

TAX AMNESTY IN LAW NUMBER 11 OF 2016 SEEN FROM THE PERSPECTIVE OF *FIQH AL-DARIBAH* (TAXATION IN ISLAM)

Sri Wigati, Moh. Sholihuddin, Saiful Jazil

UIN Sunan Ampel Surabaya | Jl. A. Yani No. 117 Surabaya |
sriwigati@uinsby.ac.id, msholihuddin@uinsby.c.id, saiful.jazil@uinsby.ac.id

Abstract: This research aims to elaborate on tax amnesty according to the provision set forth in Law Number 11 of 2016 seen from the perspective of *fiqh al-daribah* or Islamic taxation. This library research studied secondary data sourced from books, journals, or other references. All the data were analyzed based on a content analysis technique. The research results reveal that tax amnesty is a breakthrough established by the government to expedite economic growth and restructure the economy by transferring assets, considering that this measure can increase domestic liquidity, increase exchange rate, decrease interest rate, and increase investment. Tax amnesty is part of the taxation reform paving into more just taxation and a more valid, comprehensive, and integrated taxation database. The values obtained from this tax collection should contribute to national development. From the perspective of *fiqh al-daribah*, tax amnesty is within the study of *mu'amalah ijthādiyyah*, where the government is authorized to make laws concerning taxation and adheres to the principles of welfare and justice for citizens. The government is also responsible to decide the amounts of taxes to be paid by taxpayers. Ulama, however, suggested that there should not be any likelihood that taxation is perceived as a burden by people and that the collected taxes are intended for immoral conduct. Moreover, taxation is decided in deliberation. If all these requirements are not fulfilled, taxes collected may represent sinful conduct or injustice.

Keywords: tax amnesty, Islamic taxation, *fiqh al-daribah*.

Introduction

Tax amnesty was put in place in July 2016, and at the end of March 2017, tax amnesty expired. Tax amnesty complies with Law Number 11 of 2016 concerning Tax Amnesty. Some parties

consider tax amnesty successful globally, but it seems that the rich in Indonesia have not decided to participate in tax amnesty, considering that this program is optional, not an obligation. The Executive Director of the Center for Indonesia Taxation Analysis (CITA), Yustinus Prastowo, once reported that the participation in tax amnesty was still below one million participants, representing the condition where most people concerned did not participate in the program despite its essence. In terms of the construction of the law mentioned above, full obedience of the people toward taxation seems to be far-fetched,¹ contrary to the fact that tax amnesty is intended to improve the economy of the state.

The Indonesian Finance Minister asserted that tax amnesty should be viewed from a more universal perspective and should be understood that it is intended to boost the economy of society, not only is it intended to add to the revenue of the state. Tax amnesty is surely expected amidst weakening economic trends. Additional revenue is expected to run the economy of the state.² Dian Agustina, an economy observer once stated:

“Tax amnesty should give plenty of benefits to Indonesia. It reinforces the income reserve of the state through foreign exchange, creates investment and new job opportunities, boosts economic growth, widens the chance to receive more tax, and encourages the administration of taxation reform. This all can reinforce State Revenue and the development of the infrastructure across Indonesia, as congruent with the commitment of the government. With it, the disparities in income across regions could be reduced without adding the piles of debt the state has to pay. Therefore, we hope that tax amnesty 2016 could be the government policy that gains support from the House of

¹ Ilyas Istianur Praditya, “Jelang Penutupan, Masih Banyak Orang Kaya RI Tak Ikut Tax Amnesty,” *Liputan6.Com*, accessed June 7, 2021, <http://bisnis.liputan6.com/read/2901607/jelang-penutupan-masih-banyak-orang-kaya-ri-tak-ikut-tax-amnesty>.

² Finance Minister of Indonesia, “Melihat Amnesti dari Berbagai Sisi”, *Tabloid Media Keuangan*, Vol. XI / No. 103 / April 2016, 5.

Representatives (DPR) and all the people of Indonesia for a better and more prosperous Indonesia.”³

Apart from these economic objectives, tax amnesty, in terms of ideology, aims to boost nationalism among citizens. Tax amnesty represents the expectation of the government aiming to encourage all the people of the archipelago to uphold the vigor of nationalism, considering that a lot of Indonesians still invest their assets outside the state. Departing from this issue, tax amnesty is intended to encourage the people concerned to voluntarily participate in the program for repatriation. This step is deemed positive for the development of the state.⁴

From the above information, tax amnesty, first of all, comes as fresh air, recalling that the government could gain great amounts of investment coming from this program to back up the development of the nation, which leads to economic growth. Second, it helps grow the nationalism of the people to get involved in repatriation in a way that they may withdraw their assets from abroad to be invested in Indonesia.

Interestingly, Bambang Brojonegoro once said that those not reporting or incorrectly reporting their assets were subject to fines as much as 200 % of income tax and administrative sanctions imposed according to the law.⁵ Taxpayers must honestly report their assets and this report must be submitted independently or based on the *self-assessment principle*.⁶

Tax amnesty is more like a twin-blade knife. On one hand, it gives taxpayers a chance to report their assets, meaning that this amnesty erases the tax payable and no administrative or criminal sanctions are imposed as long as the taxpayers report the assets

³ Finance Minister of Indonesia, “Bicara Tax Amnesty”, *Tabloid Media Keuangan*, Vol. XI/No.103/April 2016, 17.

⁴ Finance Minister, “Melihat Amnesti dari Berbagai Sisi” ..., 5.

⁵ Feby Novalius, “Ini Hukuman Bagi Yang Melanggar Tax Amnesty,” *Okezone.Com*, accessed June 7, 2021, <https://economy.okezone.com/read/2016/06/29/20/1428662/ini-hukuman-bagi-yang-melanggar-tax-amnesty>.

