

Tax Avoidance From The Perspective of Islamic Law

The Case of Sampit and Palangka Raya

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Abstract: Tax plays a central role in the economic system of modern states. Through taxation, a state attempts to gain and increase its revenues to provide its people with public facilities and meet their need of public goods. However, there are problems and challenges facing states in their attempts to collect tax from tax payers. These include what so called “tax avoidance”, an attempt conducted by tax payers to reduce the amount of tax payable to a state. It is problematic because tax avoiders are not regarded as to have breached law whereas they have hindered the state from increasing its revenues. This has created a gap between the law that aimed at gaining revenues for public interests and the practice of tax avoidance, which is lawful, but contradictory to the aim of the law. This paper attempts to understand the practice of tax avoidance from the perspective of Islamic law. Based on qualitative data, it found that tax avoiders are motivated by bad intentions and their conduct is considered as hilah according to the perspective of Islamic law.

1 INTRODUCTION

Taxes are the lifeblood of a state. A State can not stand up straight and sturdy without being sustained by taxes. This Adagium is true because within the span of history of nation and state life, taxes not only got theoretical justification, but also empirically has been treated to all the people as taxpayers who functioned as a source of state income, which is destined as a source of state financing in welfare its people (Muhammad and Ali, 2014).

Tax as an obligation imposed by the State to its people, in the perspective of the Islamic State is a religious duty which must be obeyed by all its people. When the baitul mal (state treasury) derived from the source of income - zakat (tax on Muslims), jizyah (taxes charged to non-Muslims), fa'i (spoils of war without war), ghanimah (spoils of war with war), kharaj (non-Muslim landowner tax), 'usyr (non-Muslim trade customs), and the khums, is inadequate to finance the State budget, the State must find another way to cover the financing (Zallum, 1999). Another way is to set a tax. Tax is a religious and State duty. Both personal taxpayers and companies still consider that the tax is a burden that should be borne, so reasonable if there are

taxpayers do not voluntarily pay taxes. Tax is a burden that will reduce one's economic ability (Reskino and Novitasari, 2013).

The phenomenon of the Panama Peapers scandal involving hundreds of Indonesian businessmen allegedly is a form of tax avoidance behavior by the taxpayer. The Finance Minister said There is potential for the property of taxpayer around Rp. 4,000 trillion, which has not been affected by the tax. Approximately USD 1,400 trillion is a wealth of pre-tax and remitted to the Directorate General Taxation, while the remaining Rp. 2,700 trillion, is property of Indonesian personnel that are stored in a number of banks abroad (Solihah, 2016).

Tax avoidance behavior by these taxpayers, in the view of positive law (tax law) does not enter the domain of violation of legal norms. tax avoidance is an act that is not against the law, it is then utilised by all taxpayers including corporate taxpayers, that as a human is rational and opportunistic, to minimise tax expenses. Moreover, big companies that are go public are more focused on the interests of shareholders than they have to pay taxes (Kurniawan, 2017). Yet this behavior obviously has eroded the State's income from the taxation sector. There is a serious gap between the substance which is the aim of law, namely to get the tax funds itself

with tax avoidance behavior that is considered not contrary to the norm of law. Researchers look at this issue from an Islamic law perspective based on qualitative data.

2 TAX AVOIDANCE

The Great Dictionary of Indonesian (KBBI) means the term "penghindaran" derives from the verb "hindar" which means to abstain from; dodge; get out of the way; filling; dodge to let go (KBBI, 2005). While in Oxford Advanced Learner's Dictionary of Current English; avoidance; the action of avoiding somebody or something, tax avoiding; arranging one's affair so as to pay the smallest amount of tax required by the law (As Hornby, 1995). The difference between tax avoidance and tax evasion. According to Oliver Wendell Holmes, who wrote

"When the law draws a line, a case is on one side of it or the other, and if on the safe side is none the worse legally that a party has availed himself to the full of what the law permits. When an act is condemned as evasion, what is meant is that it is on the wrong side of the line".

