

TAX REORIENTATION AS CORRUPTION PREVENTION ON INVESTMENT IN INDONESIA

Abstract: Investments, that are supposed to increase the country's economic growth and tax revenues, have potentially created "unofficial" costs for investors and unreported informal income of the bribe recipients. It is important to conduct library research using the new institutionalism theory with historical institutionalism approach in answering the main problem. It is concluded that tax reorientation could prevent corruption on investment in Indonesia. The actors involved in investment, even though, will be limited collectively by government organizations, but the existing restrictions are the design of systems that can influence individuals and groups to prevent corruption. Restrictions of the tax authority can be imposed through several ways, such as enforcing bribes as the non-deductible expense and as an income tax object of gifts to the givers, applying bribes as income to the recipients, recommending non-penal sanctions, and blacklisting the individuals or legal entities involved in corruption.

Abstrak: Investasi, yang diharapkan dapat meningkatkan pertumbuhan ekonomi negara dan pendapatan pajak, berpotensi menimbulkan biaya "tidak resmi" bagi investor dan pendapatan informal penerima suap yang tidak dilaporkan. Penting untuk dilakukan studi pustaka dengan menggunakan teori institusionalisme baru dengan pendekatan kelembagaan historis dalam menjawab masalah pokok. Dapat disimpulkan bahwa reorientasi perpajakan dapat mencegah korupsi dalam investasi di Indonesia. Aktor yang terlibat dalam investasi, meskipun akan dibatasi secara kolektif oleh organisasi pemerintah, namun batasan yang ada adalah desain sistem yang dapat mempengaruhi individu dan kelompok untuk mencegah korupsi. Pembatasan otoritas pajak dapat diberlakukan melalui beberapa cara, seperti memberlakukan suap sebagai biaya yang tidak dapat dikurangkan dan sebagai objek pajak penghasilan dari hadiah kepada pemberi, menerapkan suap sebagai pendapatan kepada penerima, merekomendasikan sanksi non-penalti, dan daftar hitam orang perseorangan atau badan hukum yang terlibat korupsi.

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1. Introduction

In developing countries, such as Indonesia, investment is very important in improving the living standards of the people and in improving the country's economic growth, where one of the real evidences can be seen from the tax revenue that is expected to increase by the state if more and more investment. Of course, in investing their capital, investors are required to comply with laws and regulations in force in Indonesia, and vice versa investors also expect legal certainty for investments that are invested in Indonesia (Himawan, 2003). However, the regulations that apply at present, the supremacy of each law (Act) that applies to investment, as well as regional regulations that also have authority in-licensing and investment have caused a lot of confusion about which laws apply and sometimes "forcing" investors to incur "unofficial" costs, as President of the Republic of Indonesia, Joko Widodo, criticized a number of requirements in the management of licensing regulations and instead led to transactional relations between regulators and the public by stating that "Every rule, every permit, and every requirement has potential to be the object of transactions, objects of corruption "(Saputri & Minutes, 2017), as well as the results of the disclosure of corruption cases handled by the Corruption Eradication Commission (KPK) in Indonesia stated that almost 80% of repressive actions taken by KPK related to bribery in the field of licensing (Purbaya, 2019).

Some facts that there has been a lot of corruption in the field of investment in various regions in Indonesia in various forms, including the arrest of the head of the Office of Investment and Integrated Services of the One Door of PL Regency, AH, extorted illegal levies on the issuance of a corporation's business license in the year 2018 (Akbar, 2018), a Japanese company, MC, has agreed to pay a fine of US \$ 85 million in the United States for bribing a number of officials and politicians in Indonesia (including the conviction of an EM person who received a bribe of US \$ 375

thousand) to win a power plant project Tarahan electricity in Lampung (Suparno, 2015), and the conviction of TFT, former Head of the Investment Coordinating Board (BKPM) in accordance with the decision of the District Court (PN) No. 07/PID.B/TPK/2006/PN.JKT.PST dated August 25, 2006, the decision of the Court of Appeal No. 16/PID/TPK/2006/PT.DKI dated October 20, 2006, and the Supreme Court (MA) cassation decision No. 103 K/PID/2007 dated 28 February 2007 because it enriched itself using the BKPM Indonesia Investment Year budget (KPK, 2020).

