

Article

Tax Policy in Action: 2016 Tax Amnesty Experience of the Republic of Indonesia

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Abstract: Tax amnesty programs are often used by governments to improve tax compliance and to increase tax revenue. However, the policy choice to provide a tax amnesty often results in adverse consequences, including the violation of other legal rules. For this reason, the policy choice to offer a tax amnesty ('tax amnesty policy') is often controversial. The tax amnesty policy and resulting program offered by the Government of Indonesia has been criticized both because it is considered to be unfair and because it favors the perpetrators of tax evasion. In particular, the tax amnesty law offered special treatment to taxpayers who participated in the program, such as no checking of the source of funds, no checking of the financial statements reported by law enforcers, protection from punishment on the financial reports provided to the Director General of Taxation, and the requirement to pay only a small penalty. Tax amnesty programs also provide the potential for money laundering. This is certainly the case in Indonesia. In addition, tax amnesty programs weaken law enforcement in Indonesia; in particular, in the areas of corruption and money laundering. This is because law enforcement officers cannot investigate the perpetrators of white-collar crime that benefit from the tax amnesty program. Under the terms of the tax amnesty program, the financial data is not accessible by them.

Keywords: tax amnesty; money laundering; Indonesia; financial crime

1. Introduction

Tax is a major source of revenue for many countries, including Indonesia. Tax in Indonesia has three main functions; it is the source of state income, it is a tool of policy regulation, and it is a means of income redistribution ([Direktorat Jenderal Pajak 2013](#)). Based on data from the Ministry of Finance of the Republic of Indonesia, tax is the largest contributor to Indonesia's revenue budget, where almost 75% of Indonesia's income comes from taxes ([Ministry of Finance of Republic of Indonesia 2017](#)). The tax potential in Indonesia is actually very large, because Indonesia has 261 million inhabitants, and as many as 124 million of these inhabitants are in a productive age category ([Badan Pusat Statistik 1986–2017](#)). Nevertheless, only 10.1 million people are registered as taxpayers and pay their taxes on a regular basis ([Direktorat Jenderal Pajak 2017a](#)). The low number of taxpayers when compared with the productive age of the population of Indonesia means that the Indonesian government is not maximizing the potential revenue from taxation. This has led to constraints in infrastructure development in Indonesia, and to an increase in Indonesia's foreign debt.

The main cause of the low number of taxpayers in Indonesia is the widespread practice of tax evasion and tax avoidance. One of the most popular ways to achieve this is to hide income from tax officials in Indonesia or to transfer the wealth abroad, so it is not detected by tax officials. Tax evasion and tax avoidance are widespread in Indonesia, and result in a lack of state revenues from the tax sector. The lack of tax revenues has, in turn, hampered infrastructure development planned by the Indonesian government because the government has insufficient funds.

To encourage taxpayers to pay taxes within a short time frame, the Indonesian government launched a tax amnesty and repatriation of assets program, which took place between July 2016 and March 2017. The objective for implementing the tax amnesty program was to boost the income generated from taxes in the state budget. As the country's income increased, the Indonesian government planned to increase its spending on infrastructure development, as well as on improving people's welfare. The tax amnesty program was also aimed at improving the stability of Indonesia's macro economy through the repatriation of assets from abroad to Indonesia. The repatriation of assets would directly increase Indonesia's foreign exchange reserves and strengthen the economic fundamentals of Indonesia. However, the tax amnesty program, as envisioned by the Indonesian government, included some fundamental flaws, and potentially violates other laws in Indonesia.

This article will discuss the policy in Indonesia that permits tax amnesty and the criticism of this policy. The article is divided into two sections, aside from the introduction and conclusion. Section 2 discusses the tax amnesty policy in Indonesia in general and the law that implements the tax amnesty program. Section 3 discusses the criticism of the tax amnesty program and provides an example of its fundamental shortcomings.