In theory, there are at least three types of tax avoidance patterns, namely refraining from buying goods that are taxable, transferring location or better known as transfer pricing, and doing juridical avoidance or known as tax planning. Transfer pricing is one of the modes used by taxpayers to avoid taxes. Transfer price in the context of the tax legislation is the price at which one entity supplies something (goods, services, the right to use tangible or intangible assets, loans, guarantees and other financial transactions) to another associated entity... This associated entity usually operates in different countries and the transactions are therefore cross-border. Sometimes associated entity engaged in cross-border transactions can avoid the income taxes of a country through their manipulation of Transfer Pricing and then this entity would pay little or no tax on their combined profits (Solilová and Sobotková, 2010).

They sell the price below the market price, so it seems as though the company is losing money. If the company is domiciled or has a subsidiary in Indonesia, then Indonesia will suffer losses due to reduced state revenues from corporate income tax. The state suffered trillions of rupiah due to the practice of transfer pricing companies in Indonesia. The mode of transfer pricing is done by corporate taxpayers by raising or lowering the price of goods

or services that can affect the amount of tax. Companies that practice tax evasion can even collude with fiscus elements to minimize or exempt companies from paying taxes. This is the transfer pricing in a negative sense

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Circular Letter of the Directorate General of Taxation of the Republic of Indonesia number SE-04 / PJ.7 / 1993 stated that there are several ways multinational companies do engineering transfer pricing to transfer tax burden to the country with low tax rate (tax haven country). First, the selling price (exports) is lower than the market price to companies that are still in one group in the country with low tax rates. Second, the purchase price (import) which is higher than the market price by its group companies located in the country with high tax rates.

Third, the allocation of general administrative costs tend to be high, such as remuneration for technical services, and compensation for other services, so that small profits and taxes paid are also small. Fourth, the imposition of interest on loans by overseas shareholders is usually to impose high interest rates so that interest costs for the company become small, so in this case there is a shift in profits from high interest payments to parent companies abroad.

Fifth, commission, license, franchise and royalty payments are made at an unnatural amount that will increase the company's cost and minimize profits, but in essence there is a shift in profits from subsidiaries to overseas parent companies. Sixth, the purchase of company property by shareholders or related parties that are lower than market price or compared to purchases by companies that do not belong to, a special relationship. The seventh, sales to foreign parties through third parties who lack or do not have the substance of the business. That is

the definition of transfer pricing in a negative sense.

While transfer pricing in a positive sense is the transfer price by determining the price or reward in connection with the delivery of goods, services or transfer of technology between companies that have a special relationship (Gunadi, 2007). Transfer price has no purpose to avoid taxes, although he as a taxpayer avoid paying taxes. Thus, the transfer pricing in a positive sense is not discussed in this research. Tax avoidance causes stagnation of economic growth or economic turnover (Sutedi, 2013). The country suffers from a significant loss of tax revenues such as the impact on Indonesia's economic growth, not to mention the indirect impacts that arise such as reduced funds / subsidies from the government (Creswell, 2007).

3 TAXPAYER MOTIVATION TO AVOID TAXES

This research was conducted in Sampit and Palangkaraya Central Borneo by using the respondent 12 taxpayers. This research includes qualitative research. Qualitative research aims to understand a particular study by investigating social or human problems. Researchers create complex, holistic images, analyze words, report the views of informants in detail and in natural situations (Creswell, 2007). So that researcher know the motivation of taxpayers to avoid taxes. Researchers use a pseudonym in describing the results of this study.

Researcher has found the motivation Tax avoidance made by the taxpayer is as follows:

3.1 The Low Awareness of Taxpayers to Pay Taxes

Taxpayer awareness to pay taxes is an important factor for the realization of tax compliance. At least there are two aspects of awareness is meant here is the awareness that the tax is a mandatory fee to the state, that has been charged to him, that is used to realize the welfare and public benefit. Another aspect is the awareness of taxpayers to conduct good bookkeeping on the activities of expenditure and income of the company so that it can be known loss and profit company. If the bookkeeping is not done well then the taxpayer will not know the obligation to pay taxes.

