

# Effect Of Tax Amnesty Law On Waqf

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## ملخص

حكم عفو الضريبة هو أحد إختراق الناجح من الحكومة لارتفاع الدخل الضريبي مثل رفع قاعدة بيانات الضريبة. هذه السياسة تدفع تغيير الإقتصاد كي تدخل البيانات من السكان الذين يخرج أو يدخل إندونيسيا في قاعدة بيانات الضريبة. المشكلة تجد عندما لا يدخل الأشياء الموقوفة في قاعدة بيانات الضريبة سنويًا ومن ثم لا يعتبر من ضمن القانون. الأشياء الموقوفة التي لم تكتب في قاعدة بيانات الضريبة تعتبر غير رسمي ويجب أن تدفع الغرامة عند التسجيل في قائمة عفو الضريبة، وهذا مثل الأشياء المحتوية على الجريمة. قد تأمل الكاتب على المنظمات الإسلامية الآتي يُبَرِّز الوقف. إنهم قادرون على اتباع تلك الطريقة عامة لكن بعضهم لم يستعد على تسجيل الأشياء الموقوفة في قائمة بيانات الضريبة.

**كلمات مفتاحية:** عفو الضريبة، الوقف، محمديّة، نهضة العلماء.

## Abstract

*Tax Amnesty Law is the breakthrough success of the government to increase tax revenues as well as strengthen the database taxation. This policy also encourages economic restructuring due to the inflow of funds owned Indonesia citizens who were abroad and within the country but yet was listed as the basis of taxation. Problems arise mostly when Waqf property has not been registered in the yearly tax report until the object is considered part of this Law. Waqf property that has been handed down and has not been reported to the yearly tax report considered as illegal property that must be paid the fine when it registered as tax amnesty, the same as the property obtained from crime. Author made observations on the organization of Islamic organization that has long been managing the waqf. Most can adapt to this Act but some are not ready for this for waqf property is considered not taxed therefore not be registered in the Tax return.*

*Keywords: Tax Amnesty, Endowments, Muhamadiyah, Nahdlatul Ulama*

## A. Introduction

The Indonesian government to implement the Tax Amnesty with some goals to be achieved, are as follows: (i). accelerate economic growth and restructuring through the transfer of assets, which will have an impact on the increase in domestic liquidity, improvement in the exchange rates, lower interest rates, and increased investment; (ii). tax reform to encourage more equitable tax system and broadening the tax base more valid data,

comprehensive, and integrated; and (iii). increase tax revenues, which will be used to financing the construction (TA Law Article 2, paragraph 2).

Ensuring the program is successful, the government conducted a massive campaign by the media to ensure that the public can receive the government's message about the need for the Tax Amnesty succeeded by society. The target of the Tax Amnesty is the owner of the existing funds in domestic and overseas who do not want

to report his property in the annual tax report for various reasons. People did not reported their assets for some reasons it can be hide, evade taxes or intentionally concealing property obtained by illegal.

When the Law is legislated tax Amnesty leads to all communities the law on tax obligations. People as individually and entity is subject of this regulation (TA Law Article 3, paragraph 1) and bounded to the regulation. In the tax officer side, wakif / donor endowment and Nadzhir are subject to the tax amnesty as other Indonesian citizens. The government is giving chance to each taxpayer to participate Tax Amnesty due date, 31st March 2017 (TA Law Article 15, paragraph 4).

As new institutional, endowments have legal protection in 2004 when the endowment law is legislated (Endowment law, No. 41/2004), so the understanding of Nadzhir about the endowment assets an the aspect of taxation an administration is bad. People who provide endowments (Wakif) and endowment managers (Nadzhir) understood that the relationship between wakif and delivery of property inspectors do not have the tax aspect. Transfer of ownership of wakif to the superintendent is based on the desire to do good, as exemplified by the Prophet Muhammaad SAW. Endowment is legal acts to separate and hand over part of their wealth either permanently or for a specified period in accordance with their importance to the purpose of worship and general well-being according to sharia (law Waqf article 1, paragraph 1).

When the endowment property shift from wakif to the nadzhir, the burden of tax reporting of the endowment property is shift to the nadzhir. Nadzhir must reported the property on the yearly tax return. And the handover of property noted as transaction with the 0% of taxes. The balance between income and wealth profiles show the reasonableness of the reporting done by the

taxpayer to the tax officer.