2. Tax Amnesty in Indonesia

The gross domestic product (GDP) ratio of Indonesia recently reached 12% ([Directorate General of Taxation of the Republic of Indonesia 2016](#)), which is very low when compared with the tax-to-GDP ratio of developed countries, which can achieve 49.58%, or intermediate states, which can reach 24% ([OECD 2016](#)). The low tax-to-GDP ratio obtained by Indonesia is the result of poor tax compliance in Indonesia. To avoid paying taxes, taxpayers in Indonesia do the following ([Directorate General of Taxation of the Republic of Indonesia 2016](#)):

- (1) Store their wealth abroad and deposit or invest it in other forms such as properties and shares, so that they do not report it in their annual tax report.
- (2) Store their wealth in Indonesia in the form of deposits or shares that they do not report in their annual tax report.
- (3) Store their wealth in Indonesia in the form of property or cash that they do not report in their annual tax report.
- (4) Entrust their wealth to others who do not have a taxpayer identification number.
- (5) Invest their wealth in illegal businesses.

Furthermore, to avoid taxes, the taxpayers in Indonesia often move and invest funds abroad. The main countries that Indonesian taxpayers transfer their money to are Singapore, Hong Kong, Malaysia, Macau, Luxembourg, Switzerland, Cayman Islands and other tax haven countries ([Directorate General of Taxation of the Republic of Indonesia 2016](#)). For example, the Figure 1 below explains that, in 2016, a total of 250 billion US Dollars owned by Indonesia's high net worth individuals ("HNWIs") was stored outside of Indonesia. A total of 200 billion US Dollars of wealth was kept in Singapore, as can be seen in bar 3, and as much as 50 billion USD was kept in other countries, such as Hong Kong, Malaysia, Macau, Luxembourg and Cayman Island. From the total wealth of Indonesia's HNWIs, almost 50 billion US Dollars were deposited on non-investable assets, such as real estate, and the remaining 150 billion US Dollars was invested in investable assets, such as stocks, in Singapore ([Directorate General of Taxation of the Republic of Indonesia 2016](#)). The Figure 1 below also further confirms that Singapore is the main country where the Indonesian taxpayer chooses to keep his/her wealth to avoid paying taxes.



Figure 1. Offshore Wealth of the Indonesian HNWI (Directorate General of Taxation of the Republic of Indonesia 2016).

Based on the background discussed previously, the Indonesian government enacted the Law of the Republic of Indonesia No. 11/2016 on Tax Amnesty (“Tax Amnesty Law”). The tax amnesty legislation has three objectives, among others, which are as follows (Ministry of Finance of Republic of Indonesia 2016):

- (1) To accelerate the growth and the restructuring of the economy using the repatriation of assets, which will create a positive impact such as an increase in domestic liquidity, improvement of the exchange rate of Rupiah, a decrease of financial interest, and an increase of investment.
- (2) To support the tax reform in creating a system of taxation based on justice and for the expansion of basis of data (database) of taxation, which will be more valid and comprehensive in the integration.
- (3) To increase tax revenues, which will be used for funding the development.

The main objective of the Indonesian tax amnesty law is to encourage the repatriation of assets by Indonesian taxpayers that were stored outside Indonesia and then later invested in Indonesia. The tax amnesty program in Indonesia took place over a period of eight months, beginning on 1 July 2016, and ending on 31 March 2017. The eight-month implementation period was divided into three phases, of which the first took place from 1 July 2016 to 30 September 2016, the second from 1 October 2016 to 31 December 2016, and the he third between 1 January 2017 and 31 March 2017 (Ministry of Finance of Republic of Indonesia 2016). Tax amnesty was available to all taxpayers who had not revealed or reported all their assets in or outside of Indonesia (Ministry of Finance of Republic of Indonesia 2016) with two major exceptions; taxpayers under investigation in the judicial process and taxpayers serving a criminal sentence for a criminal offence in the area of taxation were not eligible under the program (Ministry of Finance of Republic of Indonesia 2016).

Taxpayers who were storing their assets and wealth abroad were given two options to receive a remission of taxes. The taxpayer could pay a low tax penalty, depending on the submission period, and repatriate assets to and invest in Indonesia for a minimum of three years. He/she could also get profit from the results of these investments (Ministry of Finance of Republic of Indonesia 2016). The other option was for the taxpayer to declare all their offshore assets and pay a slightly higher tax penalty, depending on the submission period (Ministry of Finance of Republic of Indonesia 2016).