Wahyudi, age 39 years as a taxpayer has had an attitude not concerned with the role and function of taxes as state energy in the implementation of the state. He has the perception that taxes are a burden he has to bear. He said, "The tax is a burden on the people he has to bear ... a little taxable ... whatever all taxed" The same statement was also shown by an informant named Fitri, 45 years- a taxpayer. He expressed his reluctance to pay taxes by taxing as a burden to bear. She said, "...s if it can not escape from the bondage of taxes. To fulfill the needs of everyday life has been taxed. We buy milk already taxable, buy sugar, rice, everything is taxable."

This statement is similar to Dwi, 53, an owner of a company engaged in the field of Laundry. He claimed taxes as a burden to bear. She said, "The tax is a burden .. if it must choose not pay taxes I choose not pay taxes ... I pay taxes, because I forced ... everything taxed, eating ... drinking .. anyway all taxable ... even layered ."

Indra, 37 years old. He perceives that taxes are a burden. If he is allowed not to pay taxes then he will not pay it. He said, "pay the tax compliance that is forced by state regulations if not forced to pay no taxes if it cannot pay taxes, then I will not pay taxes"(Indra, 2017). Another informant, named Oman, 44 years, said the same thing that compliance pay taxes caused by the laws and regulations that forced it (Oman, 2017). The same answer is also given by a taxpayer named Beni, 46 years old. He said that taxes are the burdens required by the state. A person paying taxes is not related to religious orders. even the Islamic religion does not require taxes. Then he challenged the researchers to show a reference, that religion requires taxes..

While Agus, 35 years old who works as a trader in "Pasar Besar Palangka Raya" do not pay taxes because his business is not done in a bookkeeping of income and expenditure well every day. He said, "I do not pay taxes on my merchandise sales revenue ... I only calculate the daily income without proper bookkeeping ... anyway ... there is money at the end of the month to pay the debt to the bank and order the goods back .." This statement provides an understanding that awareness to do well bookkeeping on income and expenditure from business activities is not done so that unknown amount of taxes that should be paid.

The data obtained from the respondents above gives us an understanding that the true taxpayers do not realize that the taxes they are supposed to pay, are used by the state to finance the public interest. It is therefore not wrong when Benjamin Franklin once said, "In this world nothing can be said to be

certain, except death and taxes, "Wrote Benjamin Franklin in his letter to Jean-Baptiste Le Roy in 1789. The phrase Benjamin Franklin is not something exaggerated by analogizing the tax with death, meaning that human life will not be separated from death and taxes as a reality that must be accepted. However, taxpayers may also seek tax avoidance. But he must deal with the law, as a consequence of the act of tax avoidance. Such an attitude will always exist in the history of taxation, along with the pure power theory on which taxation is based. Although in the case of tax collection this theory will take into account the community's carrying capacity that is taxes levied, based on the ability and strength of each individual community.

In Indonesia, this carrying power (*daya pikul*) theory applies to taxpayers by indirectly imposing income tax on all of its gross income, but its gross income is reduced deductions-the costs regulated by applicable legislation-and subsequently deducted by non-taxable income. Non-taxable income (PTKP) is tax-free income that has been established under applicable tax laws. So that the taxpayer experiencing a loss or income under PTKP then will not be subject to income tax. In other words, this theory underpins the obligation of the people to pay taxes because it is based on a person's ability to pay taxes. If the taxpayer is unable to pay the tax, then he will not be taxed on it. that is justice in this theory. Taxpayers who are able to pay taxes will be subject to the tax burden and who are unable to bear taxes will also not be taxed on them.

Even an informant named Yani 34 years who in fact is a taxpayer is more concerned with the financing of his family than for the benefit of the State. Financing for the benefit of the family is more needed and visible directly from tax. While an informant named Rina, 40 years, a government employee (PNS) admitted that he paid taxes as required by the state. She said, "pay taxes because the state obliges .. like me Government employees have been cut first by the expense treasurer who is in my office ... ". The informant's statement indicates that the taxpayer does not have the awareness to pay taxes even though he knows the tax is a liability, but the detailed tax function does not know it. This low awareness of paying taxes is shown by Vicky, 45, the owner of Steel Company in Sampit who has not sought good corporate regulation so that the obligation to pay taxes on the state to be delayed. He said, "No.. no ... I do not pay taxes but do not know about taxes ... The fiscus will ever come to me, but I am still busy so I can not ... so do not understand

about the administration of the company is difficult to apply taxes ... but work orders are still quiet"

