

MASLAHAH CONCEPT ANALYSIS TOWARDS 2016 TAX AMNESTY POLICY IN INDONESIA

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Abstract

Indonesia is projected to meet the potential global risk. Where actually it has a significant implication on Indonesian's economic rate in the future. In the other hand, the expenditure of nation is increasing year by year. But, there is a gap between the tax compliance and the tax potential. So, the Indonesian government has a tremendous errand in its program is establishing a credible fiscal policy. Towards its fiscal policy, the government tries to increase the nation revenue through Tax Amnesty policy. However, the tax amnesty conducted the result of increasing of tax compliance and tax revenue in the future. Hence, this policy has a controversial issue. The paper is a qualitative research which try to describe more deeper the meaning of *Maslahah*. This paper tries to analyze more the *Maslahah* concept towards Tax Amnesty policy in the term of Law of Islamic Economic. In this paper, the researcher observe the literal meaning of *Maslahah* and trying to describe the interest and benefits of Tax Amnesty in its short and long term. Therefore, the benefits may lead to the public welfare. But, the result of the research found that there are some lacks of Indonesia Tax Amnesty policy in its absence of tracking source, as its one of incentives. So, it causes to opposite of the Islamic Law to Al-Qur'an, which should keep the own of wealth well. Furthermore, the existence of tax amnesty policy should be more considered due to this issue, affecting in its level of importance towards *Maslahah* and Shari'ah compliance is one step down. Overall, the incentives of tax amnesty should be discussed carefully on

its further implication –where the tax amnesty presents a high risk issue for the nation development.

Key Words: Maslahah, Maqasid Shari’ah Public Welfare, Tax Amnesty and Fiscal Policy

Introduction

Despite once being the major natural resource producer in ASEAN, Indonesia is projected to meet the potential global risk. Especially when the world is facing a lot of ‘Black Swan’ events, when unexpected events suddenly happen such as Brexit, Donald Trump’s Policy, and others recent conflict in the Middle East. Where actually has a significant implication on Indonesians economic rate furthermore. Thus, the Indonesian government has a tremendous errand to provide the economic stability, where in its programme is establishing a credible fiscal policy. By pushing significant economic growth in the final full year of the current administration, the government is proposing an optimisation potential percentage of tax income.

Nowadays, considering the fact that tax revenue constitute an important part of public revenue, collection of tax revenues becomes such an important issue. The purpose of total number of its income is around Rp 1.489,9 trillion, whereas non-tax revenues around Rp 250 trillion, and funds revenues is about Rp 1,4 trillion.¹ So it has 78% from overall state budget.² According to this case, the taxation aimed at meeting the state expenses and social welfare. It has been written in the 1945 Constitution of The Republic of Indonesia, on the act of 23rdA, said, “ *tax and other charges which are forced, aimed for state need will be set up in the legislation*”.

BPS or Badan Pusat Statistik had reported around 2015, Indonesian has only 29,4% from the overall number of Indonesian Worker and enrolled as the tax payers. The data also said that those tax

¹ Refer to state budget of the year 2017, which has been approved by House of People’s Representative (DPR), on the website of Economic Minister, <http://www.kemenkeu.go.id/apbn2017>, (Saturday, September 21st, 2017 on 10.55 PM)

² Gusfahmi, S.E., M.A., 2001, *Pajak Menurut Syariah*, (Jakarta: PT. Raja Grafindo Persada), p. 1.

payers which has Tax Return on Income Tax only 60.27% of the total. A fantastic number, despite Indonesia has an extensive capability to have such a great income from every side of the nation wealth³. Based on the latest data, if it's being a long-last doings should affect the decreasing of Indonesian's economic growth. In today's modern state understanding, creating a sustainable and voluntary tax paying culture is becoming the first priority⁴. Thus, the government has a duty to set a strategy to maintain the economic growth, especially in the taxation. To achieve such an optimistic target, Government is purposing the implementation of tax amnesty policy.

This program has been represented through a special program on the Act of Tax Amnesty, Number 11, 2016, which issued on 1st of July, 2016⁵. The aim of this program to push significant economic growth over asset repatriation, tax reformation, tax data based expansion, and the increasing of tax income for the next years.

