procedures for Granting Written Orders or Permits to Open Bank Secrets.

⁴⁷ Bank Indonesia Regulation Number: 2/19/PBI/2000 concerning Requirements and Procedures for Granting Written Orders or Permits to Open Bank Secrets

Request, approval or authorization from the Depository Customer made in writing

Request for legitimate heirs from depositors who have passed away

Source: Bank Indonesia Regulation Number: 2/19 /PBI/2000 concerning Requirements and Procedures for Granting Written Orders or Permits to Open Bank Secrets

With the implementation of the AEOI, the procedure is officially no longer valid. The Ministry of Finance does not need to submit written permission to Bank Indonesia leaders to find out customer data on the basis of tax interests, namely data in the form of financial account holder identity, financial account number, financial service institution identity, balance or financial account value, and income related to financial accounts. However, banking for access on the basis of interests other than taxation but for some of the 6 points above, the procedure for accessing information still follows the prescribed procedures.

AEOI influence

The implementation of the AEOI policy has an impact and influence on the system and technical administration and even the applicable laws in Indonesia, especially regarding intersecting matters. The joining of Indonesia in the AEOI agreement will provide several benefits, including tax trade which is cheaper and accessible because it is along with dozens of countries involved in the agreement scheme. Moreover the cost of bilateral and cost diplomacy will also be cheaper. What is needed is to prepare all automatic and periodic reporting mechanisms. In addition, the countries involved in AEOI also continue to prepare themselves for systems built on time in accordance with the schedule.⁴⁸

The existence of this information disclosure will help the Directorate of Taxes increase revenue and be supported by the government that composes tax reform policies after the tax amnesty rogram is completed. When AEOI takes

⁴⁸ Dwinandha Ardhi (n 43).[15].

place, The Government will have access to data from customers of banks and non-bank financial institutions. The data itself must fulfill the format and complete according to the standard common reporting (CRS). All bank and nonbank financial institutions will be obliged to report data periodically and automatically to the the Government. This information will immediately become a taxation database. With AEOI, the data obtained is not only national but also international. Countries that are members of the AEOI agreement can exchange data automatically with the enactment of the reciprocal principle. Indonesia must be active in realizing AEOI's commitment because if it does not do, it will have an impact on the exclusion of international transaction traffic which will affect the rating and investigation of international institutions.⁴⁹

Especially for Indonesia, the benefits of AEOI policies are (1) detection of tax avoidance and offshore wealth, (2) prevention of future non-compliance tax payer. (3) supporting synergy in the domestic environment, and (4) enhance reputation.⁵⁰ However, for developing countries such as Indonesia, extra effort is needed to balance supporting infrastructure such as those of developed countries. As is the case between Indonesia and Singapore, Singapore considers Indonesia still needs to fix a number of matters related to laws and regulations specifically regarding confidentiality and data protection. In contrast to Indonesia cooperation through bilateral agreements can be started immediately because both have signed the Multilateral Competent Authority Agreement (MCAA). Based on this, in the case of the implementation of the AEOI with Singapore, the effectiveness of the implementation of AEOI has not been as expected both because of the embedded bilateralism in the MCAA agreement and the technical problems that are difficult for developing countries to fulfill.⁵¹ Where Indonesia cooperates with the State in scope and a large percentage with Singapore. Singapore is one of the countries where Indonesian citizens and companies are suspected of storing assets of around

⁴⁹ *ibid.*

⁵⁰ *ibid.*

⁵¹ Sidharta Akmam (n 42).[35].

60% of the funds belonging to Indonesian citizens abroad.⁵²

Based on Perppu Number 1 of 2017, the definition of the exchanged data is the identity of the financial account holder; Financial account number; identity of financial service institutions; balance or financial account value; income related to financial accounts. This is not in accordance with the exceptions as explained in the previous theory of bank secrecy. With this, an adjustment is needed as it has become a development in the tax reform era that for the purposes of taxation it is not specifically for a coercive situation but becomes a periodic and automatic activity. Then the theory of bank secrecy that is known to be two is absolute and relative. Where Indonesia has approached the relative theory with the existence of the AEOI policy on bank information for tax purposes to be a differentiator, not absolute or relative. But it becomes easily accessible. This disclosure of customer data should be accompanied by security and protection for customers so that bank institutions can still be trusted by customers without reducing the benefits of taxation. As mentioned:

“.....for the whole tax administration and taxpayers, who can apply the global tax system, regulating all forms of cooperation, and the kinds of relations between tax administrations and taxpayers, to protect their rights, including alternative dispute resolution systems, not just for corporate income taxation taxpayers, but also for the worldwide tax system. Consequently, the fact that there is not a General Code on international tax international cooperation, together with the dizzying speed in the development of this area, has marked the asymmetric evolution of this matter, leading to significant gaps, sometimes major contractions and often major dysfunctions, which could be solved with an administrative Code of International cooperation containing substantive and procedural part in administrative cooperation obligations of States”.⁵³

With the enactment of the AEOI policy in Indonesia, of course, there is a difference both in terms of the application of law and technical administration. Particularly for Governments that implement a global taxation system, regulate all forms of

⁵² *ibid.*[38].

⁵³ Eva Andres Aucejo, 'Towards an International Code for Administrative Cooperation in Tax Matter and International Tax Governance' (2018) 40 *Revista Derecho del Estado* n.40, enero-junio de.[73].

cooperation, and the type of relationship between tax administration and taxpayers, in order to protect their rights, including alternative dispute resolution systems, not only to pay tax but also to taxation system globally. So according to Eva Andres Aucejo system of international tax cooperation is needed, in the complicated and rapid development that marks asymmetrical and significant evolution. The resolution of the complexity is through the international administrative procedure which should be part of the cooperation of the State administration.