Taxpayers whose disclosed assets and wealth were located in Indonesia were required to pay a lower tax penalty depending on the phase of the tax amnesty program ([Ministry of Finance of Republic of Indonesia 2016](#)). The Table 1 provides an overview of the penalty payment schemes in the tax amnesty program:

Table 1. Redemption Money Rates Table ([Price Waterhouse Cooper Indonesia 2016](#)).

| General Taxpayers | Redemption Money Rates Based on Tax Amnesty Submission Period | | |
|---|---|-----------------------|--------------------|
| | July–September 2016 | October–December 2016 | January–March 2017 |
| Offshore assets declaration—not repatriated to Indonesia | 4% | 6% | 10% |
| Offshore assets declaration—repatriated to and invested in Indonesia for minimum of three years | 2% | 3% | 5% |
| Onshore assets declaration—retained in Indonesia for minimum of three years | 2% | 3% | 5% |

The tax penalties to be paid by the taxpayer were calculated by multiplying the tariff as shown in the table above on the basis of the imposition of tax penalties. The calculation of tax penalties was based on the values of the net assets that were not reported or that were incompletely reported in the most recent yearly tax report. Taxpayers who chose to repatriate offshore investments to Indonesia were required to place those investments in an investment instrument regulated by the government. The approved government investments included, among others ([Ministry of Finance of Republic of Indonesia 2016](#)):

- (1) Indonesian Government Securities;
- (2) Bonds of State-owned Enterprise (SOE);
- (3) Bonds of financial institutions owned by the Government;
- (4) Financial investment in Perception banks;
- (5) Bonds in private company that the Financial Services Authority monitors the trading of;
- (6) Infrastructure investment through government’s cooperation with business entities;
- (7) Investment in the real sector based on the priorities set by the government through a Ministry of Finance Decree; and
- (8) Other legitimate investments in compliance with the prevailing laws and regulations.

The regulations¹ contain additional details such as, for example, a provision that taxpayers who choose to repatriate their offshore assets to Indonesia will gain a profit from the investment that can be drawn every three months or when a minimum period of investment has been fulfilled ([The Republic of Indonesia Finance Ministerial 2016](#)).

The tax amnesty law also regulates the confidentiality of the data of the taxpayers who participate in the program. For example, taxpayers who participate in the program were provided with certain guarantees regarding the asset data that they gave through the program to the Directorate General of Taxes. Specifically, the taxpayer was guaranteed that the data could not be accessed or used as a database for investigation and prosecution by law enforcement such as attorney general, police, Indonesia Corruption Eradication Commission (CEC) and Indonesia Financial Transaction Reports and Analysis Centre (INTRAC) ([Ministry of Finance of Republic of Indonesia 2016](#)). To encourage taxpayers to participate in the tax amnesty program, the finance ministry also arranged threats for tax evasion and tax evaders who do not report their taxes through the tax amnesty policy scheme.

¹ The regulations regarding the repatriation of assets that should be invested in Indonesia are stipulated in the Ministerial Decree No. 122/PMK.08/2016 on the Procedure for the Transfer of Taxpayer’s Property in the Framework of Tax Amnesty Policy.

It was expected that, after the tax amnesty ended in March 2017, the Ministry of Finance and the Directorate General of Taxation would conduct an analysis of the wealth of all the registered taxpayers in Indonesia. The analysis was to be undertaken by opening the domestic banking data owned by all the taxpayers in Indonesia. The Director General of Taxes would also adopt the Organisation for Economic Co-operation and Development (OECD) policy on automatic exchange of information (AEOI), which would facilitate the Director General of Taxes' monitoring of the assets of the Indonesian citizens who kept their assets or wealth abroad (OECD 2017). Indonesian citizens who were caught with income or assets that had not been reported to the Director General of Taxes would be subject to a 200% penalty of the amount of unpaid income tax. Currently, the process being undertaken by the Director General of Taxes is to conduct research and open customer data in domestic banks, which will then be matched with the data owned by the Directorate General of Taxes, and checked to see whether there are violations of taxation or whether there is still a shortage of tax payments (Direktorat Jenderal Pajak 2017b).