This situation is similar to informant named Sonai, 39 years old, owner of leasing business in Sampit. He claims that he has paid monthly taxes to the tax office, but not based on the company's books well. He said, "...they do not mean to avoid the tax ... but do not know which taxes are ". Taxpayers who have bad awareness to pay taxes, in turn will avoid taxes. They feel guilty when not paying taxes. And as a good citizen should obey the principle of tax obligations. Thus, the government needs to hold programs that can educate the community such as giving counseling, making jargon that is in nature advocate taxpayers continuously. For example, "wise people pay tax "; "Today does not pay tax what the world says "and create other programs that make taxpayers aware of taxes. As the results of research conducted by Mohd Rizal Palil et.al., that efforts to tackle the avoidance of tax one of them is a tax authority to design the best mechanism for delivering the latest information on tax regulations (i.e. advertisements in the media, websites, brochures and customer services desks) and also in achieving its goals in deciding to change the collection system to one using a SAS. It is also important for the tax authority to be kept informed of taxpayers' levels of knowledge so that it can effectively and efficiently communicate (i.e. current changes in tax laws) and design tax policies (for example, the tax rates, filing requirements, penalties etc.) (Mohd Rizal Palil, 2016).

3.2 The Bad Taxation System

The system of taxation, especially relating to the high low tax rates and the use of tax money. Is it true that taxes are meant for the things that the tax should be used, or taxes corrupted by tax officials who will only enrich a single or group only. High tariff is a factor taxpayers to make tax avoidance.

High tariff is a factor of taxpayers to avoid taxes. This statement was obtained from an informant named Holis, 45 years, work as a car workshop entrepreneur with an estimated income of more than hundreds of millions of rupiah. According to Law no. 36 of 2008 concerning Income Tax article 17 that the taxpayer who has corporate income tax in a year with taxable income (PKP) of 600 million rupiah tax exposed 30% with layered system. When he was asked how much tax was paid in a year, with diplomatic answers he replied, "the most important thing is to pay taxes .. regardless of the tax paid is not so important.." The answer implies that the

amount of tax paid does not really matter. This means that a high tax perception becomes a taxpayer factor for tax avoidance.

There are a series of cases that justify the public perception of the bad tax system is a series of tax cases involving tax officials (fiscus). For example the case of Gayus Tambunan. Gayus Tambunan people who had become famous because of some behavior that he has done. Besides the name of Gayus Tambunan, there is the name Dhana Widiyatmika. He is a former government employee at the Tax Service Office, Bahasyim Assifie - former Head of Jakarta Tax Inspection and Investigation Office Finance Ministry, Mohammad Dian Irwan Nuqisra and Eko Darmayanto Also caught in the same case-the former two Government Employee Investigators (PPNS) of the Ministry of Finance. The Supreme Court sentenced them to nine years in prison. In addition there Tommy Hendratno is a former Section Head of Supervision and Consultation Office of Tax Sidoarjo, East Java. He was proven to abuse his authority and accept bribes of Rp. 280 million relating to the restitution or overpayment of PT Bhakti Investama Tbk. The Supreme Court sentenced him to 10 years in prison. And there are many other cases.

Many cases of tax avoidance by taxpayers in collusion with fiscus, increasingly distrust people to pay taxes. In accordance with an informant named Sudaryana, 47 years old. He was reluctant to pay taxes because the tax money was corrupted a lot by the tax officials. He said, "I think that paying taxes is useless because it's only to enrich the tax people..." (Sudaryana, 2017). The informant named Dwi, 53, says the same thing that high tax rates have become the motivation of taxpayers to do tax avoidance. She Said, "...yes ... the tax rate is high .. and much corrupted by people like Gayus ..."

Thus, a good taxation system will affect the taxpayer's interest. interest is shown taxpayers to pay taxes, and be proof of tax compliance. However, if the system is bad taxation will lead to bad taxpayer response also. Responsible tax money management, competent and non-corrupt fiscus, as well as uncomplicated taxation procedures will make taxpayers reluctant to avoid taxes. Continuously, if the management of tax money is unclear, plus a corrupt tax officer, it will make the taxpayer dishonest, they will tend to avoid taxes.