⁶ Ardan Adhi Chandra, “Tidak Jujur Laporkan Harta Saat Ikut Tax Amnesty, Ini Akibatnya,” *Detik.Com*, accessed June 7, 2021, <https://finance.detik.com/berita-ekonomi-bisnis/d-3256753/tidak-jujur-laporkan-harta-saat-ikut-tax-amnesty-ini-akibatnya>.

appropriately and pay the penalty, commonly known as 'ransom' as outlined in the relevant law.⁷ On the other hand, sanctions are imposed on those failing to submit honest reports of their assets. In Indonesia tax has contributed fantastic amounts to the revenue of the state:

"Up to the end of May 2017, the realization of new tax receipt accounted for Rp 398.7 trillion, not reaching half of the target of 2017 State Revenue. Overall, tax revenue (including tax and customs) reached Rp 463.5 trillion or 30.9% of the target of 2017 which accounted for Rp1,498.9 trillion of the State Budget in May. Customs gave a huge contribution of Rp 45.7 trillion. In the previous year, the realization of state income coming from taxes was only Rp 1,283.6 trillion, or 83.4% of the target expected by the 2016 State Budget Amendment (APBN-P), reaching Rp 1,539.2 trillion. This figure covered the amounts received in tax amnesty that gave 82.72% of the total state revenue accounting for Rp 1,551.78 trillion".⁸

From all the figures mentioned above, tax amnesty has undoubtedly contributed significant amounts to the state. In the studies on Islamic laws, taxes are vital as they serve as revenue sources of the state for the needs of the whole people. In contemporary terminology, taxes are defined as levies people are forced to pay according to the Law. Taxes are submitted to the state that does not directly receive the benefits from the taxes. Taxes are paid according to the law in place for the welfare of the people and to cover goods and services production costs collectively⁹. Under the law concerned, the state can force its citizens to pay taxes as part of their obligation.

⁷ Law No. 11 of 2016 concerning Tax Amnesty.

⁸ Gora Kunjana, "Penerimaan Pajak 2017," *Investor.Id*, accessed June 7, 2020, <https://investor.id/archive/penerimaan-pajak-2017>.

⁹ Abdurrahman Navis, "Hukum Pajak Menurut Islam", <https://aswajanucenterjatim.com/hujjah-aswaja/hukum-pajak-menurut-islam/>, diakses 13 Juni 2021.

In Islam, taxes are known as *al-ḍarībah*, or *al-Muks*. It is also called *al-jizyah* (a payment given by scribes to the Muslim government), *al-kharaj* (land tax), *al-usyr* (taxes imposed on non-muslim traders trading in an Islamic region).¹⁰ *Al-ḍarībah*, however, is the term often referred to for tax explanation. In the history of Islam, taxes were paid by the people to the state. In addition, another compulsory giving that Muslims have to pay is *zakat* (almsgiving) compulsory for all Muslims according to *nas*s, while the taxes are paid according to the decree of the government. *Zakat* is distributed only to certain communities according to the guidelines set forth in *nas*s, while taxes are more general and their contribution is based on the *ijtiḥad* of the government.

The enforcement of *al-ḍarībah* is within the authority of *ulil amr* (the government) to withdraw levies from the citizens to be further given to *bait al-mal*. *Bait al-mal* is authorized to manage the money received as taxes for the welfare of the people and the salary of the staff, road construction, and many more. That is, *al-ḍarībah* is intended to be equally contributed for the benefits of all people, depending on how the government manages *al-ḍarībah*. Considering that taxes are absolutely under the authority of the government, taxes must take into account the justice of all. Without it, the benefits will not equally be distributed to all.

Thus, taxes must be collected in line with the interest, fair benefits, and justice for the people. Appropriately collected taxes will back up the development of the state and economic distribution for the sake of the members of the public. This fair objective should receive support from the people as taxpayers. However, lots of them have been reluctant to report their assets just to avoid tax imposition. Some even tend to hide their assets. Departing from this issue, the government is working on increasing the revenue from taxes by facilitating taxpayers with tax amnesty. This aims to encourage taxpayers to transparently report

¹⁰ Adiwarman Karim, *Sejarah Pemikiran Ekonomi Islam* (Jakarta: PT. Pustaka Pelajar, cet. 2, 2002), 46.

their assets, while, simultaneously, it also poses a threat to taxpayers with the sanctions set forth in the law.

This research employed documentation techniques to help with data collection. The research data were analyzed based on content analysis to delve into the concepts, opinions, theories, and principles from books, previous studies, and other writing forms published in media.¹¹

Tax Amnesty in Law Number 11 of 2016

In a study on politics, a state exists to maintain order and fulfill the welfare of the people. The fifth principle of *Pancasila* (the Five Principles) states “social justice for all the peoples of Indonesia”. The term social justice can be defined as one of the responsibilities that the state holds to ensure that people live prosperous lives. To meet the welfare of the people, the state should optimize the revenue received to back up national development. Without this effort, it is implausible for the state to assure the people’s welfare. Law Number 11 of 2016 states that bringing welfare to all the communities of Indonesia as part of national development requires huge amounts of revenue obtained from taxes as the primary sources.

In every state, taxes serve as the main sources of revenue and they are intended to back up national development. Thus, tax revenue is always expected to increase annually. Tax amnesty is intended to help raise the amounts of taxes collected. This program is expected to encourage taxpayers to honestly report their assets and pay taxes as governed by the law. tax amnesty is also expected to cover unpaid taxes or incomplete tax payments. In the time to come, taxpayers are no longer worried about paying taxes simply because their tax reputation is cleaned.¹² This pardon given to

¹¹ Jalaluddin Rakhmad, *Metode Penelitian Komunikasi* (Bandung: Remaja Rosda Karya, 1989), 122.