The Indonesian government targeted a return through the tax amnesty program of around 12.4 billion US Dollars from the payment of redemption money and around 75.2 trillion US Dollars from the repatriation of assets. The result was very far from the targeted amount. After the closure of the tax amnesty program on 31st March 2017, the Indonesian government had only managed to collect 8564 billion US Dollars from the payment of redemption money and only 11,044 billion US Dollar from the repatriation of assets, as described in the Table 2.

Table 2. Funds Obtained from the Tax Amnesty Program (Direktorat Jenderal Pajak 2016).

| Onshore Assets Declaration (in Billion US Dollars) | Offshore Assets Declaration (in Billion US Dollars) | Assets Repatriated to Indonesia (in Billion US Dollars) | Payment of Redemption Money (in Billion US Dollars) | Payment of Tax Arrears (in Billion US Dollars) | Payment of Initial Evidence of Tax Violation (in Million US Dollars) |
|--|---|---|---|--|--|
| 276,053 | 77,459 | 11,044 | 8564 | 1397 | 131,479 |

3. Criticisms of the Tax Amnesty Program in Indonesia

The policy decision to provide tax amnesty was considered controversial in Indonesia, because the policy weakened the morale of taxpayers who had been obedient and paid their taxes. Critics also argued that a tax amnesty program would also, in the long term, affect the tax compliance of the Indonesian people, because they would not feel the need to pay taxes at all, and would pay taxes only when a tax amnesty program was held again. Waiting for a new tax amnesty program was more convenient, and experience would show Indonesian taxpayers that they would be forgiven through the program (Torgler et al. 2003). Furthermore, the decision to provide a tax amnesty to Indonesian taxpayers also illustrated that the Indonesian government had failed to encourage its people to be obedient and pay taxes in the first place (Torgler et al. 2003).

The Indonesian government's decision to provide a tax amnesty has led to criticism by many analysts and experts. Some NGOs have gone so far as to apply for a judicial review of the tax amnesty law to the constitutional court on the grounds that the tax amnesty legislation is not in line with the Indonesian constitution (The Jakarta Post 2016).

The policy decision to provide tax amnesty in Indonesia has not been effective, and it raises some new issues. In particular the tax amnesty program provides a potential means for taxpayers to commit money laundering. There are at least three important weak points in the implementation of the tax amnesty law in Indonesia. The first is the absence of a process of checking or tracking of the source of funds used by the taxpayer in the tax amnesty program; secondly, the tax amnesty law inhibits the development of the whistleblower system in Indonesia; and finally, the tax amnesty law hampers the work processes of other law enforcement agencies.

3.1. Absence of a Process for Checking or Tracking the Source of Funds

As explained above, under the tax amnesty law, it is stipulated that all taxpayers can use the tax amnesty program in Indonesia except for taxpayers currently under investigation in the judicial process or serving a criminal sentence for a criminal offence in the area of taxation ([Ministry of Finance of Republic of Indonesia 2016](#)). Based on this, taxpayers who are currently under investigation or are undergoing legal proceedings related to other criminal acts may follow the tax amnesty program of the government of Indonesia, thus providing opportunities for white-collar criminals, the perpetrators of corruption, drug smugglers and illegal business owners to participate in the tax amnesty and assets repatriation program. Furthermore, the tax amnesty law does not require the tax authorities to check or track the source of funds used by the taxpayer either to pay the fine or in terms of asset repatriation to Indonesia. The problem that arises here is the potential for money laundering in the policy of tax amnesty and repatriation of assets implemented by the Indonesian government, because white collar criminals, perpetrators of corruption and drug smugglers could take advantage of the tax amnesty and repatriation of assets to “whiten assets” belonging to them, and also have the potential to profit from the investment return on assets that are repatriated to Indonesia.

Through the tax amnesty policy, the chances of money laundering become very high in Indonesia. This is because the tax amnesty and asset repatriation encourage taxpayers to bring back money or assets that have not been declared; thus, incentivizing the deposit of funds in very large volumes at financial institutions in Indonesia, rendering the anti-money laundering regulations ineffective ([Financial Action Task Force 2012](#)). Furthermore, financial institutions in Indonesia do not apply the know-your-customer principle in processing tax amnesty funds and repatriation of assets paid by taxpayers because of the tax amnesty program and the repatriation of assets supported by the government. Moreover, as the repatriated funds and assets come from abroad, it makes it difficult for the financial institutions and law enforcement agencies to verify the legitimacy of the funds or assets.