If there is property that is managed by the nadzhir but never reported in the last annual tax return or not fully reported, Tax Amnesty law gives the right for nadzhir as taxpayers to follow the Tax Amnesty program or correct the last annual tax return. The object of the tax amnesty for tax liabilities which are not or not fully resolved by the taxpayer, which represented in property that has never been reported in the Annual Tax return. Tax amnesty granted to taxpayers through disclosure of its assets in the assets declaration. (TA Law Article 3 and the explanation of Article 5 paragraph (2)).

The issue in the Tax Amnesty is effect on the property declaration is the obligation to pay the fine on declared property. Amnesty rule stated that tax amnesty is a amnesty from the state to the people that not paid the tax yet, but they have to pay some fine. There is not subject to administrative sanctions and criminal penalties taxation in the field of amnesty, by declare the Property and pay the fine money as stipulated in this Law. (TA Law Article 1 paragraph 1). Therefore, this paper wants to examine the effect of the tax amnesty on endowment.

## **B. Theoretical backgrounding**

Endowments as a regulation published in 2004 in the form of - Law, but the practice of endowment in Indonesia have occurred even before the establishment of the Republic of Indonesia. In the simple kind, endowment on tomb land or mosque has been discovered in almost every place in Indonesia. Although religious property non taxable but if the property have not title yet, it clasify as taxable property regarding to the any regulation of taxes in Indonesia.

Recognition in the form of the endowment in Indonesia starting from the constitutional legislation established the Law Number 41 year

2004 on Endowment law. Government stipulate Peraturan Pemerintah Republic Indonesia Number 42 year 2006 to Implementation of endowments law. This recognition, opens the horizons of society that the endowment should not be only in the form of land or buildings, but can be a cash endowment like the sound of Law article 29 paragraph (2) Endowments moving objects in the form of money referred to in paragraph (1) shall be issued in the form of certificates of endowment (cash endowment) to be productive purposes. The article also open up new horizons for wakif (people who give their property to endow) and the nadzhir people who manage the endowment property) that the endowment can also be allocated for productive business activity whose results are for the benefit of society / community. The law is constitutional umbrella for management of endowment in Indonesia although the practice of endowment has existed since pre-independence era.

Previous understanding about the restricted endowment funds for public purposes such as the mosque, school and the grave. Nadzhir as endow manager, has responsible for maintaining and administering the assets managed. As Article 11, Nadzhir have the task: (i). do administrating property endowment; (ii). manage and develop property ownership in accordance with the function, and purpose; (iii). supervise and protect property ownership; and (iv). report on the implementation of tasks to Indonesian Endowment Board.

This responsibility makes the superintendent position in tax laws as a taxpayer is obliged to report property that is managed in the annual tax return. Tax Amnesty made the position of the property reported on the tax return 2015 as the starting point reference of reporting. If the property reported on the tax return 2015 so the taxpayer is not obliged to report his property

regarding to the rule of tax Amnesty. However, if the taxpayer does not report or under-report their wealth in tax return year 2015, the taxpayer has the right to fixed the tax return yer 2015 or following the Tax Amnesty program. If they follow Tax Tax Amnesty program, the property that has not been reported have to be declaire in tax amnesty form and must be pay some fine regarding to the law. The percentage of fine is various starting from july 2016 to Mach 2017.

### C. Previous research

Zubaidah (2013) wrote about The Legal Framework of endowment in Malaysia which provides the legal basis for the implementation of the endowment system forced in Malaysia. In the other side, accounting aspects of the endowment ever written by Shafia (2013) in order to increase transparency and accountability in the management of zakat to improve governance aspects of endowment. Both Research conducted contribute to improving the quality of governance in order to gain the trust endowments of people to hand over his property to the Nadzhir. Two researchers and many other researchers have not yet discussed about the tax aspects of endowment, thus possible potential problems will be increase because of the nature character of the taxes is force.

There are fundamental problems associated with the earlier endowment governance has not entered a tax factor as important thing in the management of the property. This has implicated when the property endowments declare Tax Amnesty program and have to pay the sum of fine.

### D. Issues and Discussion

Regarding to the tax law, the basic endowment issue is the hand over of property from wakif to the nadzhir. In social religious perspective it is an act of kindness. Tax officer treat the hand over as same as economic transaction. And the

nadzir have the responsible to adminstrating and reporting the property law of tax call nadzhir as subject of the tax.