¹² Budi Mulyono, *Sunset Policy di Indonesia, Beberapa Manfaat dan Kelemahan dalam Implementasinya*, (Jakarta: Fisip UI, 2008), 4.

taxpayers is deemed to bring more amounts of revenue to the government.¹³

Indonesia implemented tax amnesty for the first time in 1964 when Sukarno ruled. In 1984 President Sukarno directly instructed the tax amnesty to be implemented.¹⁴ However, this implementation was not effective due to the lack of responses from taxpayers and unreliable tax administrative systems.¹⁵ Optimal tax revenue is not quite possible without effective tax administration.¹⁶ In 2008, the Sunset Policy concerning abolishment of administrative sanctions for taxpayers with their incomplete tax payment or errors in form fulfillment of tax reports on income tax was enforced. This regulation lasted for fourteen months per January 2008, contributing Rp 7.46 trillion in tax revenue.¹⁷ The 2008 Sunset Policy was deemed a success considering that the revenue received met the target set by State Budget.¹⁸

Tax amnesty as intended in Law Number 11 of 2016 concerning Tax Amnesty Article 1 Paragraph (1) is governed in the following statement: "tax payable should not be subject to tax administrative and criminal sanctions as long as the asset is revealed and the tax and the penalty are paid according to this Law".¹⁹ That is, tax amnesty gives pardons to taxpayers for their tax payable, and this program is intended to help raise tax revenue. Taxpayers are encouraged to honestly reveal their assets and income. Bambang Brojonegoro once argued:²⁰

¹³ Ohn Hutagaol, *Perpajakan: Isu-su Kontemporer*, (Yogyakarta: Graha Ilmu, 2007), 33.

¹⁴ Ranti Kusuma Arini, *Kebijakan Pengampunan Pajak di Indonesia*, (Jakarta: UI, 2008), 4.

¹⁵ Ragimun, "Analisis Implementasi Pengampunan Pajak (Tax Amnesty) Di Indonesia", *Jurnal Pembangunan Manusia*, Vol.5 No.3 Tahun 2011, 15.

¹⁶ Sony Devano dan Siti Kurnia Rahayu, *Perpajakan: Konsep, Teori, dan Isu* (Jakarta: Putra Grafika, 2006), 72.

¹⁷ Tintin Dewantini, "Manfaat Kebijakan Tax Amnesty Di Indonesia", *Makalah*, presented in Sekolah Tinggi Hukum Bandung, 2016, 5.

¹⁸ Wiwin Sri Rahyani, "Pengampunan Pajak (Tax Amnesty) Suatu Solusi Meningkatkan Penerimaan Pajak", *Jurnal RechtsVinding Online*, Media Pembinaan Hukum Nasional, (t.th), 2.

¹⁹ Law No. 11 of 2016 concerning Tax Amnesty.

²⁰ Finance Minister, "Meraih Penerimaan Melalui Pengampunan", *Tabloid Media Keuangan*, Vol. XI / No. 103 / April 2016, 23.

“Tax Amnesty should be viewed as a fundamental economic policy with a broad dimension, not only limited to fiscal and taxation. With tax amnesty, tax revenue is expected to rise in the State Budget this year and in the following years, and the State Budget is also expected to be more sustainable. The enforcement of tax amnesty this year and in the coming years is expected to back up the development and economy of the state and reduce poverty and fill gaps. Tax amnesty should be followed by repatriation of half or the whole assets invested abroad to help maintain the sustainability of the macro-economy of the state. We see this policy as a strategic measure since the benefits could be fundamentally perceived by the whole communities for the sake of the economy of the state”.

Therefore, tax revenue received by the state helps maintain justice for all citizens. Article 2 Paragraph (1) of Law Number 11 of 2016 states that tax amnesty is given according to the following principles: first, tax amnesty must take into account legal certainty to ensure that the citizens are obedient to taxes; second, there must be justice in terms of the rights and obligations of each party involved in tax amnesty; third, the virtue must be guaranteed in a way that the tax amnesty should give the benefits to the citizens; and fourth, tax amnesty as part of national revenue collection must be prioritized over other interests.²¹

Tax amnesty is mainly intended to, first, expedite and restructure the economy by transferring assets that could affect domestic liquidity, improve the exchange rate, reduce the interest rate, and increase investment value. Second, tax amnesty encourages tax reform into more just taxation and establishes a wider and more valid, and integrated taxation database. Third, increasing tax revenue to contribute the funds to national development.²² Bambang Brojonegoro (a former Finance Minister)

²¹ Elaboration on Law No 11 of 2016 concerning Tax Amnesty (Elaboration on State Gazette of the Republic of Indonesia 2016 Number 131), 4.

²² Pasal 2 Ayat 2 Undang-Undang Nomor 11 Tahun 2016 tentang Pengampunan Pajak.

mentioned the objectives of tax amnesty as mandated by the Law as follows:²³

1. Repatriation or withdrawing funds of Indonesians invested abroad

Joko Widodo once argued that this tax amnesty is addressed to the assets of Indonesians invested abroad, not restricted to the very rich, but medium and small businesses could join this program.²⁴ In short, this is mainly addressed to the assets invested abroad by Indonesians as taxpayers. Once again, this is not only restricted to those having big businesses, but it could also apply to small and medium businesses.

Tax amnesty seems to be the last resort of the government to increase tax revenue. It has not been easy for the government to withdraw the capital invested overseas by Indonesian taxpayers. On the other hand, the restriction in the law has created a barrier for the government to withdraw the funds invested illegally abroad.²⁵

2. National economic growth

The funds withdrawn from repatriation are intended to help improve the national economy which leads to expected national development. Underground economic activities are intended to avoid taxes, and this is commonly found in both developed and developing countries. The underground economy involves tax evasion where people choose not to report their assets on the annual tax report form (SPT) for income tax.

3. National Taxation Bases

²³ Muhammad Idris, "4 Tujuan Pemerintah Ingin Terapkan Tax Amnesty," *Finance.Detik.Com*, accessed June 7, 2021, <https://finance.detik.com/berita-ekonomi-bisnis/d-3186301/4-tujuan-pemerintah-ingin-terapkan-tax-amnesty>.

²⁴ Arie C. Meliala, "Sasaran Utama Amnesti Pajak, Orang Yang Simpan Uang Di Luar Negeri," *Pikiran-Rakyat.Com*, accessed June 7, 2021, <https://www.pikiran-rakyat.com/ekonomi/pr-01263120/sasaran-utama-amnesti-pajak-orang-yang-simpan-uang-di-luar-negeri-378713>.