The importance of investment in improving the standard of living of the people, improving the country's economic growth, and increasing tax revenue, but the many regulations currently in force that show the supremacy of each regional authority and/or each institution's authority have created a great deal of potential legal confusion. incurs "unofficial" costs for investors. Meanwhile, the estuary of every illegal act that is motivated by the economy is very closely related to income and costs, wherein the case of the increasing number of illegal acts that are motivated by the economy, it will cause more unreported income especially if it comes from informal income from fraudulent practices (Abhimanyu, 2009) and more costs are not officially reported by certain entities that provide informal income. This background emerges as the main problem that will answer the research question: how to reorient taxes as a means of preventing corruption in the investment sector in Indonesia. What is meant by reorientation is that the root comes from the word orientation, as according to the Big Indonesian Dictionary (KBBI, 2020) online has the meaning as (1) review to determine the right (right, place, etc.) attitude (direction, place, etc.); (2) views that underlie thoughts, concerns or tendencies. While the affix "re" in the word "reorientation" has the meaning repeated or returned. Therefore, reorientation can be interpreted as a review of the tendency of view or thought. In this research, reorientation is interpreted as a review of the views that underlie thinking in the

establishment of an investment law based on Indonesian dictionaries, and Encyclopedias. corruption prevention in Indonesia.

2. Methodology

This research is qualitative research using expository study. An understanding of the expository study was put forward by Goddard and Melville (2007) who stated that the study was "based purely on existing information, and normally results in" review "-type".

As qualitative research is defined as typically more focused on sense-making in a purer sense, the orientation of this research implies an effort to develop relevant theories from data collected and widely read in the fields of investment and tax, and then compare, contrast, analyze and analyze synthesize all viewpoints qualitatively (Weathington, Cunningham, & Pittenger, 2012; Goddard & Melville, 2007). The data used in this study are secondary data, which according to the Judge (Robson & McCartan, 2016) is "any reanalysis of the data collected by another researcher or organization", thus allowing researchers to concentrate more on analysis and interpretation. Secondary data includes primary legal material, secondary legal material, and tertiary legal material. Primary legal materials, nwhich is binding legal materials consisting of norms (basic) or basic rules, that is Pancasila, the 1945 Constitution of the Republic of Indonesia (1945 Constitution), Law Number 25 of 2007 concerning Capital Investment (Investment Law), Law Number of 16 of 2009 concerning General Provisions and Tax Procedures (Ketentuan Umum dan Tata Cara Perpajakan/KUP Law), Law Number 36 of 2008 concerning the Fourth Amendment to Law No. 7 of 1983 concerning Income Tax (Income Tax Law), Law Number 12 of 2011 concerning the Formation of Regulations and Regulations, tax legislation, and various regulations relating to this writing. Secondary legal materials, which is legal materials that provide an explanation of primary legal materials, such as literature, textbooks, scientific journals. Tertiary legal materials, materials that provide instructions and explanations for primary and secondary legal materials, such as legal dictionaries,

3. Literature Review

The problem of corruption in the investment environment has become a growing concern in various countries, as theoretical analysis postulates that corruption has a negative impact on the level of capital formation or on the use of capital in the production process (Breslita & Samanta, 2008). In fact, the study of Haque and Kneller (2015) has stressed that only countries with lower corruption can enjoy an efficient return on public investment that can increase growth, but in countries with high levels of corruption that have caused public investment to fail to produce more growth high and have a negative impact on growth through reducing private investment, so policies are needed to prevent corruption in increasing the efficiency of public investment that can provide a very positive impulse to economic growth.