Taxes are not familiar with the term property for public purposes or private. As long nadzhir have responsible to the assets, the tax officer asume that all of tax responsibility be own by nadzhir. When there is the potential tax obligation rise from the property, tax officer will cahse the tax to nadzhir. Potential tax can arise for several reasons; (i) have not been made the certificate of endowment to the property (ii) the nadzhir not declare the property in anual tax return (iii) the property has been reported but the number is less.

Since most of the endowment property located on the center of the city, they had huge economic value. Endowned land is usually located in densely populated areas, and has a long cultural roots. Data on donated land can be seen in table 1 below this.

NO	PROVINCE	TOTAL	ALREADY CER. TIPCATE WAQF	YET CER. TIPCATE WAQF	WIDE TOTAL (m2)
1	Nanggroe Aceh Darussalam	24,888	13,730	11,168	767,869,011.58
2	North Sumatra	16,280	7761	8519	36,035,480.00
3	West Sumatra	6643	4,420	2,223	212,212,380.00
4	South Sumatra	6394	3,521	2875	380,456,227.29
5	Riau	8152	2,641	5,691	1,183,976,528.00
6	Jambi	5918	3795	2,133	13,516,203.00
7	Bengkulu	2759	1,899	890	7,122,171.22
8	Lampung	14,591	8372	6,219	22,998,834.00
9	Bangka Belitung	1,133	779	354	3,245,060.00
10	Riau Islands	1,187	326	861	1,066,799.00
11	DKI Jakarta	7422	4623	2,799	3,013,640.00
12	DI Yogyakarta	8,547	8051	496	2,933,943.00
13	West	74,860	45,873	28,987	116,662,017.81
14	Central Java	103,294	82,641	20,653	163,169,706.97
15	East	74,429	54,193	20,236	58,238,272.20
16	Banten	20,089	11,049	9040	38,322,270.00
17	Bali	1,399	1,132	267	13,998,000.00
18	West Kalimantan	4,467	2,257	2,210	27,544,360.00
19	Central Kalimantan	2642	1,631	1,011	5,778,500.00
20	South Kalimantan	9265	7562	1,683	58,238,272.20
21	East Kalimantan	3423	772	2,651	13,984,104.00
22	North Sulawesi	887	420	467	1,905,272.70
23	Southeast Sulawesi	2,386	1516	870	5,225,958.00

24	Orissa	3,175	2,851	1,122	165,042,816.23
25	South Sulawesi	10,440	5486	4054	1,029,030,278.00
26	North West	2,448	571	1,877	3,251,799.00
27	Papua	346	142	204	694,466.00
28	West Papua	338	105	233	591,117.00
29	East	1,272	1,047	225	5,311,787.00
30	Wintneath	12,105	7031	5074	25,816,325.00
31	Maluccas	1,215	449	766	5,808,359.00
32	North	1,489	805	543	30,223,191.00
33	grentalo	1,877	729	1,148	1,863,358.00
<b>TOTAL</b>	<b>85788</b>	<b>207189</b>	<b>149847</b>	<b>4,259,443,170.00</b>	

Source: Directorate of the Ministry of Religious Endowments, dated, March 2016. North Kalimantan not been splited yet from east Kalimantan

According to data from Indonesia Waqf Board there are 4.35 million m2 of land which is managed by endowment land consisting of 435.768 pieces of land. Among the 287,160 already have land titles (certificate) and the rest do not have a certificate of 148.447. According to the tax law, endowment property is not taxable as long as it has land title (endowment certificate).

Regarding to the tax amnesty law The property that declare and reported on the tax return as at 31 dec 2015 is not an object of Tax Amnest. If the land not registered on tax return it has to declare on the tax amnesty program and pay some fine. Ammount of the fine to be paid for the non registered when the property declare for the tax low (i) from + 1st Juli to 30 Sept 2016 fined rate by 4% (ii) and when declare + 1 Ok to 31 Desember 2016 subject to tariff 6% (iii) finally when declare 1 Jan to 31 March 2017 it fined by 10%.

Regarding to the Tax law, property that not reported to the tax return is considered as treasure that historically obtained by earnings that not taxable. Tax Amnesty Law gives people to declare such properties and paid the fine then the property is considered as legal property.

If the superintendent can not prove that the property was include and reported on the tax return, the choice of the superintendent is traceable to such property a few years back

and make revisions to the tax return or declare property in Tax Amnesty and pay the fine. Tax amnesty is program amnesty from government to the tax payer, if following this program the tax payer do not have administrative sanctions and criminal penalties taxation in the field of taxation, they have to declare the Property and pay the fine money as stipulated in this Law (UU TA Article 1 paragraph 1).