²⁵ Muchlisin Riadi, "Pengertian, Tujuan Dan Jenis-Jenis Tax Amnesty," *Kajianpustaka.Com*, accessed June 8, 2021, <https://www.kajianpustaka.com/2016/09/pengertian-tujuan-dan-jenis-jenis-tax-amnesty.html>.

The assets reported in the request for tax amnesty can be useful for the upcoming taxation. This program should come along with taxation administration in the Directorate General of Taxation (DJP).

Improving taxation administration is considered urgent, considering that this administration has existed as an issue for taxpayers.

4. Tax Revenue

Tax amnesty will bring back the revenue to the state as penalty paid by taxpayers. This should be supported by the existence of regulatory provisions that allow for ease for taxpayers.

Tax amnesty is also beneficial for taxpayers since with this policy they are exempt from income tax, administrative and criminal sanctions, and inquiries by enquirers.²⁶ Tax amnesty also contributes to the addition of tax objects and subjects because the numbers of people not registered to tax amnesty are legion. The tax revenue paid by taxpayers increases due to the rising numbers of tax subjects and objects, and it is expected to keep increasing in the time to come.²⁷

Tax Amnesty from the perspective of *Fiqh al-ḍarībah*

1. The objectives and principles of Tax Amnesty

Principles serve as the fundamentals of thoughts and actions. Similarly, Law Number 11 of 2016 mentions the principles, followed by the elaboration on Law Number 11 of 2016 concerning Tax Amnesty (details on State Gazette of the Republic of Indonesia of 2016 Number 131), implying that tax amnesty is implemented based on legal certainty, justice, virtue, and national interests.

²⁶ Pebrianto Eko Wicaksono, "Begini Manfaat Tax Amnesty Untuk Orang Biasa," *Liputan6.Com*, accessed June 8, 2021, <https://www.liputan6.com/bisnis/read/2577301/begini-manfaat-tax-amnesty-untuk-orang-biasa>.

²⁷ Ibid.

With those principles linked to *fiqh al-ḍaribah*, virtue and justice share the same intention (*maqāṣid*), serving as the fundamentals for Law Number 11 of 2016 and *fiqh al-ḍaribah*.

In the context of Islamic Law, the collection of *zakat* and taxes truly guarantee justice for all. Failure to achieve justice represents the failure in the fulfillment of human rights. This failure is, thus, considered a violation of *syari'at* mandated by Allah swt.

In Islamic studies, both justice and virtue are vital and often discussed by Muslim scholars or commonly known as *ulama*. They agree that virtue is the finish line of the sharia of Islam in the world, meaning that Islam came to ensure that the people live a virtuous and just life that brings the *Maslahah* for human beings in the world and hereafter.²⁸ Ibn Qayyim once argued that the principle of *syari'at* was related to the virtue of the people in the world and hereafter. *Maslahah* must cover the sense of justice, affection, and wisdom. All that violate the values of justice are considered a trick, bad faith, and vanity. Anything that involves vanity cannot be dubbed *shariat*, considering that *shariat* from Allah is intended for the justice of His humans.²⁹

Justice is vital as stated in Al-Maidah verse 8:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا كُونُوا قَوِّمِينَ لِلّٰهِ شُهَدَاءَ بِالْقِسْطِ وَلَا يَحِبُّ إِلَيْكُمْ شُنَّانٌ قَوْمٌ عَلَىٰ ءَلَّا تَعْدِلُوا أَعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَىٰ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ

“O you who believe! Be upright to God, witnessing with justice, and let not the hatred of certain people prevent you from acting justly. Adhere to justice, for that is nearer to piety, and fear God. God is informed of what you do”. (QS. al-Maidah: 8).

²⁸ Abu Ishaq al-Shaṭībī, *al-Muwāfaqat fi Uṣul al-Shari'ah*, Juz II (Kairo: Muṣṭafā Muḥammad, t.t.), 4.

²⁹ Ibn Qayyim al-Jauziyyah, *l'Ilām al-Muwaqqi'īn 'an Rabb al-Alamīn*, Jilid III (Beirut: Dar al-Kutub al-Ilmiyah, 1991), 11.

The above verse implies that justice represents how pious a person is to God. People acting justly in life are those who are pious. Only the just people contribute to the prosperity of the people. The just people are those who can erase hunger and thirst of others. In other words, justice results from empathy for others.³⁰ Therefore, Yusuf Qardhawi set very strict requirements in tax collection to ensure that justice is achieved; first, taxes are collected if there are no sources of revenue from which funds can be collected; second, tax collection must consider the justice of the people; third, funds collected from taxes are for the people, not for other negative purposes aiming to fulfill immoral conduct and lust; fourth, tax collection is agreed by scholars that demonstrate the characteristic of *akhlak al-karimah*.³¹

To ensure that justice is maintained, taxes must not be enforced unjustly (*zalim*), or tax collection is deemed to be a sinful deed. Taxes must be collected based on the law of *syara'*. Some verses in Quran also allow this way of collecting taxes, specifically in at-Tawbah verse 29:

فَاتِلُوا الَّذِينَ لَا يُؤْمِنُونَ بِاللَّهِ وَلَا بِالْيَوْمِ الْآخِرِ وَلَا يُحَرِّمُونَ مَا حَرَّمَ اللَّهُ وَرَسُولُهُ وَلَا يَدِينُونَ دِينَ الْحَقِّ مِنَ الَّذِينَ أُوتُوا الْكِتَابَ حَتَّى يُعْطُوا الْجِزْيَةَ عَنْ يَدٍ وَهُمْ صَاغِرُونَ

“Fight those who do not believe in God, nor in the Last Day, nor forbid what God and His Messenger have forbidden, nor abide by the religion of truth—from among those who received the Scripture—until they pay *jizyah* (the due tax), willingly or unwillingly”. (QS. at-Tawbah : 29).

