

**CORPORATE TAXATION AND BUSINESS LEGITIMACY IN INDONESIA**Yudha Pramana<sup>1</sup>, Anis W. Hermawan<sup>2</sup><sup>1</sup> Faculty of Economics, Universitas Udayana, Denpasar,, Indonesia. E-mail: [yupramana@gmail.com](mailto:yupramana@gmail.com)<sup>2</sup> Faculty of Law, Open University, Jakarta, Indonesia. E-mail: [aniswahyu524@gmail.com](mailto:aniswahyu524@gmail.com)

Article	Abstract
<p><b>Keywords:</b> business legitimacy, corporate taxation, tax avoidance.</p> <p><b>History of Article</b> Received: April 1, 2022; Reviewed: April 11, 2022; Accepted: April 13, 2022; Published: April 14, 2022</p>	<p>Empirical and juridical gaps related to business legitimacy can cause tax avoidance efforts by certain corporate taxpayers. The observed gap can be seen from the compliance ratio of the submission of the Annual Notification Letter of Corporate Income Tax, which has not been satisfactory. In contrast, the juridical gap can be seen in the loopholes in the rules that are still used rate tax avoidance. So, it needs normative juridical studies to produce the concept of business legitimacy in tackling corporate tax avoidance in Indonesia. This study concluded that consistent business legitimacy in the form of efficiency principles and tax principles that do not distort investment in tax laws and regulations would lead corporate tax-payers to avoid tax avoidance in Indonesia.</p>

**1. INTRODUCTION**

The vital role of Corporate Taxpayers in Indonesia on tax revenues has not been able to run optimally because there is still tax avoidance related to the misuse of certain legal entities or corporations or companies, both on an international and national scale<sup>1</sup>.

This is based on empirical and juridical gaps related to business legitimacy in Indonesia. The observed gap, among others, can be seen from the compliance ratio of the annual notification letter (SPT) of corporate income tax during 2016-2020 is still always below 70%, which each year is 58.15%, 65.14%, 58.86%, 65.47%, and 60.16%<sup>2</sup>. While the juridical gap in business legitimacy, among others, can be seen from the structure of tax subjects in Indonesia which include Domestic and Foreign Tax Subjects as stipulated in Article 2 of Law No. 7 of 1983 concerning Income Tax as amended several times recently by Law No. 7 of 2021 concerning Harmonization of Tax Regulations (PPh Law). This structure can still cause problems in the criminal liability of WP Agency, such as a legal entity or company can take the form of a group that forms several other companies. As

<sup>1</sup> Henry D. P. Sinaga, "The Criminal Liability of Corporate Taxpayer in the Perspective of Tax Law Reform in Indonesia", *Mimbar Hukum*, Vol. 29, No. 3. p. 544, pp. 542-557, DOI: <http://doi.org/10.22146/jmh.17638>. 2017.

<sup>2</sup> Direktorat Jenderal Pajak, "Laporan Tahunan 2020", accessed on March 28, 2022, <https://www.pajak.go.id/sites/default/files/2021-10/Laporan%20Tahunan%20DJP%202020%20-%20Bahasa.pdf>.

usual, businesses that have allowed the formation of corporate groups with several subsidiaries turned out to open loopholes in tax rules for purposes such as hiding certain assets through the spread to subsidiaries, reducing tax payments through subsidiaries in tax havens countries, the obligation to make consolidated financial statements in some countries, easier management because there is no need to buy fixed assets but simply by doing so. Stock transactions, for the benefit of investment expansion and business control, and debt financing flexibility<sup>3</sup>.

Facts that the corporate taxpayer has empirical and juridical gaps related to business legitimacy that have the potential to cause tax avoidance efforts against certain corporate taxpayers is essential to deal with, considering that the legal regime can seek countermeasures and recovered/losses to victims (in this case it is the state) as well as in deciding the level of sanctions imposed on corporate taxpayers who commit violations in tax law in the Indonesia country<sup>4</sup>. It is necessary to answer one formulation of existing problems, namely those who question how corporate taxation and business legitimacy in tackling tax tackle Indonesia.