Tax amnesties⁶ are accepted as one of the politically popular ways used for increasing the state revenue, and their importance in tax policies rises day by day. While such regulation are creating an additional income opportunity for taxpayers, at the same time, this study analyses tax amnesties which brings many expectations. In the other hand, tax amnesties also have costs. The major issue is the possibility of tax amnesties actually decreasing, rather than increasing the efficiency and equity of tax system. However, has the fair-minded principal of Tax amnesty run optimally? Whether the Directorate General of Tax, Ken Dwi Nugroho said in his speech, that there are many entrepreneurs hasn't participated in the tax amnesty program.⁷ Thus, made the recent investment status in the

³ Was taken from Refleksi Tingkat Kepatuhan Pajak <http://www.pajak.go.id/> (Saturday, September 21st, 2017 on 11.45 PM)

⁴ Mehmet Nar, 2015, *The Effect of Behavioral Economics on Tax Amnesty*, International Journal of economics and Financial Issues, Vol. 5, Issue 2, p. 580.

⁵ Suharno, *Panduan Praktis Amnesty Pajak Indonesia*, (Jakarta: Kompas Media Nusantara, 2016) p.6.

⁶ Tax amnesty which has explained in the Act Number 11 on the year of 2016, an amnesty for the delinquent taxes, without the financial and criminal penalties, but they should pay some tax administration effort or known as redemption money or *uang tebusan* by revealing on the whole of his own properties. The term of redemption money refer to tax administration efforts, which taxpayer should pay based on the number of his property to public treasury for admitting his tax amnesty.

⁷ was taken from "Dirjen Pajak Masih Kejar Pengusaha untuk Ikut Tax Amnesty" of <http://Bisnis.liputan6.com/> (Monday, 23 Oktober 2017 on 11.12 PM)

lower rate. They who have many assets in the foreign country don't have any courage to put their asset in the risk of Indonesian's fiscal position. In fact, this condition gets worse for honest taxpayers, that can have unfairness feeling. They have spent their money for being a good citizen as a tax payer, but on the other hand, many entrepreneurs hiding their asset in other countries. Amid a weak condition of the economic growth, only 550 enterprises from the total amount of 5 million of them which regularly pay their tax.

At this point, as Moslem we have to realize, the needs of ummah has its correlation of public welfare or in Islam concept well-known as *Maslahah* in Islam. Where in this case, a *Maslahah* could bring more advantages for preventing *mudarat*. So there are questions towards this problem, Is this policy of the government meets many *Maslahah* for the nation citizen? In the view of Islam, this regulation yet could not be traced back hundred years. As the historical story, fiscal policy in the year of Rasulullah SAW not only focusing on zakat but also such as *ghanimah*, *khumus*, *fay*, and also *jizyah*. Nothing in the *dalil muttafaq alaihi* is looked forward to the relation of tax amnaesty as the fiscal policy.

From this point of issue, in this essay will be researching more deeper about the *Maslahah* in the Tax Amnesty policy derived from the Tax Amnesty tax number 11, 2016.

The Definition, Object and Classification of *Maslahah*

The development of economy is an indispensable field of economic research nowadays. Its growth and transformational has expanded multiplied. Its impact would have been affecting on human being's economic worldview. Whereas, everyone conduct to make a better future to survive to get real well-being off all irrespective of their age, sex, or even nationality. Then, there will be very many latest economic policy, theory, or even model is not based on Islamic framework – where Muslim in Indonesia has the huge population. So on, Muslim need to contribute in this economic field. One of Islamic alternative approach to the global economic developing based on the concept of *Maslahah*.

In this part, *Maslahah* is a goal derived from *Maqasid Shariah*⁸.

⁸ Asyraf Wajdi Dusuki and Said Bouheraoua, No year, *The Framework of Maqasid Al-Shari'ah and Its Implication for Islamic Finance*, Islam and Civilisation Renewal, p. 318.

Which Islam prioritizes public needs and its correlation towards its all means to harm, socio-economic difficulty and underdevelopment.