³⁰ M. Amien Rais, *Tauhid Sosial: Formula Menggempur Kesenjangan*, (Bandung: Mizan, 1998), 113.

³¹ Yusuf Qardhawi, *Fiqh al-Zakāh*, (Kairo: Maktabah Wahbah, cet. 25, 2006), vol. 1, 1081-1082.

The Hadith of the Prophet of Muhammad concerning tax (*jizyah*) was set forth in the following Hadith “the Hadith from Anas and Usman bin Abi Sulaiman ra., said that the Prophet of Muhammad commanded Khālid bin Wālid to head for *Ukaidir Dūmah*, and they accepted it and came with *jizyah*. Thus, he was guarded for safety and made a peace agreement regarding the *jizyah*”. (HR. Abū Dāwud).³²

An *Amir al-mu'minin*, Umar ibn Khattab ra., asserted that, in the history of Islam, countries that were invaded under the conquest such as Egypt, Iraq, Syria, Palestine, and Persia imposed taxes.³³ In the time of Umar ra., the governmental administration started to be managed in a more professional scope. First, *bait al-mal* was established to keep the state assets in a capital city. *Bait al-mal* was further established in the provincial capital.³⁴ Abu Hurairah ra., an *amir* from Bahrain in 16 *Hijriyah*, brought 500,000 dirham as *kharaj* to Medina. This amount was agreed upon in the deliberation between Umar ra. and the board of *shura* to be saved in *bait al-mal* as funds for war and not to be distributed.³⁵

2. The compliance of taxpayers with Tax Amnesty

The Law Number 11 of 2016 represents a governmental breakthrough intended to boost tax revenue for the state. Taxes serve as significant sources of state revenue in addition to other contributions coming from oil and gas. Taxation backs up ongoing national development, enhances the national economy, fills existing gaps, opens access to job opportunities, and tackles poverty.

³² Ibn al-Hajar al-Asqalani, *Bulūgh al-Marām*, Terj. Masdar Helmy (Bandung: Gema Risalah Press, 1997), 441.

³³ Nurcholish Madjid, *Islam Doktrin dan Peradaban* (Jakarta: Yayasan Paramadina, 1999), 401-403.

³⁴ Adiwarman Karim, *Sejarah Pemikiran Ekonomi Islam...*, 46.

³⁵ Ibid.

Tax amnesty, as intended in Law Number 11 of 2016 concerning Tax Amnesty, specifically Article 1 Paragraph (1), is mandatory, encouraging people to report their assets without worries of being subject to either administrative or criminal sanctions. On the other hand, tax amnesty opens a chance for people who invest their assets in other countries to bring them back to Indonesia.

Thus, in general, tax amnesty is more than just transferring the assets back to the home country, but it also grows the values of nationalism. Paying taxes should represent a sense of nationalism. That is, tax amnesty is not only related to the obligation to pay taxes, but it could also be more of a challenge for taxpayers.

Tax amnesty is a win-win solution set by the government for taxpayers, bringing profits and advantages for both the government and taxpayers. In other words, taxpayers can report their assets without having to worry about sanctions, while the government can benefit from the revenue from taxes to ensure that the national government is ongoing.

In a nutshell, tax amnesty aims to improve the welfare of the citizens and the sustainability of national development, but do articles in Law Number 11 of 2016 fulfill the requirements if it is seen from the perspective of Islam and how does it apply to taxpayers in case they disobey the rules outlined in Law Number 11 of 2016?

There are some matters linked to Islamic law that have to be taken into account to respond to the above questions:

- a. The government is authorized to make laws

Ulama have shared the same thoughts implying that Muslims are required to choose a leader that has the power to instruct followers. Being a leader means being responsible for the mandate delegated to settle all chaos for the people.

With his authority, a leader can make rules, regulations, and laws consisting of provisions regarding social and national life in terms of what must or must not be done according to the following requirements:³⁶

- 1) Taking into account deliberation (*wa shāwirhum fi al-amr*)

Shūra (deliberation) is taken into account in decision-making involving many individuals over a particular problem. *Shura* is the term first introduced by the Quran as in Surah As-Syura 38 and Ali Imran 159. *Shūrā* reduces the likelihood of nepotism and authoritarian tendencies.³⁷

- 2) Eliminating difficulties (*raf'u al-haraj*)

Regulations are made to ease, not to increase difficulties. Thus, any difficulties are to be eliminated.³⁸

- 3) Not exposing negative aspects (*sadh al-dharī'ah*)

Sadh al-dharī'ah aims to help people avoid what is declared haram, what is harmful and disastrous. In other words, all haram matters, which could also be defined by some as *mubah* (permitted), are fought against by setting barriers to them by eliminating the causes that lead to something haram and immoral.³⁹

- 4) Bringing about the virtue for the people (*jalb al-maṣāliḥ al-āmmah*)

Virtue is an objective in Islamic law (*maqāṣid al-sharī'ah*).⁴⁰ Understanding *maqāṣid al-sharī'ah* in enacting Islamic laws involves a full understanding of

³⁶ Muh. Sholihuddin, *Tafsir Agama Atas Negara* (Surabaya: IAIN Press, 2011), 78.

³⁷ Khaled Abou El Fadl, *Islam dan Tantangan Demokrasi*, Terj. Ghifna Ayu Rahmani dan Ruslani (Jakarta: Ufuk Press, 2004), 11.

³⁸ Ahsin Sakho Muhammad, "Salah Satu Prinsip Syari'ah Islam Adalah *Raf'u Al-Haraj*," *iiq.ac.id*, accessed June 14, 2021, <https://iiq.ac.id/artikel/details/500/KH-Dr-Ahsin-Sakho-Muhammad-Salah-Satu-Prinsip-Syari'ah-Islam-adalah-Raf'u-al-Haraj>.

³⁹ Ibid.

