

Digital Tax Regulation in Facing Society 5.0 Era to Realize Indonesian Tax Sovereignty

Amelia Cahyadini^{*}, Tasya Safiranita^{**}, Zainal Muttaqin^{***}, Rizki Fauzi^{****},
Ahmad M. Ramli^{*****}

DOI: <https://doi.org/10.22304/pijh.v11n1.a7>

Submitted: July 25, 2023 | Accepted: February 5, 2024

Abstract

Technological advancements have catalyzed the emergence of the digital economy, where digital platforms, leveraging internet access, can penetrate multiple regions and accrue substantial profits unrestricted by national jurisdictions. This scenario presents advantages and convenience but simultaneously challenges a country's tax sovereignty. The traditional tax system, predicated on a company's physical presence for tax liability, finds itself ill-equipped to handle the digital domain's nuances. This research seeks to explore the potential and hurdles in implementing digital taxes in Indonesia, delving into the government's regulatory efforts within the framework of Society 5.0. From an academic standpoint, digital taxes illustrate the disruption in tax collection due to the absence of a tangible company presence. Thus, this study also aims to investigate the determination of tax sovereignty in the context of digital taxation, aspiring to enrich scholarly discourse. Employing a normative juridical approach, this study scrutinizes legal norms and rules while considering empirical facts from the field. The findings indicate that while the introduction of digital taxes in Indonesia holds significant promise and faces considerable challenges, governmental action to update and streamline digital tax regulations is imperative. Furthermore, the principles underlying digital tax proposals, such as Pillar One, require reinforcement to enhance their effective implementation.

Keywords: digital taxes, society 5.0, tax sovereignty.

A. Introduction

The adoption of technology and internet networks in Indonesia has been on the rise,

PADJADJARAN Journal of Law Volume 11 Number 1 Year 2024 [ISSN 2460-1543] [e-ISSN 2442-9325]

^{*} Assistant Professor of Department of Administrative Law at the Faculty of Law, Padjadjaran University, Jalan Raya Bandung–Sumedang Km. 21, S.H., M.H., Dr. (Padjadjaran University), amelia.cahyadini@unpad.ac.id.

^{**} Assistant Professor of Department of Cyber Law at the Faculty of Law, Padjadjaran University, Jalan Raya Bandung–Sumedang Km. 21, S.H., M.H., Dr. (Padjadjaran University), tasya.safiranita@unpad.ac.id.

^{***} Associate Professor of Department of Administrative Law at the Faculty of Law, Padjadjaran University, Jalan Raya Bandung–Sumedang Km. 21, S.H., M.H., Dr. (Padjadjaran University), zainal.muttaqin@unpad.ac.id.

^{****} Staff of Legal and Cooperation Division, Secretariat of the Directorate General of Posts and Informatics Operations, Ministry of Communications and Informatics, Jalan Medan Merdeka Barat Number 9 Jakarta Pusat, S.H. (Padjadjaran University), rizkifau01@gmail.com.

^{*****} Professor of Cyber Law at the Faculty of Law, Universitas Padjadjaran, Jalan Raya Bandung–Sumedang Km. 21, S.H., M.H., Dr. (Padjadjaran University), ahmad.ramli@unpad.ac.id.

leading to the country's transition to Society 5.0 as of 2019. Correspondingly, a survey by the Indonesian Internet Service Providers Association (APJII) on internet penetration in Indonesia in 2023 revealed that internet users reached 215.63 million during the 2022-2023 period. This represents a significant increase from the previous period of 2012-2022, which recorded a total of 210.03 million internet users.¹

The surge in internet users in Indonesia correlates with the growing number of digital platform users. Digital platforms, as an innovation stemming from technological advancements reliant on internet connectivity, have significantly facilitated human activities, spanning various sectors, including finance, transportation and mobility, healthcare, and more.² This scenario underscores the profound development of digital platforms and their impact on enhancing the efficiency and effectiveness of human life.²

Digital platforms in Indonesia have permeated all facets of life, significantly influencing crucial national sectors such as the economy. This is evidenced by the collaboration between the Ministry of Communication and Information Technology (*Kementerian Komunikasi dan Informatika*-Kominfo) and 40 digital platform operators under the G20 Industry Task Force Digital Economy Working Group (ITF DEWG) aligned with the G20 Presidency agenda for 2022-2023. One notable digital platform, Traveloka, represented by its Vice President of Public & Government Relations, Widyasari Listyowulan, has expressed the company's support for the government's efforts in enhancing digital literacy and talent to foster synergy across sectors.³ This underscores the role of digital platforms in facilitating economic recovery and sustaining business continuity by seamlessly integrating into various sectors across Indonesia.