The term *Maslahah* in Arabic means interest or benefit⁹. And it has the meaning literally, as providing benefits and avoiding harm. Usually *Maslahah* is refer to *manfa'ah* or public welfare/interest. But neither *masalahah* nor *manfaa'ah* has not the same meaning as utility concept that western theory purpose. *Maslahah* in another meaning is a device used by jurist in their Islamic legal theory to purpose public benefit and prevent social harm. Based on this definition, Al-Ghazali defines below:

As for *Maslahah*, it is essentially an expression for the acquisition of benefit or the repulsion of injury or harm, but that is not what we mean by it, because acquisition of benefits and the repulsion of harm represent human goals, that is, the welfare of humans through the attainment of these goals. What we mean by *Maslahah*, however, is the preservation of the ends of the shari'ah.¹⁰

Wheter As-Syatibi in his book *Al-Muwafaqat*, explained "*Maslahah* is a principle that concerns the sunsistence of human life, the completion of man's livelihood and the acquisition of what his emotional and intellectual qualities require of him, in absolute sense"¹¹.

In this definition, he tried to pointed out where *Maslahah* is a broad objective principle to measure everything in humanlife, including economic, laws of principles justice, or even '*ibadah*'.

However, *Maslahah* linked to Maqasid Shariah, where it defined as a mutual supports towards persivasive social fields at large. Indeed, Al-Ghazali has singled out in his definition, the importance of holding the aims of the shariah or the objectives of shariah (protection of faith, life, posterity, intellect and wealth) as the most essensial point of *Maslahah*. Muhammad Said Ramadhan Al-Buthi also highlighted on his definition, *Maslahah* as the object of interest of human life based on As-Syari', to protect of faith, life, posterity, intellect and wealth invigorate on its order.

Regarding on the definition of Al-Ghazali aand As-Syatibi, *Maslahah* in its term defined as the universal objective of Islam to aquire

⁹ معلوف، الأب لويس، المنجد، الطبعة الرابعة والأربعين، (بيروت: دار المشرق ش.م.م،

١١٠٢ ص. ٢٣٤)

¹⁰ Asyraf Wajdi Dusuki and Said Bouheraoua, p.318

¹¹ *Ibid*, p. 319

benefits and repulse harm, representing human goals in both of the world and hereafter. Those goals are relied upon *Maqasid Shariah* which consist of the deeper meaning and inner aspects of wisdom, conducted by the Lawgiver in all of the inclusive of ibadah and moreover *muamalah*¹².

Most of scholar shed on its objective connote to *maqasid shariah's* object. Both of them promote the well-being of human being through protecting their faith (*din*), life (*nafs*), posterity (*nasl*), intellect (*'aql*) and wealth (*mal*). Those five aspects refer to primary objective (*al-asliyyah*), whether out of this range is the corollaries (*tabi'ah*)¹³. Generally, it would be difficult without the indispensable of primary objective.

However, as the time goes by, there are the developing of human need and many problems of social-economic and political, should be determined upon its primary object. We should ensure *Maslahah* based on *Maqasid* to acquire well-being of every human being.

According to Al-Ghazali's book, he has divided the classification of *Maslahah* into three classifications based on its evidence. The first is *Maslahah Mu'tabarah*, which is one of *Maslahah* which has been ensured its validly by *Shari'ah* and being one of evidence in the universal matter. Its sources are derived from *Nash* (*Qur'an* and *Sunnah*) and *ijma'*, based on *qiyas*. For the example, drinking liquor which is disagreed by *Qur'an* and *Sunnah*. Its rule is determined as definitive. In order to promote and protect the objective of *Maslahah*. In posterity, Scholar are all in agreement that making *Maslahah* as the objective and framework of universal scope of mankind. The second is *Maslahah Mulgha* or called with invalidated *Maslahah*. The evidences, both of *Al-Qur'an* and *Sunnah* do well on nullifying its legal law. It has been inclusive including a large ranges all human acts, which related to 'ibadah and *mu'amalah*. In addition, the practice of usury in *mu'amalah* is forbidden. This case consists of unjusticy, whenever people tried to shift from one thing to other worth things. The last is *Maslahah*, which no evidence to be yielded as an agreement or disagreement. In this term, it defines as *Maslahah Mursalah*. Large numbers of transaction in *mu'amalah* do nothing based *Al-Qur'an* and *Sunnah*, but elaborate to be its evidence in the posterity. The utilization

¹² Abdullahi Abubakar Lamido, *Maqasid al-Shari'ah as a Framework for Economic Development Theorization* (2016), p. 3.