⁴⁰ Masdar F. Mas'udi, "Meletakkan Kembali Maslahat Sebagai Acuan Syari'ah", *Jurnal Ilmu dan Kebudayaan Ulumul Qur'an*, No.3, Vol. VI Tahun 1995, 97.

what is allowed and forbidden by Allah.⁴¹ *Maqāṣid al-sharī'ah* refers to the virtue in everything done; it is considered as benefits, goodness, or avoidance of harmful conduct.⁴²

5) Assuring justice (*tahqīq al-'adalah*)

Justice is a vital principle in Islam, or it is also called virtue. Justice serves as a bridge between law and all people of different social statuses, and it is repeatedly mentioned in Surahal-Nahl 90, al-Shura 15, al-Maidah 8, al-Nisā' 58, and in further surahs.

6) Complying with the principle and the vigor of *naṣṣ qat'i*

Naṣṣ qat'i is a *naṣṣ* clearly defining the provision of the law of a matter. *Naṣṣ* of this category should not be responded to with *ijtihād*. Matters outlined in *naṣṣ qat'i* should be settled according to the law as intended in the *naṣṣ*. However, if there are no provisions enacted, new legal provisions can be made as long as they do not contravene *naṣṣ qat'i*.

The above represents absolute requirements that must exist before the enforcement of the laws in society. In other words, in-depth studies conducted by the government are necessary before laws are made to find out the impacts that may arise following the implementation of the law concerned. These studies possibly involve stakeholders from whom recommendations are obtained by the government. The stakeholders may consist of academicians, ulama, or the members of the public. If all these requirements are met, people must comply with the rules. This is in line with

⁴¹ 'Abd al-Malik ibn Yusuf Abu al-Ma'ali al-Juwaini, *al-Burhan fi Usul al-Fiqh*, Juz I (Kairo: Dar al-Ansar, 1400 H.), 295.

⁴² Abbas Arfan, *Geneologi Pluralitas Mazhab dalam Hukum Islam* (Malang: UIN-Malang Pres, 2008), 82.

the principle stating that “judicial decisions (government, authorities) are binding and eliminate opinion gaps”.⁴³

b. Compliance with the government is compulsory

Ulama agree that compliance with a leader is a must. The government as the leader of the state plays an essential role in the existence of a state, and, thus, compliance is not an option. Such compliance with a leader is mentioned in an-Nisā’ verse 59:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ ۖ فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ۚ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا

“O you who believe! Obey God and obey the Messenger and those in authority among you. And if you dispute over anything, refer it to God and the Messenger, if you believe in God and the Last Day. That is best, and a most excellent determination” (QS. al-Nisā’ : 59).

The above verse highlights the essence of obedience to *ulil amr*, the government. However, this obedience is applicable in the definition of “*mubāḥ*” since this matter is not regulated by Allah and His Messenger:

1. *Mubāḥ bi al-juz’i wa al-kulli* refers to an action that may be taken or not by an individual or a group, such as sales and purchases and transaction records. In this case, the person or a group can do these activities or they can choose to leave them.
2. *Mubāḥ bi al-juz’i la al-kulli* refers to activities a person as an individual may do or leave, but this does not apply to all, such as marriage. An individual can decide to get married or they can choose not to. However, this does not apply to all people, and, thus, to some, marriage is “compulsory”.⁴⁴

⁴³ Ibrahim Hosen, “Fiqh Siyashah dalam Tradisi Pemikiran Islam Klasik”, *Jurnal Ilmu dan Kebudayaan Ulumul Quran*, No. 2, Vol. IV, Tahun 1994, 61-62.

⁴⁴ Ibid.

Taxation can be referred to as *mubah* in this context, since the provisions regarding this matter are left in the hands of the government, meaning that the government sees tax collection as giving benefits to people as a whole. Thus, the status of the tax withdrawn from *mubah* shifts to compulsory, and it must be obeyed. This matter is in line with the principle of *fiqhiyyah*:

تصرف الامام على الرئية منوط بالمصلحة

“The policy made by a leader (the government) for the people must be congruent with the principle of virtue”.⁴⁵

The above principle implies that the provisions in the law concerned can be enforced by the government as long as it benefits people, and it is compulsory for the people to comply with it, they must not stand against this policy.

3. Sanctions imposed on taxpayers not joining Tax Amnesty

Law Number 11 of 2016 asserts that people registered as taxpayers are eligible for tax amnesty. Article 1 Paragraph (2) further explains that taxpayers refer to individuals or entities that hold rights and responsibilities in taxation according to the provisions of the legislation concerning taxation. Article 3 Paragraph (1) states “every taxpayer has the right to tax amnesty”. Law Number 11 of 2016 also mentions that “the taxpayers entitled to tax amnesty are those required to report their annual notification of income tax.

Furthermore, Article 11 Paragraph (5) letter a and b asserts that taxpayers with written statements are subject to tax amnesty consisting of (a) tax payable write-off prior to the issuance of tax provision, exemption from administrative and criminal sanctions, obligations of taxation within tax

⁴⁵ Ali Ahmad al-Nadwi, *al-Qawā'id al-Fiqhiyyah*, Cet. V (Beirut: Dar al-Qalam, 2000), 124.

period, part of the tax year, tax year, to the end of the last tax year; (b) exemption from administrative sanctions including interest, fines, for an obligation of taxation within tax period, part of the tax year, tax year, to the end of the last tax year.

The elaboration above indicates that the existence of Law Number 11 of 2016 implies benefits for both the taxpayers and the state, considering that the taxpayers are exempt from both administrative and criminal sanctions. For the state, the national development will be more sustainable with the help of the revenue coming from taxes.

In the context of Islam, the regulatory provisions set by the government in either laws or other provisions are binding for people, and they also apply to taxation in Indonesia. As a consequence, the government's rules and regulations that impose sanctions are deemed to be valid according to *syar'I* and they hold the quality of coercion for violators. Similarly, the amnesty given by the government to taxpayers following the violation of taxation is also valid from the perspective of *syara'*.