There are several studies that show the pros and cons of corruption related to investment. Some studies strongly support the argument that corruption has a negative impact on a country's investment, especially developing countries. Breslita and Samanta's study (2008) suggests that developing countries make their best efforts to eradicate or reduce corruption in economic and administrative infrastructure if they want to expand the economy, pursue economic growth, and improve economic welfare because reducing corruption greatly helps increase economic competitiveness and there are still many things you can do if you want to increase their economic growth and development. Haque and Kneller's analysis (2015) shows that corruption not only reduces the quality of public services needed for production but also inflates public expenditure, so it explains why public investment fails to increase growth in countries where corruption is endemic. Then Wei's investigation in 2000 showed that companies paying bribes in the countries where they were involved in Foreign Direct Investment (FDI) could serve as additional taxes, and the findings of Alfaro et al. in 2008 showed that low institutional quality,

including corruption, was the main factor hampering capital flows from rich countries to poor countries (Okada and Samreth, 2014).

In contrast to studies that support the argument that corruption has a negative impact on a country's investment, some studies show that FDI has a positive impact on economic growth when corruption is severe and has a negative impact if corruption falls below a certain threshold, such as Okada and Samreth's (2014) study of 130 countries during the period 1995 to 2008 which implies that FDI inhibits economic growth in countries where corruption is below the threshold and encourages economic growth in countries where corruption is above, and Egger and Winner's 2005 study proves that corruption can be a factor that drives FDI inflows, because corruption can help speed up bureaucratic procedures (Okada and Samreth, 2014).

The existence of studies that show the pros and cons related to the relationship of corruption to the investment needs to be investigated qualitatively by using the theory of new institutionalism with the approach of historical institutionalism and by involving the role of taxation. New institutionalism is a response to the scientific study of traditional institutionalism which has so far shown that political institutions (such as government institutions, legislative committees, the judiciary) play a more autonomous role in shaping political impacts for their own good, so they tend to be arenas to fight forces social and only shows itself as a collection of standard operating procedures (SOP) and structures that establish and maintain their own interests (Lowndes, 2010). Then, the adequacy of the approach of historical institutionalism in this study in connection with its ability to make choices in designing the governance system of an institution that can influence the decision-making of individuals in the future, as well as with other matters, such as sensitivity to operations power among the actors involved, the impact of institutional changes initiated by the tipping point and positive feedback from the relevant institutions, the interactive mechanisms underlying these will influence the choice of actions of individual actors, and

the treatment of historical institutionalism in treating stakeholders who have so far been regarded as maximizing self-interest (Shih, Sun and Wang, 2012; Lowndes, 2010). Furthermore, the existence of tax in the eradication of corruption in the investment sector stated by Eka (2017) refers to the preventive and curative side of the tax institution, where the tax preventive side is related to its efforts to influence the potential for the emergence of corrupt behavior through tax disincentives while the tax curative side is related to the process of supervision and law enforcement carried out by the tax authority, the Directorate General of Taxes (DGT), which can be used as a tool to detect indications of corruption which can later be followed up by law enforcement agencies.

4. Analysis and Discussion

4.1 Investment and Corruption Law in Indonesia

Basically, investment occurs because of the existence of legal rules that have guaranteed legal certainty for investors, both domestic and foreign, to participate in investing in Indonesia, as Article 1 paragraph (1) of Law Number 25 of 2007 has provided the understanding of investment refers to all forms of investment activities, both by domestic investors and foreign investors to conduct business in the territory of the Republic of Indonesia.

This investment which is open to the whole of Indonesia must indeed be in line with Article 18 paragraph (2) of the 1945 Constitution which states that "Provincial, District and City Regional Governments regulate and manage their own government affairs according to the principle of autonomy and co-administration" and Law No. 23 of 2014 concerning Regional Government which mandates the transfer of government affairs by the central government to autonomous regions based on the principle of autonomy. This means that the devolution of authority by the central government to political bodies in the regions cannot be avoided, bearing in mind that the regional head is also elected by the people concerned, then the decision-making must