¹³ Asyraf Wajdi Dusuki and Said Bouheraoua, *The Framework of Maqasid Al-Shari'ah and Its Implication for Islamic Finance*, p.3

of *Maslahah Mursalah* can be established in the observing of multiplicity of texts and different range of evidences. So on it will invigorate a clear interest of mankind and insisting the rule of human being.¹⁴

Maslahah Aspect towards Tax Amnesty's Object 2017 in Indonesia

In this paper, I would like to draw a point towards the latest government packet of fiscal policy in the term of *Maslahah*. *Maslahah* would connect between the spirits and philosophy of Sharia on one hand towards its object¹⁵ (eligibility, coverage, and incentives). Within Sharia actualization on the policy, it explores *Maslahah* as the agenda for the study of Islamic Economic development, which ends on a reflection, conclusion, and some recommendations.

a. Eligibility

The role of eligibility would be the fundamental things in every government program. Its subject have to be considered carefully, because it has strong correlation in the succeed of its program. Furthermore, the subject would carry out the program and the advantages feed back into their welfare. Taxpayers who have the right qualifications for participating in tax amnesty program have been managed in the Article 3 of The Act Number 11 of 2016. Every taxpayer shall have the right to receive Tax Amnesty, by declaring the Assets owned in Declaration Letter. But there are some exceptions where the citizens do not have any right in it¹⁶, mainly:

- 1) The taxpayer under investigation, due to declared investigation in the Prosecution Office
- 2) In juridical process
- 3) Or undergoing criminal sentence in the Tax Crime

This policy is regulated by the government. Where, the aim on regulating this policy is to boost the database of taxpayers. Whereas, since 1984 Indonesia has low percentage of taxpayer or tax ratio. The latest data shown not more than 12,4% the obliged taxpayers report their asset

¹⁴ Asyraf Wajdi Dusuki and Said Bouheraoua, *The Framework of Maqasid Al-Shari'ah and Its Implication for Islamic Finance*, p. 396.

¹⁵ Zainal Muttaqin, *Tax Amnesty di Indonesia* (Bandung: PT Refika Aditama, 2013), p. 99.

¹⁶ President of The Republic of Indonesia, *Law of The Republic of Indonesia Number 11 of 2016 regarding Tax Amnesty*, Article 3, Number 3 p. 5.

every year¹⁷. In the other hand, nation budget is increasing year to year¹⁸.

In Islam, taxation was controled since the period of Rasullulah SAW. In the beginning the Islamic expansion in many *futuh* in the Middle East, muslim got many valuable things after winning the war. So on, his valuable thing was being the nation revenue. In this period there were three foundation of nation revenue mainly *fai*, *khumus*, and *zakah*¹⁹. Islamic Public Finance were developing systematically related to nothing save Qur'an and Prophetic Tradition. The rule of distributing some of those valuable things was regulated in Al-Anfal 1,

يَسْأَلُونَكَ عَنِ الْأَنْفَالِ قُلِ الْأَنْفَالُ لِلَّهِ وَالرَّسُولِ فَاتَّقُوا اللَّهَ وَأَصْلِحُوا ذَاتَ بَيْنِكُمْ وَأَطِيعُوا اللَّهَ وَرَسُولَهُ إِنْ كُنْتُمْ مُؤْمِنِينَ ٢٠

"They ask you about the windfalls. Say: The windfalls are for Allah and the Messenger. So be careful of (your duty to) Allah and set aright matters of your difference, and obey Allah and His Messenger if you are believers"

From this verse, Islam regulated his taxation towards nation upon Rasulullah SAW as the stakeholder. Islam did not need any institution to manage the distribution and expenditures. In that period, the nation's need was not too large and significant.