3.2. Inhibition of the Development of the Whistleblower System in Indonesia

Currently, Indonesia is trying to adjust the rules and regulations in the field of anti-corruption in union with the United Nations Convention Against Corruption (“UNCAC”). One of the things that is currently being developed in Indonesia is the use of a whistleblower system; the usage of a whistleblower system has managed to uncover big corruption cases in several state institutions in Indonesia. The CEC, as a special institution in charge of investigating and prosecuting corruption cases in Indonesia, relies heavily on the use of the whistleblower system in uncovering corruption cases. The whistleblower system in Indonesia is regulated by the Law of the Republic of Indonesia No. 31 of 2014 on the Protection of Witnesses and Victims, the Supreme Court of the Republic of Indonesia Circular No. 4 of 2011 on Treatment for Whistleblowers in certain criminal offences and also in Article 37 of UNCAC.

Whistleblowers are one of the most useful sources of information both in the government and in the public sphere where they can serve as a monitoring system ([Apaza and Chang 2011](#)). Whistleblowing also serves to improve the transparency and accountability of a government regime ([Jos 1991](#)). Whistleblowing systems are very useful in criminal cases in which initial evidence is difficult to uncover or hard to obtain, such as corruption ([Carr and Lewis 2010](#)). Investigating corruption cases using regular inquiry methods takes a long time and has high costs ([Carr and Lewis 2010](#)). This also applies in Indonesia, where whistleblowing systems are very effective for use in opening corruption and money laundering cases. Even law enforcers in Indonesia, such as the CEC and INTRAC, have accommodated whistleblowing as one of the most reliable systems in uncovering big cases ([Berantas Korupsi 2013](#)).

The tax amnesty law has directly thwarted the development of the whistleblower system in Indonesia. As discussed above, through the tax amnesty and repatriation program in Indonesia, it is possible for criminals or illegal business owners to “whiten” their assets, because there is no obligation to check the source of funds for taxpayers following the tax amnesty program. Even though the tax

director general knows that the funds used in the tax amnesty program and the repatriation of assets are sourced from criminal or illegal business, they cannot report the taxpayer to the police, CEC or INTRAC. This is due to the tax amnesty law, which states that the ministers, deputy ministers, employees of the Ministry of Finance, employees of the Directorate General of Taxes and other parties involved in the implementation of the tax amnesty program are prohibited from divulging, disseminating and notifying data on taxpayers to other parties using the tax amnesty program and the repatriation of assets (Ministry of Finance of Republic of Indonesia 2016). If they leak or provide such data, they could be subject to a maximum imprisonment of five years (Ministry of Finance of Republic of Indonesia 2016).

The inhibition of the development of the whistleblower system in Indonesia has also made the transparency and accountability of the Indonesian government questionable. Moreover, law enforcement, which has relied heavily on the whistleblower system to elicit evidence from public officials or community members are also disrupted. This is because of the five-year criminal threat for data leakage related to tax amnesty participants. Yet, if the data leaked is, for example, data related to corruption cases or money laundering cases, it would be very important for law enforcement to return the state losses due to these actions, and become a benefit for Indonesia. If the whistleblower system can be used in the tax amnesty program, it will become a potential way to conduct an investigation of new corruption cases or illegal businesses that have not been detected by the government.