3.3 The Government has Discriminated against Taxpayers

This research also found the taxpayers' perception that they were discriminated against by the government. Discrimination treatment becomes an important factor in tax avoidance. The discriminatory treatment in question is the fiscal exemption of foreign countries to certain taxpayers. Should foreign fiscal exemption be given to all taxpayers who already have a taxpayer ID number-NPWP or who do not have a taxpayer ID number-NPWP. In addition, there is a policy on zakat as a tax deduction, valued as a discriminatory policy. The enforcement of a tax-exempt policy only benefits some taxpayers only. So that will result in jealousy on the taxpayers who do not receive profits from the policy. The effect is tax evasion. This means that government discrimination is the reason for tax avoidance.

The Government has enacted Law no. 11 Year 2016 on Tax Amnesty is considered by the public as an unfair policy. Mr. Beni expressed his disagreement with this Tax Amnesty. He said, "Tax amnesty ... I do not participate tax amnesty not for people who are in the country ... but why can target citizens in the country ... so I do not agree .. tax policy amnesty unfair and wrong target..."

Tax amnesty is a government policy to grant amnesty to taxpayers in the form of the abolition of tax payable, the abolition of administrative sanctions, and the elimination of penal sanctions, on assets acquired in 2015 or earlier that have not been reported to the State by redeeming all tax debt owed by the ransom that has been determined in accordance with the period. The government's target in tax amnesty policy is to expect entrepreneurs who have kept their funds abroad voluntarily to repatriate their funds to Indonesia-by paying the ransom-and becoming compliant new taxpayers so as to increase the future State tax revenue.

3.4 Tax Benefit

The motivation of the taxpayer to make further tax avoidance is in the form of his desire to reduce the amount of tax paid to the State. In the perspective of the taxpayer, the tax is a burden obliged by the State to the people who can reduce income every year. This attitude is shown by an informant named Tito, 49 years old, a fiscus. According to him, people doing tax avoidance is likely to feel affection for taxes. Taxes that pay taxpayers can reduce earnings every year. Taxpayers may do the tax avoidance

mode by manipulating income data against tax reporting to tax officials. He said, “taxpayers do tax evasion because unfortunately for the money ... taxes will reduce income every year .. the perpetrators of tax avoidance usually from large corporations ... may conspire with fiscus to calculate the taxes....” This informant has informed the researcher that the subject of tax avoidance by reason of tax benefit is company having big income. They asked the fiscus or the tax consultant to calculate the amount of tax then do the reporting engineering to the state so that the tax is lower than it should pay. The taxpayer conducting engineering tax report with the main motivation is the tax benefit in the form of the difference between the amount of tax he pays and the amount of tax he should pay. Indonesia recognizes the Self Assessment system - independent tax reporting system after the government proclaims itself to carry out tax reform in 1984 by abandoning the tax collection system whose calculations are performed by the fiscus with the official assessment system term.

The self assessment system has a high level of risk to tax avoidance practices. A good taxpayer will perform his duties as a good citizen. This taxpayer will conduct calculations, reporting and tax payments honestly in accordance with the income earned in each year. On the contrary, taxpayers who do not have good intentions, will manipulate their income and net income data to obtain minimal tax benefits or even be exempt from tax. Transfer pricing mode has used tax avoidance by reason of tax benefit.

An informant named Dwi, 53 years old - business owner of Laundry. According to him the mode of transfer pricing and tax planning is mostly done by companies that utilize tax fiscus person. It is the taxpayer who knows best the laws and regulations as well as the tax calculations. He said, . “I think ... many are doing tax avoidance ... if that upsetting taxes is usually big companies, even colluding with tax officials”

4 TAX AVOIDANCE IN ISLAMIC LAW

Islamic law recognizes the term hilah. Ibn Manzbur in *Lisanu al'Araby* defines hilah with *al-tahawwul*, a special form of the meaning of the word *al-tasharruf wa al-a'mal* which means a change of law from one condition to another. While the jama (singular) 'form of this hilah is *al-hiyal*. While the Big Indonesian

Dictionary called it with the term *kilah* which is defined as trickery, deceit, excuses, artificial excuses. According to the terms in the book of *Mausu'a fiqhi Umar Ibn al-Khattab RA, Al-Qa'ahji* defines hilah is showing the action of the outer dimension is allowed but will have the ultimate goal of breaking the shara law by bringing it to the different realms of law.