On the contrary, when it came to Caliph Umar's period. Islam had many troops and large inhabitants. So, there were many expenditures to fulfill the welfare of nation. Umar tried to regulate taxation in the *baitulmal*, to handle the public finance more smoothly towards *Maslahah* value in line with Al-Qur'an. At this point, the policy of taxation in Islam is conducted by the government linearly to Al-Qur'an and Prophetic Tradition. The centralization of financial power is needed nowadays, in order to keep the Sharia rule and the welfare of nation. Moreover it is being the duty of scholar and *ulama*', after the absence of Rasulullah SAW and his Caliphs.

This is similarly with the condition of our nation, which is needing more nation revenue to be improving welfare. Taxation is playing very

¹⁷ Abdul Rahman, Tax Compliance in Indonesia The Role of Public Officials as Taxpayers (Enschede: Spirit - BAPPENAS RI, 2017), p. 2.

¹⁸ Indonesian Bank, *Laporan Perekonomian Indonesia 2016* (2016), p. 96.

¹⁹ Fudhail Rahman, "Sumber-sumber pendapatan dan pengeluaran negara islam", *Al-Iqtishad*, vol. 5, no. 2 (2013), p. 243.

²⁰ Al-Qur'an Surah Al-Anfal (8) : 1

important role in our nation. The government always tries to stimulate the percentage the taxpayers to pay the tax rate. In spite of the nation budget 2016 needs IDR 2.095,7 trillion, 16.6% larger than last year, government set tax amnesty to collect more data of delinquent taxpayer²¹.

To promote the public welfare or *Maslahah*, in spite of low nation revenue, government tries to stimulate the economic nation by encourage taxation trough tax amnesty for many evaders. The benefits of this program could be seen on its short terms.

The taxpayers who declare their offshore and onshore unreported assets into the tax net of Indonesia got abolishment of tax rate, administrative penalty, and criminal case in taxation, saved database of any transaction in their asset. Willy-nilly, taxpayers would pay their rate voluntary. In the future, the nation could maintain somehow the tax evaders which has participated this program to complicate the rules of taxation annually. The number taxpayers, who pay their tax rate regularly, will grow the nation economy. More than just numbers of nation revenue, but also tax amnesty would build the tax compliance to contribute in the nation development. In other words, this policy could bring to new tax reform. In order to strengthen the regulation, the government enforces tax evader trough tax amnesty. So, they would not fear to have penalties in the next tax reform introduced.

But not every taxpayer has a right in participating this program. The government conducts somehow to make sure this program is success by setting some exception in it. In order to establish its legal security and justice principle. Merely, the government points the main target of this program is taxpayer that own high net worth offshore. They should declare their offshore asset, because -like the government said- this program is only once, no more repetition, and the evader of this program would be given penalties toward their violation.

b. Coverage

The kind of tax that providing in the amnesty is over Income Tax and Value Added Tax or Value Added Tax and Sales Tax on Luxury Goods. The reason of picking out this kind coverage is the most percentage of tax revenue come from this kind of tax. Whether the potential inhabitant of workforce is very large. There are IDR 1000 trillion of potential of

²¹ Bank, *Laporan Perekonomian Indonesia 2016*, p. 96.

income tax, if there is high tax compliance²². In fact, the government is only collecting around IDR 9 trillion of potential income tax. So, this point the government could push up the tax revenue toward the right coverage, Income tax, Value Added Tax or Value Added Tax and Sales Tax on Luxury Goods.

c. Incentives

Tax is the authorities of government to regulate its law, due to the need of the nation and its expenditures is very large. The government as the stakeholder has a legal in punishing the taxpayer that is not loyal to the nation. The punishments in Islam where no evidence encourage, to be upright, refer to *at-ta'dzir*. This is a form of government to keep nation welfare, rather than the economic stall. *Maslahah* in this point should be drawn to be the major part of discussion. The right of this punishment should be also controlled carefully. Many penalties acts, leak of promoting program, and the difficulties administration bounded to the taxpayers cause some evader in their compliance of law. So on the government needs a special program to encourage the tax compliance in that year, due to many factors and reasons. Tax amnesty could bring broad *Maslahah* in some ranges moreover in the tax revenue of nations.