Studies on Islamic laws imply that Islamic studies cover two aspects, namely the matters regarding *ubūdiyyah* (observance) and matters related to *muamalah* (social interaction). Ulama have agreed that *ijtihad* does not apply when it comes to observance. Muslims as the objects of teaching comply with the regulation called *naṣṣ qat'i* in either the Quran or Hadiths. What the Prophet Muhammad did sets examples, and these examples must not be reduced or improvised, except for the matters debated among *furū'* (ulama). This provision is obvious in the case of those deserving almsgiving as clearly asserted by the Quran in at-Tawbah verse 60:

إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَامِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبُهُمْ وَفِي الرِّقَابِ وَالْغَارِمِينَ وَفِي سَبِيلِ
اللَّهِ وَابْنِ السَّبِيلِ ۖ فَرِيضَةً مِّنَ اللَّهِ ۚ وَاللَّهُ عَلِيمٌ حَكِيمٌ

“Charities are for the poor, and the destitute, and those who administer them, and for reconciling hearts, and for freeing slaves, and for those in debt, and in the path of God, and for the traveler in need—an obligation from God. God is all Knowing, Most Wise”. (QS. at-Tawbah: 60).

In terms of *muamalah* (social interaction), ulama have agreed that *ijtihad* applies. This is often understandable, recalling that life changes in line with current development. When these changes are narrowly understood, it will lead to the sense that makes the religion look as if it did not tolerate human life.

Similarly, the study of taxation is included in the scope of *muamalah*, and its provisions adjust to the current development. In the past, taxes were collected mostly from non-Muslim people, but taxpayers now involve Moslems. *Jizyah* was paid by non-Muslims as a redress of protection of either asset, observance, and exemption from a war in Islamic countries. In the past, Muslims were exempt from paying taxes because they gave alms. Since it was not compulsory for the non-Moslems to give alms, taxes apply to them. The amount of taxes paid is in the authority of the government to decide and the government is responsible for the mandate representing the members of the public.

In the time of Umar ibn Khattab ra, Moslem soldiers released agricultural lands in Greater Syria, including those that sat in the regions of the east coast of the Mediterranean Sea, Iraq, Persia, and Egypt to be further distributed to the troops.⁴⁶ Furthermore, Umar ibn Khattab ra once set a provision that put these lands under the control of the state and they were not distributed to the people, but the cultivation of these lands was still the responsibility of the

⁴⁶ Nurcholish Madjid, *Islam Doktrin dan Peradaban* (Jakarta: Yayasan Paramadina, 1999), 401-403.

former land owners. They were required to pay *kharaj* (taxes) for these lands and this revenue was further distributed to all Moslems after they were deducted to pay the troops positioned in Basra and Kufa in Iraq and some other independent countries.⁴⁷ *Ushr* (one-tenth) is part of taxes deducted from the trading costs, including exporting and importing activities. *Usher* took 10% from Muslim traders in a foreign country. This tax collection was based on a letter sent by the Governor of Basra, Abu Musa al-Asy'ari to Umar ibn Khattab, requiring all Moslem traders trading their goods and services in non-Moslem countries to pay a 10% tax.⁴⁸

The aforementioned details indicate that taxes have been developing along with the growth of human civilization. The provisions regarding this *ijtihad* made by the government have been changing, adjusting to the current conditions. These provisions must take into account the virtue and justice of the people.

Conclusion

Law Number 11 of 2016 allows taxpayers and the state to perceive the benefits. Taxpayers participating in tax amnesty are exempt from any administrative and criminal sanctions. This is good since it erases their doubt to report their assets. For the state, the tax revenue following this tax amnesty program will help contribute to the national development that surely requires huge amounts of funds.

From the perspective of *fiqh al-daribah*, tax amnesty is within the studies of *mu'āmalah ijtiḥādiyyah*, implying that the government holds the authority to make legislation concerning taxes without disregarding the virtue and justice of the people. The government is also authorized to determine the amounts to be paid as taxes by the people. However, ulama suggested that taxes should not give

⁴⁷ Ibid.

⁴⁸ Gusfahmi, *Pajak Menurut Syariah...*, 131.

burdens to the payers, they should not be for immoral conduct, and it should take deliberation to agree with the amounts paid. If all these requirements were not met, taxes would be unjust to implement and the implementation would be deemed to be sinful conduct.

References

- Arfan, Abbas. *Geneologi Pluralitas Mazhab dalam Hukum Islam*. Malang: UIN-Malang Pres, 2008.
- Arini, Ranti Kusuma. *Kebijakan Pengampunan Pajak di Indonesia*. Jakarta: UI, 2008.
- Asqalani (al), Ibn al-Hajar. *Bulūgh al-Marām*, Terj. Masdar Helmy. Bandung: Gema Risalah Press, 1997.
- Chandra, Ardan Adhi. "Tidak Jujur Laporkan Harta Saat Ikut Tax Amnesty, Ini Akibatnya," *Detik.Com*, accessed June 7, 2021, <https://finance.detik.com/berita-ekonomi-bisnis/d-3256753/tidak-jujur-laporkanharta-saat-ikut-tax-amnesty-ini-akibatnya>.
- Devano, Sony dan Siti Kurnia Rahayu. *Perpajakan: Konsep, Teori, dan Isu*. Jakarta: Putra Grafika, 2006.
- Dewantini, Tintin. "Manfaat Kebijakan Tax Amnesty Di Indonesia". *Makalah*, disampaikan di Sekolah Tinggi Hukum Bandung, 2016.
- Gusfahmi. *Pajak Menurut Syariah*. Jakarta: PT RajaGrafindo Persada, 2011.
- Hosen, Ibrahim. "Fiqh Siyasah dalam Tradisi Pemikiran Islam Klasik", *Jurnal Ilmu dan Kebudayaan Uloomul Quran*. No. 2, Vol. IV, Tahun 1994.
- Hutagaol, Ohn. *Perpajakan: Isu-su Kontemporer*. Yogyakarta: Graha Ilmu, 2007.
- Idris, Muhammad. "4 Tujuan Pemerintah Ingin Terapkan Tax Amnesty," *Finance.Detik.Com*, accessed June 7, 2021, <https://finance.detik.com/berita-ekonomi-bisnis/d-3186301/4-tujuan-pemerintah-inginterapkan-tax-amnesty>.
- Jauziyyah (al), Ibn Qayyīm. *I'lā m al-Muwaqqi'īn 'an Rabb al-'Alamīn, Jilid III*. Beirut: Dār al-Kutub al-'Ilmiyah, 1991.