## **2. METHODS**

In producing business concepts that can minimize tax avoidance that has the potential to be done by corporate taxpayers in Indonesia, this study uses normative juridical methods. Normative law studies or doctrinal legal studies study laws conceptualized and developed based on specific legal doctrines<sup>5</sup> adequate to fi This study uses normative juridical methods to produce business concepts that can minimize tax avoidance that has the potential to be done by corporate taxpayers in Indonesiating problems, the use of normative juridical methods will focus this study on examining the application of rules or norms in positive law; the next one will be analyzed and discussed comprehensively to answer the formulation of the problem and produce a prescription for implementing or enforcing the rules of law in society, or terms of the politics of legal renewal<sup>6</sup>.

## **3. ANALYSIS AND DISCUSSION**

### **a. Overview of Corporate Taxpayers in Indonesia**

Law No. 6 of 1983 concerning General Provisions and Procedures of Taxation as amended several times last by Law No. 7 of 2021 concerning Harmonization of Tax Regulations (UU KUP) has formulated the fulfillment of subjective and objective require-

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<sup>3</sup> Ian Ramsay dan Geof Stapledon, *Corporate Groups in Australia*, accessed on March 30, 2022, [http://law.unimelb.edu.au/\\_data/assets/pdf\\_file/0017/1710260/150-CorporateGroupsResearchReport1.pdf](http://law.unimelb.edu.au/_data/assets/pdf_file/0017/1710260/150-CorporateGroupsResearchReport1.pdf).

<sup>4</sup> Henry Dianto Pardamean Sinaga, "Pertanggungjawaban Pengganti dalam Hukum Pajak di Indonesia," *Masalah-Masalah Hukum* 46, No. 3 (Juli): 206-207. 2017.

<sup>5</sup> Soetandyo Wignjosoebroto, *Hukum Paradigma, Metode dan Dinamika Masalahnya*, Elsam & Huma, Jakarta. 2002.

<sup>6</sup> Michael Salter dan Julie Mason, *Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research*, Harlow: Pearson Education Limited 2007.

ments that must become a Taxpayer and obtain a Taxpayer Identification Number (NPWP). After receiving the NPWP, all taxpayers must fill out, sign, and submit a Notification Letter (SPT). Furthermore, Article 4 of the KUP Law stipulates that Corporate Taxpayers are obliged to fill out and report tax returns correctly, ultimately, clearly, and signed by the board of directors or a power of attorney with an extraordinary power of attorney. Another requirement to become a corporate taxpayer is Law No. 40 of 2007 concerning Limited Liability Companies (UU PT). One of them stipulates that a Limited Liability Company is a legal entity that must be established by two or more people who can act in lawful traffic as legal subjects and have wealth separated from the personal wealth of its administrators<sup>7</sup>.

Then, Article 32 paragraph (1) and paragraph (2) of the Kup Law have determined that the representatives of taxpayers who are personally responsible and entity for paying taxes owed by the Corporate Taxpayer are the administrators. Those included in the understanding of the management are a person who has the authority to determine wisdom and make decisions to carry out company activities, for example, authorized to sign contracts with third parties, sign checks, and so on, even if the person is not listed by name in the composition of the board in the establishment or change certificate (also applies to commissioners and majority or controlling shareholders). Furthermore, the explanation of Article 32 paragraph (2) of the KUP Law explains that tax authorities can consider the exclusion of liability if the WP representative can prove and ensure that in his position, according to fairness and decency, it is impossible to be held accountable.

## **b. Business Legitimacy and Its Relationship To Corporate Taxation**

Legitimacy, which is viewed as a general perception that an entity acts by what is desired, appropriate, or appropriate in some socially constructed system of norms, values, beliefs, and definitions, suggests that the concept of legitimacy is still an implicit social contract in which businesses are responsible for the expectations or demands of society<sup>8</sup>.