Tax amnesty has brought some ease to taxpayers which have offshore assets. Through this government special program, they will not have any worry or difficulties to declare or repatriate their assets towards taxation. Tax amnesty has many kinds incentives to collect its participate, both of onshore and offshore.

There are paying the low rate towards unreported assets, tax-holiday on the last tax liabilities, abolishment of administration penalties, and abolishment of investigating of criminal sentence, so forth and so on.

The most used incentives in other applicator countries, such as India, Argentina, and Brazil is the abolishment of tracking the investigating assets²³. It is being the main factor of tax amnesty.

In Indonesia, the government opens chances widely to who wants to declare to not being investigated in their criminal sentences of taxation,

²² Gatra, *Tantangan Pengampunan Pajak*. Edition no. 38 on the year XXII, 21-27 July 2016. p.15

²³ Elliot Uchitelle, *The Effectiveness of Tax Amnesty in Selected Countries* (FRBNY Quarterly Review, 1989), pp. 49-51.

in the other hand they should pay the redemption money based on their asset. Flash back on the last tax amnesty in Indonesia, in 1984 where not success because the government did not give the right incentives to the participant. The participant will have 5% or 10% redemption money, in multiplying the tax liabilities in the previous years which undeclared. 5% was for income of government priority, whereas 10% was out of that aim²⁴. The multiplying asset on the tax liabilities were being other serious complicated problem. A long time ago, tax administrative of Indonesia was full of penalties²⁵. Whereas the taxpayers needed more information towards the new self-assessment system and the ease and simple tax administration.

Evaluating from the previous program, in this third tax amnesty program, government tries to reform into more adjustable taxation. They make the tax administration is more simple and easy. The redemption money that should be paid is calculated by multiplying the net of Asset only. Net Asset value shall include the latest SPT, PPh or unreported assets. But, after conducting this program, government is preparing on a set of penalties for who evading the special program in that year. Tracking the tax evader is not difficult anymore. Because the nation made a broad data integrity with the financial institution of other countries around the world.

The Existence of Indonesia Tax Amnesty Policy in *Maslahah* Framework

Maslahah has been basis for many contemporary issues in Islamic law. Since then, *Maslahah* has an objective valuable thing to promote the well-being of inhabitant. In particular, the concept of *Maslahah* represents the correlation between the contemporary financial issues with the Islamic framework based on the aim of *din* to hold the *Maqasid sharia*. Due to promoting the public welfare, *Maslahah* does not only mean serving interest (*jalb al-manfa'ah*) and save every human being from harm (*daf al-mafasid*), it is determined as the boarder dimension of epistemologist ('*aqidah*)²⁶.

Indeed, the Islamic Financial Institutions including the government

²⁴ Muttaqin, *Tax Amnesty di Indonesia*, p. 50.

²⁵ *Ibid.*

²⁶ Dusuki and Bouheraoua, "The Famework of Maqasid Al-Shari'ah and Its Implication for Islamic Finance", p. 318.

have to ensure that every transaction based on *shari'ah*, not only in the terms of forming and technicalities, but the most fundamental, in their substance outlined by *shari'ah*. This framework makes the contemporary financial issues more efficient and effective in managing²⁷.

The large number in mistake for defining *Maslahah* concept is relating its meaning in the narrow range. *Maslahah* has its fundamental factor, that we called with "benefit". People only focus on the benefit in the term of secular. The term of benefit is not only simply bounding with world aspect, furthermore in the Islamic perspective, its correlation with hereafter. Therefore, there's no reason to have the legality of ones financial issue that would ruin the concept of *shari'ah* in hereafter. Even merely, the contemporor of financial issues should not opposing the evidence of Al-Qur'an and Prophetic Tradition. Thus, it can not say justice replaces with injustice, mercy with its opposite, or wisdom with nonsense, it is not belonging to *Maslahah* concept in Islam. Every stakeholder should choose the basis of legislation carefully, not depends on their strong desire of subjective goals.