- Juwainī (al), ‘Abd al-Mālik ibn Yūsuf Abū al-Ma’ālī. *al-Burhān fi Uṣūl al-Fiqh*, Juz I. Kairo: Dār al-Anṣār, 1400 H.
- Karim, Adiwarman. *Sejarah Pemikiran Ekonomi Islam*. Jakarta: PT. Pustaka Pelajar, cet.2, 2002.
- Kementerian Keuangan RI, “Bicara Tax Amnesty”, *Tabloid Media Keuangan*, Vol. XI / No. 103 / April 2016.
- , “Melihat Amnesti dari Berbagai Sisi”, *Tabloid Media Keuangan*, Vol. XI /No. 103 / April 2016.
- , “Meraih Penerimaan Melalui Pengampunan”, *Tabloid Media Keuangan*, Vol. XI / No. 103 / April 2016.
- Kunjana, Gora. “Penerimaan Pajak 2017,” *Investor.Id*, accessed June 7, 2020, <https://investor.id/archive/penerimaan-pajak-2017>.
- Madjid, Nurcholish. *Islam Doktrin dan Peradaban*. Jakarta: Yayasan Paramadina, 1999.
- Mas’udi, Masdar F. “Meletakkan Kembali Maslahat Sebagai Acuan Syari’ah”, *Jurnal Ilmu dan Kebudayaan Ulumul Qur’an*, No.3, Vol. VI Tahun 1995.
- Meliala, Arie C. “Sasaran Utama Amnesti Pajak, Orang Yang Simpan Uang Di Luar Negeri,” *PikiranRakyat.Com*, accessed June 7, 2021, <https://www.pikiran-rakyat.com/ekonomi/pr-01263120/sasaranutama-amnesti-pajak-orang-yang-simpan-uang-di-luar-negeri-378713>.
- Muhammad, Ahsin Sakho. “Salah Satu Prinsip Syari’ah Islam Adalah Raf’u Al-Haraj,” *iiq.ac.id*, accessed June 14, 2021, <https://iiq.ac.id/artikel/details/500/KH-Dr-Ahsin-Sakho-Muhammad-Salah-SatuPrinsip-Syari’ah-Islam-adalah-Raf’u-al-Haraj>.
- Mulyono, Budi. *Sunset Policy di Indonesia, Beberapa Manfaat dan Kelemahan dalam Implementasinya*. Jakarta: Fisip UI, 2008.
- Navis, Abdurrahman. “Hukum Pajak Menurut Islam”. <https://aswajanucenterjatim.com/hujjah-aswaja/hukum-pajak-menurut-islam/>, diakses 25 Maret 2017.
- Novalius, Feby. “Ini Hukuman Bagi Yang Melanggar Tax Amnesty,” *Okezone.Com*, accessed June 7, 2021,

- <https://economy.okezone.com/read/2016/06/29/20/1428662/ini-hukuman-bagi-yang-melanggartax-amnesty>.
- Penjelasan Atas Undang-Undang Republik Indonesia Nomor 11 Tahun 2016 tentang Pengampunan Pajak (Penjelasan atas Lembaran Negara Republik Indonesia Tahun 2016 Nomor 131).
- Praditya, Ilyas Istianur. "Jelang Penutupan, Masih Banyak Orang Kaya RI Tak Ikut Tax Amnesty," *Liputan6.Com*, accessed June 7, 2021, <http://bisnis.liputan6.com/read/2901607/jelang-penutupan-masihbanyak-orang-kaya-ri-tak-ikut-tax-amnesty>.
- Qardhawi, Yūsuf. *Fiqh al-Zakāh*. Kairo: Maktabah Wahbah, cet. 25, 2006.
- Ragimun. "Analisis Implementasi Pengampunan Pajak (Tax Amnesty) di Indonesia". *Jurnal Pembangunan Manusia*, Vol. 5 No. 3 Tahun 2011.
- Rahyani, Wiwin Sri, "Pengampunan Pajak (Tax Amnesty) Suatu Solusi Meningkatkan Penerimaan Pajak", *Jurnal RechtsVinding Online*. Media Pembinaan Hukum Nasional, (t.th).
- Rais, M. Amien. *Tauhid Sosial: Formula Menggempur Kesenjangan*. Bandung: Mizan, 1998..
- Rakhmad, Jalaluddin. *Metode Penelitian Komunikasi*. Bandung: Remaja Rosda Karya, 1989.
- Riadi, Muchlisin. "Pengertian, Tujuan Dan Jenis-Jenis Tax Amnesty," *Kajianpustaka.Com*, accessed June 8, 2021, <https://www.kajianpustaka.com/2016/09/pengertian-tujuan-dan-jenis-jenis-taxamnesty.html>.
- Shatībī (al), Abū Ishāq. *al-Muwāfaqāt fi Uṣūl al-Sharī'ah*, Jūz II. Kairo: Mustafā Muḥammad, t.t.
- Sholihuddin, Muh. *Tafsir Agama Atas Negara*. Surabaya: IAIN Press, 2011.
- Undang-undang No. 11 Tahun 2016 tentang Pengampunan Pajak.
- Wicaksono, Pebrianto Eko. "Begini Manfaat Tax Amnesty Untuk Orang Biasa," *Liputan6.Com*, accessed June 8, 2021, <https://www.liputan6.com/bisnis/read/2577301/begini-Manfaat-tax-amnesty-untuk-orangbiasa>.