also be carried out by the regional head which is carried out by himself and is accountable to the people in his region. The rationalization of decentralization and regional government as a justification for delegating the authority of the investment process in the regions to the regional government in the form of assigning assignments, rights, obligations, and responsibilities for licensing and non-licensing (Supancana et al., 2010) shows the historical facts aligned with the mandate of the related constitution there are social, economic and political needs related to Indonesia's vast territory and large population. However, the fact that there have been overlaps in investment rules and overlapping powers between the regions and the central government has led to decentralization in terms of investment in Indonesia, which has the potential to become an object of corruption. Opportunities for corruption due to overlapping rules and power in the investment sector are in line with Mauro's (1995) findings on sampled countries which show that highly complex bureaucratic regulations will always open opportunities for corruption, thereby reducing private investment and reducing economic growth. Of course, any opportunity for corruption in investment sector constitutes the indifference of the principles of investment as formulated in Article 3 paragraph 1 of Law no. 25 of 2007, such as legal certainty, openness, accountability, equal and non-discriminatory treatment, togetherness, fair efficiency, and independence, due to several corruption cases that have been handled by the KPK were related to bribery in the licensing sector which is the domain of power holders.

This has become a turning point to restore the sovereignty of existing investment principles through tax reorientation that is intolerant of the corruption of persons involved in the investment process, bearing in mind that each of these principles has its own meaning, that is the principle of legal certainty which is "principles in the rule of law that place laws and statutory provisions as a basis in every policy and action in the field of investment", the principle of openness which

is "the principle that is open to the right of the public to obtain true, honest and non-discriminatory information about activities investment" (where furthermore in Article 2 paragraph (3) of Law No. 14 of 2008 concerning Public Information Openness, it has been formulated that every Public Information must be obtained by every Public Information Applicant quickly and on time, at a low cost, and in a simple manner), the principle of accountability which is "the principle that determines that every activity and the final result of the implementation of capital investment must be accountable to the public or the people as holders of the highest sovereignty of the country in accordance with statutory provisions", the principle of equal treatment and does not differentiate from the country of origin which is "the principle of treatment of non-discrimination services based on statutory provisions, both between domestic investors and foreign investors as well as between investors from one foreign country and investors from other foreign countries", the principle of togetherness which is "the principle that encourages the role of all investors joint capital in business activities to realize the welfare of the people", the principle of equitable efficiency which is "the principle that underlies the implementation of investment by promoting equitable efficiency in an effort to create a fair, conducive and competitive business climate", a sustainable principle which is "a principle that strives to progress the development process through investment to ensure prosperity and progress in all aspects of life, both for the present and the future ", and the principle of independence which is a principle that must continue to prioritize the potential of the nation and the state by not closing itself in the entry of foreign capital in order to realize economic growth (Article 3 paragraph (1) letter a of Law No. 25. of 2007).

Those principles of investment in Indonesia are a connecting bridge in strengthening the role of taxes as a means of preventing corruption in the investment sector, as well as the general explanation and draft of the Draft Law on General Provisions and Tax Procedures (RUU-KUP, 2016) and the 2015-2019 National Medium-Term

Development Plan has emphasized that taxation is an embodiment of the dedication and participation of taxpayers to directly and jointly to finance the country and support inclusive and equitable economic growth. Thus, any violation of those investment principles that causes loss on state's tax revenues can be interpreted that any loss of state finance in the event of corruption and or bribery in the investment process refer to: a) Article 1 number 1 of Law no. 17 of 2003 concerning State Finances (KN Law), which has defined state financial losses as an act that causes losses on all rights and obligations of the state that can be valued in money, as well as everything in the form of money or in the form of goods that can be owned by the state due with the implementation of these rights and obligations, and b) Article 2(a) of the KN Law emphasizes that one of the state's rights is the right to collect taxes, then in the criminal provisions of the General Provisions and Tax Procedures Law affirms that acts that meet the elements can cause losses on state revenue is a tax crime (Sinaga, 2018).

4.2. Tax Reorientation in Preventing Corruption in Indonesia

Tax reorientation as a means of preventing corruption in the investment sector in Indonesia must strive to face challenges that cannot be separated from an understanding of the complex and cross-policy relationships that exist between interrelated institutions. Historical institutionalism should be a gateway to reduce the possibility of political conflict that is resistant to change (Peters, Pierre & King, 2005) in the form of monitoring the tax rights and obligations of every citizen who has the ability to prevent corruption, as the position of tax as part of the law State Administration which every illegal act can have consequences in the form of administrative sanctions (in the form of interest and or fines) and criminal sanctions (in the form of fines and prisons) (Kansil & Kansil, 2007; Soemitro, 1992). The historical institutionalism approach to tax institutions can provide an elegant descriptive framework in creating long-term stability through its reorientation in minimizing

corruption in the investment process in Indonesia considering the existence of tax law as the tool to detect any unofficial cost and unreported revenues that tend to always transform in business communities (Hermawan & Sinaga, 2020).