In this issue, tax amnesty is a policy with no evidence, both of Al-Qur'an and also Hadist. So, i consider it's as kind of *Maslahah Mursalah*. The economic policy and situation are always changing every time. And Islam as the moderate religion, could conduct somehow that every issue has its solve trough *Shari'ah* law. In this term, like I've been presented before, to analyse and approach its term, *Maslahah*, must be carefully an aware to not create any policy based on personal interest. In this time, i admit that tax amnesty policy has some *Maslahah* in it, where actually in its program conducting a public welfare in Indonesia.

So far, tax amnesty with its goals bring many benefits to the nation revenue. But, the researcher would like to draw more clearly and deeply towards the real *Maslahah* concept in Islam. We can derive from the Article 2 of Act Number 11 of 2016, tax amnesty should aim at some of these goals²⁸:

- a. Boosting the economic growth trough assets transferring, where could bring some advantages in strengthen the domestic liquidity, exchange rate of Rupiah, volume of investment, and decreasing the interest

²⁷ *Ibid.*, p. 317.

²⁸ Indonesia, *Law of The Republic of Indonesia Number 11 of 2016 regarding Tax Amnesty*, p. 4.

rate.

- b. Promoting tax reform to be equitable valid, integrated, and comprehensive taxation system and database extension.
- c. Increasing tax revenue toward high tax compliance.

From those aims, tax amnesty would affect somehow in a short terms, Indonesia had reached such a fantastic number of redemption money of this special program. Even the nominal was not as expected before, but Indonesia got the 1st rank on the highest redemption money after tax amnesty program²⁹. Wheterin the long term, tax amnesty also collect the names and data of taxpayer to comply with their tax rate payment annually.

To shed on the deeper observe of its *Maslahah*. I would like to highlight the term of *Maslahah* in Islam. The benefits not only derived as in the world but also has some merits in the hereafter. As presented before, tax amnesty has many advantages which lead to public welfare, both of in the short and long term. But the researcher found there are some gap inside those benefits.

a. The absence of tracking the source of the asset

One of facilities of tax amnesty is the absence of tacking source of assets. The government chose this kind of incentives due to collect database of tax amnesty as large number of expectation. But for leading countries, which have high tax compliance and good tax administration is very effective to increase tax revenue. In the other hand, for the developing countries, tax amnesty will not guarantee the increasing of tax revenue and tax administration. Tax amnesty as Gatra said is neutral. It usulally gives many tax revenue in the short term, but vice versa in the long term. However, the facilities of absence of tracking of source of the asset gives opportunities for the taxpayer who have asset of illegall business, drug smuggler, and corruption to participate in tax amnesty and repatriation assets³⁰. In particular, the government admits money laundry in the policy of tax amnesty. From this program they could manage their illegal asset tobe “whiten asset” where invested and feedback into some profit from

²⁹ Andrew C. Aseng, *Tax Amnesty Implementation in Selected Countries and Its Effectivity*, no. July 2016 (2018), p. 4.

³⁰ Emmiryzan Wasrinil Said, *Tax Policy in Action : 2016 Tax Amnesty Experience of the Republic of Indonesia* (2017), p. 6.

the investment.

The number of money laundry in Indonesia is never been accessed and shown. But it is being very danger situation in Indonesia, if the government is still admitting their process. The asset that brought back to Indonesia is being questioned and gharar, due to the absence of tracking source of it. Islam in Islamic fiancé prohibits any product of *maysir*, *gharar*, and *riba*. The government must ensure the form of technicalities is based on *shariah*-compliant. Furthermore, the government do not build the tax compliance in this term, but rather than collecting the funds as much as can neglecting its big substance, in the moral values. This point also inhibits the development of regulation of anti-corruption in Indonesia. Because, the authorities of taxation will save carefully the database of funds of the participant. It will be difficult for the institute in uncovering corruption cases. Even the General Directorate knows that the asset in tax amnesty program from illegal or criminal business, they cannot report to police or KPK. So on, the accountability and transparency of Indonesian government is questioned, from choosing this program.

b. The State of Importance of Tax Amnesty as *Maslahah Daruriyah* is Questioned

Another critic towards this program in *Maslahah* concept is the importance of this program. Because the program would bargain the nation revenue and the role of law enforcement away. It should be conducted in the state of emergency. In Islam, the state of emergency could make a policy with high risk being *Maslahah Daruriyah* depends on its welfare in that time. In one time this policy could be *Maslahah Daruriyah* if it applied well towards *Shari'ah* compliment, but then, it could change if the characteristic in contradiction with one of the conditions as has been observing before. But, leak of economic development is not being fundamental point to be considered as its reason to be done³¹.