The potential of digital platforms in relation to a country's economic sector is immense. According to a report by McKinsey Indonesia 2016, the Indonesian economy could see an increase of more than USD150 billion by 2025, should a digital revolution occur. This potential growth is estimated to reach USD156 billion, or approximately IDR2.184 trillion, based on an exchange rate assumption of IDR14.000 for USD1.⁴ The Indonesian government is keenly aware of this potential. It has evidenced its realization by actively collaborating with digital platforms on significant agendas related to economic growth, such as the G20 Industry Task Force Digital

¹ Andrean W. Finaka, "Pengguna Internet di Indonesia Makin Tinggi," accessed on June 18, 2023, <https://indonesiabaik.id/infografis/pengguna-internet-di-indonesia-makin-tinggi>.

² Mark de Reuver (et.al.), "The Digital Platform: A Research Agenda," *Journal of Information Technology* 33, no 2 (2018): 124, <https://doi.org/10.1057/s41265-016-0033-3>.

³ Kominfo, "Platform Digital Indonesia Untuk Kekuatan di DEWG G20", accessed on July 10, 2023, <https://www.kominfo.go.id/content/detail/44240/platform-digital-indonesia-unjuk-kekuatan-di-dewg-g20/0/artikel>.

⁴ Herlina Utamawati dan Suparna Wijaya, *Pajak Penghasilan Ekonomi Digital* (Indramayu: CV Adanu Abitama, 2020), 2.

Economy Working Group (ITF DEWG) agenda. This strategic approach by the Indonesian government seeks to maximize opportunities for economic expansion and serves as a platform for collaboration between sectors in Indonesia's digital economy.

Aligned with the preceding discussion, a digital platform is essentially a digital space that facilitates user interaction, collaboration, transactions, and access to various digital services. The Circular Letter of the Minister of Communication and Informatics of the Republic of Indonesia Number 5 of 2016 on the Limitations and Responsibilities of Platform Providers and Merchants for Electronic Commerce in the form of User Generated Content defines platforms as entities such as applications, internet sites, and/or other internet-based content services that are utilized for transactions and/or trade facilitation through electronic systems.

Furthermore, according to Indonesian law, digital platforms fall under the category of electronic system providers. The deployment of electronic systems encompasses every individual, state administrator, business entity, and community that provides, manages, and/or operates electronic systems, either individually or collaboratively, to meet the needs of electronic system users for their own purposes and/or the needs of others.⁵

Digital platform operators generate income through monetization, a strategic framework that delineates the optimal methods for platforms to earn revenue and achieve a return on investment. This framework enables digital platforms to identify the value they offer, the pricing strategy, and the sources of income. Essentially, monetization involves leveraging a platform's user base and transforming user activities and engagement into various revenue streams.⁶

Several prevalent monetization methods utilized by digital platforms include First, offering paid applications where users pay upfront to access the app; second, enabling in-app purchases that allow users to pay for specific features within the app; and third, integrating advertisements within the platform; which can be displayed as a photo or video ads. These methods collectively facilitate the generation of revenue by capitalizing on the interactions and engagement of the platform's users.⁷

The monetization methods previously discussed have led to the development of several business models commonly employed by digital platforms, including

⁵ Article 1 Number 4 Government Regulation Number 71 of 2019 on Electronic System and Transaction Operators and Article 1 point 5 of the Regulation of the Minister of Communication and Information Technology of the Republic of Indonesia Number 5 of 2020 on Private Scope Electronic System Operators.

⁶ Ailie K.Y. Tang, "Mobile App Monetization: App Business Models in the Digital Era," *International Journal of Innovation* 7, no. 5 (2016): 224.

⁷ Ailie K.Y. Tang.

freemium, paid, paidmium, and in-app advertising.⁸ The availability of diverse business models provides digital platforms with enhanced opportunities to maximize monetization and generate increased profits from their user base. The greater the number of users who engage with a platform's monetization model, the more substantial the benefits accruing to the platform. Therefore, it is logical for various platforms to strive to optimize their monetization potential to boost revenue. This focus on maximizing monetization underlines the platforms' efforts to effectively manage their operations and capitalize on user engagement to secure financial gains.