The existence of a tax institution with its integrity system must encourage transparent and accountable reporting mechanisms so that each component of society can act as a front line supervisor and ensure investment service delivery organizations perform as expected (Graycar & Masters, 2018), which is in line with the principles of investment which basically do not tolerate any illegal act, which is the actions of every person that is not only limited to acts that violate the law but also act that vilate moral, propriety, thoroughness and caution that should be owned by someone in social life (Sinaga, Samekto & Emirzon, 2019). The meaning of illegal activity in the investment process in Indonesia also provides an understanding of the similarity of criminal acts of corruption and located tax evasion, which are equally causing losses to the country's financial or economy that cannot be separated from collective illegal acts, as the logic of tax evasion and corruption as collective illegal acts refer to the characteristics of these acts as illegal, hidden, and collective practices make it a routine that forms a pattern of organizational action that consists of rules as a basic pattern of actors, interpretation of these rules by actors and actual performance patterns (Frost & Tischer , 2014). This thought has also been expressed by Persson et al. (2013) which states that the failure of anti-corruption reforms in highly corrupt countries cannot be separated from the problem of collective action. Collective action in carrying out this corruption clearly results in unreported (or deliberately disguised) income, which is the domain of Article 4 paragraph (1) of Income Tax Law which states that the tax object is income is any additional economic capability received or obtained by taxpayers, both originating from Indonesia or from outside Indonesia, which can be used for consumption or for increasing the wealth of the relevant Taxpayer, by name and in any form. Then, in

the case of tax disincentives in the case of bribery, those who give bribes clearly cannot charge them as costs that can reduce their business profits, as explained in article 6 paragraph (1) letter an of the Income Tax Law has confirmed that the costs that can be charged must have a direct or indirect relationship with business activities or in the framework of activities to obtain, collect, and maintain income which is an object of tax (Eka, 2017). Whereas bribe recipients may be subject to the object of tax income in the form of gifts in any name or form.

This terminology of "income" confirms that tax legislation has a very important role in minimizing illegal acts, especially in preventing the occurrence of criminal acts of corruption through increased voluntary compliance of taxpayers. Then, the important role of income in minimizing illegal acts has been firmly bridged in Investment Law and Tax Law, as the Elucidation of Article 33 paragraph (3) of Investment law defines tax crime as incorrect and/or incomplete data and information in tax filing that cause harm to the state's tax revenues and as the Article 1 number (1) of the KUP Law formulating taxes as "mandatory contributions to the state owed by individuals or entities that are coercive based on the Act, with no direct compensation and used for the state's purposes for the greatest prosperity of the people", so that all taxpayers must obtain fairness through their participation right to report certain taxpayers who commit tax fraud. The central role of legislation in tax reinforcement as a means of preventing corruption refers to its definition as any written decision issued by an official or environmental authority that contains generally binding rules (behavior), bearing in mind that legislation has two functions at once, that is the internal function which is the function of legislation as a legal sub-system of legislation on the rule of law system in general (which includes the function of law creation, the function of legal reform, the function of integrating the legal system pluralism and the function of legal certainty) and the external function (or can be called the social function of the law, which includes: the function of change, the function of stabilization, and the function of

convenience) which is the relationship of legislation with the environment in which it applies (Maroni, 2015).