The condition of Indonesia in that year is still in good condition. Because the Indonesia is an independence country since 1945. This condition has been getting better after the new order. The worst disaster which happen in Indonesia was tsunami in Aceh, but Indonesia was suffering after then.

The study above has shown that the concept of *Maslahah* is

³¹ Muttaqin, *Tax Amnesty di Indonesia*, p. 110.

aplicated well in this policy, except in one kind of incentive. The absence of tracking source makes the enforcement institutions and financial institution in gap. Due to the General Directorate blocks the notifying data of criminal and illegal business of taxpayers. They are protected from every investigation of any cases, whether financial and tax database could be strong proof for beginning enforcement proceeding in Indonesia. It could be drawn this leak of tax amnesty policy include one of *mafasid*.

Considering from its *mafasid*, *Maslahah* run against its principles, to not contrast with the principle of Al-Qur'an and *Sunnah*. But the way of government to collect some nation revenue in short term with omitting the tracing or tax audit of the participant seems like they legalize every ways to get an numerous tax compliant and nation revenue. Contrary to *shariah* principles in Al-Qur'an, where taking another's wealth is forbidden without any permission, including in the way of taking illegally such as corruption, money laundry, and others. So on, so forth, *Maslahah* in tax amnesty term is not *Shari'ah* compliance applicated well. The importance of its policy is not over *Maslahah Dharuriyah* again, but it has stalled being *Maslahah al-Hajiyyah*. There some points to be avoiding, due to oppositting the aim of *Shari'ah*. It proves that the government should examine carefully in electing the this program, due to some reason represented before. In further, we can observe the importance of its *Maslahah* in *ushul-fiqh*. The proper one, tax amnesty is a complementary need or *Hajiyyah*. The benefits or interests that supplement *daruriyyah* or essentials need. Because it is only being the bases of conducting the welfare in the world much and little in the hereafter. But if one tries to fulfill this complementary need, it will make the life easier and undistress. Overall, *daruriyyah* of *sharia*-compliance should be kept up rather than *hajiyyah* and *tahsiniyah*. Because the defiance of *hajiyyah* will not fundamentally affect *daruriyyah* where actually lead to public welfare.

Conclusion

Tax Amnesty in its program has brought many advantages to promote public welfare. There are short term and long term goals to be reached, mainly:

- a. In short terms, the government tries to collect additional revenue and would stable nation economy in that year around 2016-2017.
- b. In long terms, hoped from this program, government could increase

tax ratio compliance, brought some investment from repatriated program which has some profits to the participate and nation, would ease tax reform in the future and increasing the developing of the nation smoothly.

The study above has shown that the concept of Maslahah in this policy is kind of *Maslahah Mursalah*. And based on its importance its as *Maslahah al-Hajjiyah*, which actually implicated well in this policy, except in one kind of incentive. The absence of tracking source makes the enforcement institutions and financial institution in gap. It seems that the government admits the practice of money laundry in Indonesia, and backed up its practice in the institutions. Other lack of this program is the implementation of tax amnesty is only in the state of emergency, which has been discussed in the last chapter. It makes the degrees of tax amnesty towards shariah-compliance is lower. Tax amnesty is not as *daruriyah* or essential need, but it rather as *hajjiyah* need to complement the ease of human need and well-being.

Thus, I would argue that the incentives of tax amnesty should be considered carefully. Because, it has broad correlation with the success of program in tem of *Shari'ah*-compliance. The absent of tracking source lead to the issue that the nation admitted the money laundry trough tax amnesty and making other enforcement institutions difficult to investigate white-collar crimes or international smuggling cases in Indonesia. There are many choices of incentives of tax amnesty that could succeed all of part of government institute in Indonesian.

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