3.3. Hampering the Work Processes of Other Law Enforcement Agencies

A further criticism of Indonesia's tax amnesty law is that the law has directly hampered the performance of other law enforcement agencies. The tax amnesty act directly hampered ongoing investigations by the police, the attorney general, the CEC and INTRAC. This is because the tax amnesty law states that the data provided by the taxpayer to the tax directorate general is exclusively for the purposes of the tax amnesty program and the repatriation of assets, and cannot be used as the basis for investigation and prosecution (Ministry of Finance of Republic of Indonesia 2016). Furthermore, the tax amnesty law also goes against the principle of equality before the law, as outlined in Article 28D of the Indonesian Constitution. This is because of the "exclusive right" not being punished or prosecuted using the data contained in the tax amnesty program, granted by the Indonesian government to taxpayers who follow the tax amnesty program and the repatriation of assets (Sholihah 2016); whereas, tax amnesty as a public policy should consider fairness or equity for all people (Parle and Hirlinger 1986). The convenience provided in the tax amnesty policy should be limited to matters relating to taxation violations only. For example, some states in the United States that have developed tax amnesty policies that only give relief to tax amnesty participants who are not to be examined in civil or criminal cases (Mikesell 1986).

However, the relief provided by the Government of Indonesia, in this case, is excessive, and has the potential to generate inequality between the participants and non-participant in the tax amnesty. To join the tax amnesty program, taxpayers are required to submit their asset data to the tax officer; thus, if an illegal business owner or a perpetrator of corruption follows the tax amnesty program and submits their wealth data, they will automatically be protected by the state through the tax amnesty law. Although the case to be investigated by law enforcement is not a case of taxation, there may be sufficient evidence in the tax report to prosecute other criminal cases. The basic difference is that in the United States tax amnesty models, participants' protection from being investigated and punished under criminal or civil law is limited only to cases of tax violation; whereas in Indonesia, tax amnesty participants are protected from all investigations of any case involving them, as long as the investigation uses tax and financial data that has been given through the tax amnesty program. On the other hand, the tax and financial data of a person can be used as sufficient proof for beginning law enforcement proceedings in Indonesia to investigate white-collar crimes or international smuggling cases. The policy of granting such "exclusive rights" clearly creates inequality before the law and

sends the message that, through the tax amnesty policy, Indonesia has committed to protecting illegal business owners, drug traffickers, and perpetrators of corruption.

4. Conclusions

The tax amnesty law in Indonesia did not work effectively. The results targeted by the Indonesian government were not achieved. Furthermore, tax amnesty programs have adverse impacts on the tax compliance of Indonesians, as they may decide to rely on the next tax amnesty program. To prevent Indonesians dependency on tax amnesty programs, firm law enforcement following the conclusion of the tax amnesty program is needed. Indonesia should immediately impose a fine of 200 percent on taxpayers who are caught not reporting their assets or income in the tax amnesty program that ended on 31 March 2017. The Director General of Taxes should open the taxpayer data in domestic banks, and implement the AEOI, one of the OECD programs in Indonesia, to find the data on taxpayers' assets and income. With the implementation of AEOI, the Director General of Taxes can monitor the assets owned by the Indonesian taxpayers who are abroad. Both steps would be effective in encouraging taxpayer compliance in Indonesia after the end of the tax amnesty program.

The tax amnesty program in Indonesia also affected other sectors of law; primarily, the criminal law sector and the legal sector relating to white-collar crimes, such as corruption and money laundering. The adverse effects of the tax amnesty program are the result of not checking the sources of funds used for the unreported income which creates the potential for money laundering. The tax amnesty program also limits and undermines the development of the whistleblower system in Indonesia—one of the ways relied upon by law enforcement to reveal cases of white-collar crime. The tax amnesty program has also directly impeded the performance of law enforcement by not allowing the tax amnesty report to be used as evidence in an investigation. Furthermore, the tax amnesty law also provides a bad precedent for law enforcement in Indonesia because taxpayers using the tax amnesty facilities and asset repatriation gain immunity for their assets because law enforcement officers cannot access data on the assets.

It is clear that the tax amnesty program in Indonesia, including the ability to repatriate assets, benefited only a few parties. Unfortunately, the Indonesian government is very proud of its achievement. This is ironic, because the tax amnesty program is, in fact, a form of unconstitutional, unfair and tangible support for money laundering.

It is hoped that, in the future, there will be no more controversial policies such as the tax amnesty policy in Indonesia, because the policy creates injustice and complicates investigations in the field of corruption and money laundering. Therefore, for future development, it is appropriate for each country to take account of the risk of inter-law clashes in applying a policy, particularly if it can reduce the sense of justice and equality before the law.

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