The implementation of tax reorientation that is expected to provide services to the public through the presentation of decisions of individuals and business entities that are intolerant of corruption in connection with an investment in the future can be done through the development of several techniques that have been suggested by Graycar & Masters (2018). First, in the event that corrupt behavior is not detected because every transaction of parties that are not reported and or disguised is anticipated by the efforts of the tax authorities to make changes to their efforts by making transactions transparent. The DGT can carry out inconspicuous mechanisms through the collection and analysis of red flags indicating corruption and at the same time tax evasion and or tax avoidance in an investment process, which of course must involve technology in reducing discretion in conducting illegal transactions and in marking symptoms of irregularities taxation norms. Second, in anticipating transaction anonymity in the books or records of parties related to the investment process, the DGT can apply to change the risk and reward with reduced anonymity. Anonymity reduces accountability, where, for example, unscrupulous officers who deal with the investment will conceal as much of their decisions as possible regarding a particular investment. In addition, anonymous transactions or records will make it difficult for complaints that are the right of every citizen in the event of bribery and/or corruption. Third, in the case of collusion between individual government officials and individual persons in investment companies that are clearly not in line with the principles of equality, justice, and information disclosure, the tax authority can instill value integrity by delivering integrity. Every individual and business entity involved in the process of investment is a taxpayer whose data is stored in the DGT data center, which will certainly be able to eliminate their integrity as taxpayers who must report all their tax rights and obligations with

certainty, truth, and clearly. That integrity will be tarnished if the DGT has implemented law enforcement on the perpetrators of these illegal acts. And even, the sanctions that have been attached to the taxpayers will be one of the "clean checks" for other institutions related to the integrity of certain individuals or business entities related to investment. Fourth, in narrowing the space for corruptors and tax evasion actors, the tax authority must be able to increase the awareness of taxpayers by alerting peoples' conscience. Voluntary compliance of taxpayers is direct community involvement, which is identical with active participation as taxpayers in state life, as one of the functions of tax is related to the idea or conception of democracy. The concept of democracy as the active participation of taxpayers in development is in line with several principles of investment and the thinking of Sodikin (2014) which argues that there are three ideas that are interrelated in building democracy, that are freedom, equality, and justice, where freedom or independence is recognized as the main goal of every state in independence contained human demands not to be controlled by anyone, and ultimately requires a basis of equality to bring justice. Tax reorientation that encourages the active participation of all taxpayers has been investigated is expected to be in line with the Buckenmaier, Dimant, and Mittone (2018) studies that investigate the effects of institutional mechanisms that encourage taxpayers to blow the whistle on collusive corruption and tax compliance. His findings state that in the presence of legal mechanisms, subjects collude and receive bribes less frequently when paying more taxes, and the introduction of opportunities to blow the whistle will reduce collision and acceptance of bribes and increase the tax returns collected.

Those history of several existing laws and various expert notions have shown that the tax authority is more effective in monitoring and reducing the resistance of each collective illegal acts of corruption and collusion actors in the investment sector in Indonesia. Preventive and curative control of the parties involved in an investment process which followed by strong efforts of a tax

authority to create active participation of each taxpayer constitutes the form of consistency in implementing transparency, accountability, and excellent service that will narrow the space for the perpetrators of corruption, collusion, and tax evasion due to the increase of voluntary compliance of taxpayers who are intolerant for any form of corruption and collusion.

5. Conclusions

This study concludes that tax reorientation can prevent corruption in investment sector in Indonesia, as the ability of tax law in detecting any unofficial cost and unreported revenues has strong relation with investment principles consisting of legal certainty, openness, accountability, equal and non-discriminatory treatment, togetherness, fair efficiency, and independence. The historical institutionalism approach involves the DGT continuously supervising closely and periodically any additional economic capacity in whatever name and form with respect to each taxpayer (including every individual and business entity involved in the investment process in Indonesia through the mandate of laws and regulations. tax invitation). Although it will restrict the actors involved in investment, the existing limitation is the design of a system that can influence individuals and groups to prevent corruption. It is proposed that tax authority restrictions can be applied in a number of ways, such as applying bribes as non-deductible expenses and as an income tax object from gifts to givers, applying bribes as income to recipients, recommending non-criminal sanctions due to the useful and efficient financial/monetary sanctions in returning losses of the state's tax revenue (Priyambudi, Sinaga & Bolifaar, 2020), and as a center for net check recommendations for other institutions (such as regional governments, BKPM, banking) towards individuals and business entities involved in investment in Indonesia.

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