As previously mentioned, monetization significantly contributes to the revenue of digital platforms. For instance, YouTube's global advertising revenue in the third quarter of 2020 reached USD 5 billion, approximately IDR 73.7 trillion, marking a 30% increase from USD 3.8 billion, around IDR 56 trillion, in the same quarter of 2019.⁹ Furthermore, Google announced that the premium subscription model introduced on YouTube by the end of 2020 attracted more than 30 million subscribers to YouTube Premium, which includes access to YouTube Music.¹⁰ Additionally, in the same quarter, Google's advertising division, excluding YouTube, generated USD 37 billion in revenue, highlighting the substantial income digital platforms can achieve through various monetization strategies.¹¹

Meanwhile, Facebook's global revenue in the third quarter of 2020 increased by 22% year-over-year to USD21.47 billion.¹² This continuation of revenue growth from the fourth quarter of 2011 through 2021 underscores the platform's sustained financial success.¹³ The majority of Facebook's revenue originates from mobile advertising, specifically through smartphones, which constitute 94% of the company's total revenue, illustrating the significant impact of mobile platforms on the company's financial performance.¹⁴

The aforementioned facts underscore that as user numbers increase, digital platforms' profits have the potential to grow substantially in the era of Society 5.0. However, this opportunity for profit introduces challenges related to the taxation of digital platforms. Given that users of digital platforms originate from various

⁸ Ailie K.Y. Tang, "Mobile App Monetization: App Business Models in the Digital Era."

⁹ Alphabet Inc, "Alphabet Announces Third Quarter 2020 Results," accessed on June 18, 2023, <https://abc.xyz/investor/news/2020/1029/>.

¹⁰ Alphabet Inc.

¹¹ Alphabet Inc.

¹² Anna Suci Perwitasari, "Pandemi Covid-19 Bikin Pendapatan Iklan Facebook Melesat 22% di Kuartal III-2020," accessed on June 18, 2023, <https://newssetup.kontan.co.id/news/pandemi-covid-19-bikin-pendapatan-iklan-facebook-melesat-22-dikuartal-iii-2020?page=all>.

¹³ Databoks Katadata, "Pendapatan Facebook Meroket 48 Persen pada Kuartal I 2021," accessed on June 18, 2023, <https://databoks.katadata.co.id/datapublish/2021/07/26/pendapatan-facebook-meroket-48-persen-pada-kuartal-i2021>.

¹⁴ Bill Clinton, "Jumlah Pengguna Facebook Tembus 2,4 Miliar," accessed on June 18, 2023, <https://tekno.kompas.com/read/2019/10/31/14160067/jumlah-pengguna-facebook-tembus-2-4-miliar>.

countries around the world, the imposition and payment of taxes for digital platforms are complicated by questions of jurisdiction. Specifically, complexities arise regarding which country possesses the authority to levy taxes on digital platforms: the country where the digital platform operates or the country where the digital platform is registered.

The complexity of digital taxation extends to technical aspects impacting the identification of the tax subject, whereas in digital taxation, the tax subject can find itself in an ambiguous position. For instance, challenges emerge in scenarios involving cross-border electronic transactions without a physical storefront or company presence in the destination country. This is particularly true when the product in question is digital or intangible, complicating the determination of income derived from using or transferring such non-physical products. These circumstances cannot be adequately addressed through conventional taxation systems,¹⁵ illustrating that technological advancements and shifts toward a digital economy introduce more complex and challenging tax issues beyond the scope of traditional taxation frameworks. These complexities primarily stem from legal challenges, where existing laws struggle to keep pace with rapid technological progress. Technological advancements have transformed life across various sectors, yet taxation remains essentially unchanged, highlighting a significant gap in the legal framework's adaptability to modern economic realities.

The complexities encountered in digital taxation are inherent, given the significant impact of technological utilization and shifts towards a digital economy on key elements of the taxation system, namely, the tax subjects and objects. The clarity regarding these two elements significantly influences future tax calculation and imposition processes. The more distinct the presence of a tax subject and tax object, the more straightforward the tax calculation and imposition become.

Given the complexity and unresolved challenges surrounding digital tax collection, there is a pressing need for research within the realm of digital taxation and its relationship to the implementation of tax sovereignty in the era of Society 5.0, particularly in Indonesia. The discussion of this specific topic aims to ensure relevance to the prevailing conditions of digital tax collection in Indonesia. Moreover, it is anticipated that this research will broaden understanding from the fundamentals to the application of tax sovereignty in cases of digital taxation in the era of society 5.0.