Ibn Qayyim al-Jauzi defines that hilah is looking for a way of deceit by not showing that its true purpose is that it is forbidden. While According to al-Syathibi, an attempt to perform a practice which in fact is allowed, to abrogate other shara law (al-Syathiby, 1999).

Some of the definitions mentioned above can be concluded that hilah is to create a legal state in order to justify a certain law which is actually harm, although in fact it is allowed. there is something hidden, and trying to divert from a law to another law.

There are two kinds of “hilah” in the literature of Islamic law, namely “hilah mashru'iyah-the kind of hilah is allowed in Islamic law” and “hilah ghairu mashru'iyah- the kind of hilah is not allowed in Islamic law”. In the Qur'an contains examples of these two types of “hilah”. Problems arise when faced with problems-if there is an attempt to avoid religious obligations-but text is not found in the Qur'an and Hadith. Shafi'i, Maliki, Hanbali have declared that the use of hilah is harm and absolutely forbidden (Ayub, 2009). And Abu Hanifah tends to accept hilah as an attempt to avoid the law. Nevertheless, Abu Hanifah does not make easily to using of hilah. Hilah containing prejudice and makruh- is an act that should not be done by someone” is prohibited. Moreover, it clearly has the intention to cancel the rules of shar'i law (The Quran and Hadith).

Tax avoidance by transfer pricing mode in the negative sense of transferring the price of goods or services to an affiliated company, with the mode of selling the price below the market price that seems to suffer a loss. So the main objective is to avoid and even free domestic taxes, enlarge the profits earned by the company is clearly conducting sales engineering. It is a form of tyranny to the state. “Hilah” or engineering of this price transfer behavior is forbidden by Islamic law. Paying taxes is a religious obligation as justification of the legality of the State in levying taxes on its people, whether based on the Qur'an, Hadith, or Masahah Mursalah (public interest).

The act of hilah or engineering to conduct a sale transaction of goods or services to an affiliated

company with the same or lower price is permissible. But the deed if the main motive is to avoid taxes will be prohibited. Because it implies that tax payers avoid taxes intentionally. Whereas the role and function of the tax is vital in financing the implementation of the State in the context of implementing the common good (masalah lilumamah). In contrast to transfer pricing in a positive sense, ie transferring prices to an affiliated group of companies in order to perform performance evaluation, management motivation, price control, and market control (Zain, 2003) and no tax benefit found. At least As-Shathiby notes there are 3 things (Al-Syathiby, 1999) that cause hilah like this is prohibited. First, the motive for doing hilah is clearly contrary to Allah and His Messenger as law-makers. Paying taxes is a religious obligation, then taxpayers do engineering such that it seems to suffer a loss and avoid paying taxes.

Second, the act of hilah will result in greater damage. Yet, the act that causes damage is something that is forbidden by religion. Taxes are used by the State for the administration of the State in enforcing the common good. If the State fails in a tax collection effort, then from which the State may finance the expenditure of the State. It will certainly cause damage. Third, hilah seeks to abolish the law which actually applies to it, but the addition of terms or the reduction of the conditions, thus causing a conflict with the Shari'ah. To engineer the sale of goods or services as if the loss to an affiliated company with the intention of being exempt from tax shall mean waiving the law which actually applies ie the obligation to pay tax. Obviously this behavior is against the shari'ah..

5 CONCLUSIONS

At least there are 4 motivations someone do the tax avoidance in the empirical level. First, the low awareness of taxpayers to pay taxes, Second, the bad tax system, third, discriminatory treatment of taxpayers and forth, the reasons for tax benefit.

Behavior to manipulate the transfer pricing of goods that seems to lose money to the company affiliated with the motivation to avoid tax is the act that belongs to the category of ghairu masyru'ah in the perspective of Islamic law is something forbidden (haram). Because the behavior is not oriented to public interest (masalah lil ummah) and contrary to the function and purpose of the tax.

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