Indonesian civil society organizations such as Muhammadiyah firmly rejects the enactment of the Tax Amnesty and filed a lawsuit to the Constitutional Court. A variety of reasons were given but the substance underlying assets because of its mass organization Muhammadiyah most organizations registered as an asset even though there are still registered as individual member. Thought that public property is not the object of the income tax, the organization do not pay attention to administrate the endowment property. This weakness is not a big problem, while Tax Amnesty Law has not been legislated. But after the enactment of this law, all assets that are not registered in the tax mechanism is considered as illegal property, and therefore must be included in the Tax Amnesty program.

Muhammadiyah, as an institutional have huge economic value of land and buildings, mosques, prayer rooms, hospitals in several cities, community health centers, school, campuses, office buildings etc. Some administrated on the head office and the other by each region depend on the authority. The accumulated value of the redemption of the property is certainly very great.

The old laws provide tax space for organizations or foundations engaged in social and awareness for administrate the property is low. Tax Amnesty Law does not provide accommodation for the administrative failure and staright to the line in the term of tax return reporting. All property that can not describe the source of income consider

as property acquired through unlawful activity, and should therefore be forgiven by the state and declare on the Tax Amnesty and so pay the fine. It is a huge burden on the organizations and therefor they propose an objection.

The origin purpose of the enactment of the Tax Amnesty is to repatriate the assets owned people who kept abroad. Or property obtained by illegal means owned by citizens but not reported to the administration of the taxation system. The Organizations are not part of the two condition. All the property wealth is obtain for the social and religious activity.

In 2014 Muhamadiyah publish the accumulated assets amounting to 20 trillion rupiah. If the value is registered to the Tax Amnesty program, the value of the ransom before 30 September 2016 by 2% to reach 400 billion rupiah. This very large value to be paid.

Other organization such as Nahdlatul Ulama has many pesantren spread in many city, but the property is not belong and administrated by head office. Much of them is belong on by the Kiai or their family. So the isu of Tax Law is not rise as the organization issue but handled sparately. Therefor Nahdlatul Ulama not too concerned about the enactment of the Tax Amnesty law. Because the burden of tax is managed partially and not so large in each of its units. This causes the Nahdlatul Ulama or other organizations do not involve simultaneously together with Muhammadiyah to make a claim to the Constitutional Court.

Both organizations above is litle case of nadzhir that dedicated on endowment property and have to have participated in the Tax Amnesty. There are many small foundations that are not affiliated to both organizations that also faces the same problem stemming from their poor administrating.

The authors saw their is fundamental weaknesses in designing academic papers on Tax Amnesty Law which does not involve many

elements of social wealth and philanthropy into variable regulation that should be accommodated in the articles section. These weaknesses also not corrected in the discussion on the political content of Parliament. There is no proper public hearing to provide input on legislation to avoid a conflict between regulation and social realities.

The mass organization have long life and be an element that helps the government improve the life of the community and their education through charity and philanthropy activity. Etymologically, the meaning of philanthropy (philanthropy) is philanthropy, generosity, or contributions something that shows the love of mankind. Four term is derived from the Greek, which is philos (love) and anthropos/human, which literally means the conceptualization of the practice of giving, service (service) and association (association) by volunteering to help others in need as expression of love.

#### E. Conclusion

From the discussion above, the author can conclude as follows;

1. There are weaknesses in the administrative by the nadzhir handling for tax purpose. They do not treat the property as tax object properly to avoid the tax penalty. Further the endowment nadzhir have to improve the capacity to administrate the property properly.
2. This show the weaknes that have to be resolve by the Authority of Endowment in Religion Ministry. There should be significant improvements in governance for institutional so that the public will have more confidence hand over of property and participate actively in endowment.
3. Accountability and transparency is the caharacteristic of a good government organization. Mass and philanthropic

institutions have to increase the quality of Good Governance to increase the trust of public so they increase the trust to the endowment mechanism.

4. There is weakness gap on the Tax Amnesty Law that not consider yet many aspect of sosial institution. In case of changes in tax regulations make the social organization trapped on the condition that constitutionally force them to follow the Tax Amnesty program and paid the amount of fine as a consequence.
5. Needs special chapter in the Tax Amnesty Law which regulates social institutions to resolve the endowments problem in tax.

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