Conclusion

The fundamental influence of international tax policy on Indonesian tax law is the birth of a fourth theory from the theory of bank secrecy, that is the Directorate General of Taxes can automatically access information about bank customers, which is previously required special procedures for the intended Bank. On the other hand the effect of the implementation of AEOI for Indonesia's revenues is positive by getting periodic and automatic reporting so that it can trace the size of Indonesian Taxpayers' wealth abroad, this also complements the previous Tax Amnesty program. However, this will not be achieved if it is not supported by adequate infrastructure, including laws and regulations specifically regarding confidentiality and data protection. The influence of the implementation of this AEOI is that there is a special condition outside of the two theories of bank secrecy in general, outside of absolute theory and relative theory. Because access to information by mechanism is automatic and is received periodically outside of exceptions set out in the laws and regulations.

Laws and regulations specifically regarding confidentiality and protection of data that are less supportive should immediately be compiled so as not to obstruct a number of receipts as intended by the State of cooperation. With the existence of conditions outside the exception of the bank's secrecy theory, it certainly has legal consequences, the consequences of this law should be regulated in such a way as not to harm the rights of the individual bank customers.

Bibliography

- Aldira Maradita, 'Karakteristik Good Corporate Governance Pada Bank Syariah Dan Bank Konvensional' (2014) 29 Yuridika.
- Anang Muay Kurniawan, *International Tax* (State Accounting College (STAN) 2010).
- Aris Hardianto, 'Manfaat Analogi Dalam Hukum Pidana Untuk Mengatasi Kejahatan Yang Mengalami Modernisasi' (2016) 31 Yuridika.
- Binsar Sitorus, 'Independen Hakim Dalam Sistem Peradilan Pajak Di Indonesia' (2013) 28 Yuridika.
- Cermati.com, 'Getting to Know AEOI, the Program That Makes Tax Evaders Can't Escape' (2017) <<https://www.cermati.com/artikel/mengenal-aeoi-program-yang-membuat-pengemplang-pajak-tidak-bisa-kabur>> accessed 1 March 2019.
- Directorate General of Taxes, *Towards Automation of Access to Financial Information, Media Financial Taxes Vol. XII. No. 117* (Ministry of Finance of Indonesia 2017).
- , 'Disclosure of Voluntary Assets with Final Rates' (*Directorate General of Taxes*, 2019) <<http://www.pajak.go.id/sites/default/files/PASFINAL-Presentasi-Eksternal-PJ091PPHS009201700.pdf>> accessed 8 April 2019.
- Dwinandha Ardhi, *Welcome to the Era of Financial Information Openness, Vol. XII /No. 117* (Tax Finance Media 2017).
- Elisa, 'Recognition in International Law' (*Universitas Gadjah Mada*, 2019) <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=2ahUKEwi3qoHAn7jhAhU-7XMBHZlvD9EQFjACegQIBRAB&url=http%3A%2F%2Fwww.ugm.ac.id%2Fuser%2Farchive%2Fdownload%2F24029%2F477rph4lr7g0amjmmv2sjuck43&usg=AOvVaw1bJ9Nbbxkt8yvYm-vevw3_> accessed 5 April 2019.
- Eva Andres Aucejo, 'Towards an International Code for Administrative Cooperation in Tax Matter and International Tax Governance' (2018) 40 *Revista Derecho del Estado* n.40, enero-junio de.
- Faisal Basri, 'National Seminar Basic Principles of Radio Frequency Spectrum Management as Guidelines for Establishing the National Frequency Spectrum Law' (2018).

Hanum R. Helmi, 'Perlindungan Hukum Bagi Pengguna Jasa Operator Seluler Atas Adanya Short Message Service (SMS) Spam' (2011) 26 Yuridika.

Hermansyah, *Indonesian National Banking Law* (Kencana 2005).

Iwan Suhardi, 'Penyatuan Hukum Pajak Formal Dalam Sistem Hukum Pajak Nasional' (2016) 31 Yuridika.

Mahfud M.D., *Politics of Law in Indonesia* (Rajawali Press 2014).

okezone.com, 'Sah! Disahkan Jadi UU, Keterbukaan Informasi Pajak Bisa Dimulai' (*okezone.com*, 2017) <<https://economy.okezone.com/read/2017/07/27/20/1744965/sah-disahkan-jadi-uu-keterbukaan-informasi-pajak-bisa-dimulai>> accessed 15 October 2018.

Reuven S. Avi Yonah, *International Tax as International Law : An Analysis of the International Tax Regime* (Cambridge University Press 2007).

Rochmat Soemitro, *Hukum Pajak Internasional Indonesia Perkembangan Dan Pengaruhnya* (Eresco 1991).

Sarwirini, 'Impelementasi Restroactive Justice Dalam Penegakan Hukum Pajak' (2014) 29 Yuridika.

Sidharta Akmam, 'Automated Exchange in Information: Political Economy Perspective' (2017) 10 Journal of International Relations.

The Directorate General of Taxes, 'Disclosure of Voluntary Assets with Final Rates' (*Pajak.go.id*, 2017) <<http://www.pajak.go.id/sites/default/files/PASFINAL-Presentasi Eksternal-PJ091PPhS009201700.pdf>> accessed 8 April 2019.