But business legitimacy can take different forms, depending on society's historical, cultural, and economic situation<sup>9</sup>. One of the different views related to business legitimacy is the view of corporate taxation. Many believe that certain corporate taxpayers make tax avoidance efforts because of the assumption that corporate (income) taxation is a distortion tax because income from the corporate sector is taxed twice, first at the corporate level. Secondly, at the individual level, the payment of the body that has been taxed is still taxed when the distribution of dividends to individual shareholders<sup>10</sup>. Capi-

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<sup>7</sup> Henry D. P. Sinaga, *Ibid.*

<sup>8</sup> Andrei Kuznetsov & Olga Kuznetsova (2012) Business Legitimacy and the Margins of Corporate Social Responsibility in the Russian Context, *International Studies of Management & Organization*, 42:3, p. 36, pp. 35-48 <http://dx.doi.org/10.2753/IMO0020-8825420302>

<sup>9</sup> *Loc.cit.*

<sup>10</sup> Cesaire A. Meh, Risiko bisnis, kendala kredit, dan pajak perusahaan, *Journal of Economic Dynamics & Control*, Vol. 32, pp. 2971-3008. 2008.

tal and business income from the non-corporate sector or private taxpayers is only taxed at the personal level<sup>11</sup>.

### **c. Corporate Taxation and Business Legitimacy in Addressing Tax Avoidance in Indonesia**

Previous analysis and discussion have shown that financial constraints and business risks are vital in understanding the impact of corporate taxation. Meh's findings suggest that allowing financial rules and business risks can fundamentally change corpo-rate tax implications<sup>12</sup>. However, it must be realized that investment is significant for a country, especially Indonesia.

Investment in the real sector itself must be in the form of a business entity, precisely a corporation. While investors investing in the corporate structure are for two answers that have been widely accepted to date. The first is related to efficiency and the statement that corporate taxation works as a withholding tax that serves as a backstop to the personal tax. While the second is the tax revenue argument, where the principle of corporate tax remains without distorting investment decisions<sup>13</sup>. When tax principles that do not distort investment are disrupted, corporate tax avoidance activities will occur through building alternative perspectives on the motivations and effects of tax avoidance, as Desai and Dharmapala's studies have investigated corporate tax avoidance as an extension of other tax-favored activities. Such as the use of debt and tax havens countries as tax shelters through interest mode and capital structure<sup>14</sup>.

Theoretically, the interaction of tax avoidance activities inherent in corporations cannot be separated from agency problems because unclear tax avoidance activities can create a shield for managerial opportunism. This perspective has many studies, where the conclusion obtained is "corporate tax avoidance that occurs due to the relationship between corporate governance arrangements and the company's response to its taxation turns out to have the potential to incur costs that may be greater than the benefits for shareholders, considering that the transfer opportunities provided by corporate tax avoidance will only be a tool of managerial opportunism. The brief picture is that direct diversion and subtle forms of profit manipulation can only be facilitated when engaging managerially in tax avoidance activities<sup>15</sup>."

It is necessary to reconsider the relationship between the double taxation of an incorporated company and limited liability with establishing agency relations. The role of corporate taxation only arises if there is asymmetric information in the capital market. In this case, the imposition of corporate tax should be one of the obligations that can improve the welfare of employees and companies to avoid asymmetric information and managerial opportunism. Consistency with the agency's perspective on corporate tax

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<sup>11</sup> Loc.cit.

<sup>12</sup> Cesaire A. Meh, Ibid.

<sup>13</sup> Johannes Becker dan Clemens Fuest, Why is there Corporate Taxation? The Role of Limited Liability Revisited, *Journal of Economics*, Vol. 92, No. 1, pp. 1–10, DOI 10.1007/s00712-006-0240-4. 2007.

<sup>14</sup> Mihir A. Desai and Dharmika Dharmapala, Corporate Tax Avoidance and Firm Value, *The Review of Economics and Statistics*, Vol. 91, No. 3, pp. 537-546, p. 538. 2009.

<sup>15</sup> Loc.cit.

avoidance will strengthen business legitimacy through governance mediation. Better quality corporate governance will lead companies to avoid the effects of tax avoidance that can be greater than the value of taxes avoided<sup>16</sup>.

#### 4. CONCLUSION

Based on analysis and discussion, it was concluded that the government must strengthen business legitimacy consistently in its laws and regulations so that corporate taxpayers avoid tax avoidance efforts in Indonesia. This consistency must be in line with the principles of corporate investment, namely efficiency principles and tax principles that do not distort investment, considering the disruption of these two principles will motivate corporations to do tax avoidance.

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