B. Digital Tax Imposition in the Era of Society 5.0

Taxation is not a novel concept unfamiliar to society; its origins trace back to the

¹⁵ Vito Tanzi, "Globalization, Technological Development, and The Work of Fiscal Termites," (International Monetary Fund Working Paper, 2000), 8.

early days of the Roman Republic, around 509-27 BC, when the tax was perceived as a voluntary contribution from the people to their king, with various forms of tax applied such as censor, questor, and several other types of levies. Over time, the concept of taxation expanded in scope, including within Indonesia, where active and systematic taxation began with the arrival of the Dutch, particularly with the establishment of the VOC. Tax collection became more structured, especially concerning ownership, such as land ownership or matters related to land. This practice of tax collection persisted through various colonial periods, including Dutch, Japanese, and British rule, evolving into the systematic framework observed today.¹⁶

The concept of taxation persists to this day, with Indonesia establishing the Directorate General of Taxes (DGT) to regulate this crucial sector. Taxation remains a vital component of state revenue, as evidenced by the Central Bureau of Statistics data regarding State Revenue Realization from 2021 to 2023. Over the last three years, the tax revenue sector has consistently been the highest earner, with total revenue in mid-2023 alone reaching IDR2.016.923.70 billion. This figure starkly contrasts with the non-tax revenue sector, which only generated IDR426.259.10 billion, underscoring the significant role of taxation in supporting the state's financial structure.¹⁷

Moving on from the discussion on taxes, the era of Society 5.0 is closely related to the use of technology and the internet in everyday life; even in this era, society will consciously or unconsciously shift to the era of digitalization in the form of cyber-physical and emphasize humans as the center of civilization that utilizes digital technology as a tool for life institutions in various fields. The emergence of the Society 5.0 era is an era of community life that is encouraged to be more effective and efficient with the help of technology and internet networks.

Transitioning from the topic of taxes, the era of Society 5.0 is intimately connected with the pervasive use of technology and the internet in daily life. In this era, whether consciously or unconsciously, society is transitioning toward digitalization characterized by cyber-physical systems, with humans positioned at the core of civilization. Digital technology is leveraged as an instrumental tool across various domains.¹⁸ The emergence of Society 5.0 marks an epoch where community life is propelled toward greater effectiveness and efficiency through the support of technology and internet connectivity.

As digital realms become more integral to our lives, they must also be governed by law. To protect national interests, including those of Indonesia, governmental

¹⁶ Dwikora Harjo, *Perpajakan Indonesia* (Jakarta: Mitra Wacana Media, 2019), 3-4.

¹⁷ Badan Pusat Statistik (BPS), "Realisasi Pendapatan Negara (Milyar Rupiah), 2021-2023," accessed on July 11, 2023, <https://www.bps.go.id/indicator/13/1070/1/realisasi-pendapatan-negara.html>.

¹⁸ Ahmad M. Ramli, "Pentingnya Bangsa Ini Mulai Adaptif Dengan Industri 5.0," accessed on June 18, 2023, <https://republika.co.id/berita/qynv2n371/pentingnya-bangsa-ini-mulai-adaptif-dengan-industri-5-0>.

legal frameworks must evolve to keep pace with societal shifts toward digitalization. A critical sector requiring government attention amid the growing reliance on digital platforms is state revenue, particularly taxation.

In alignment with these considerations, digital taxation has been addressed in numerous international forums, such as the G20 meeting held in Japan in 2019. At this meeting, countries affiliated with the Organization for Economic Co-operation and Development (OECD) discussed the challenges associated with implementing digital taxes.¹⁹ It was highlighted that without immediate action on the digital tax sector, there is a risk of significant tax losses due to Base Erosion and Profit Shifting (BEPS) phenomena in developing countries, with potential losses amounting to as much as USD200 billion annually.

The potential losses from uncollected taxes represent a significant detriment to countries, particularly those that are developing. This situation necessitates the creation of a taxation mechanism capable of effectively targeting tax subjects and objects arising from digital activities. Should such conditions be overlooked by the state, the financial revenue sector could miss out on numerous opportunities, failing to capitalize on potential sources of funding. Moreover, with the rapid and often uncontrollable advancement of technology and internet networks, opportunities like taxation must receive greater attention from governments, including Indonesia.

In the era of Society 5.0, the tax sector must adapt to manage and harness potential revenues from digital-based tax objects, including internet-based international media increasingly active within Indonesia. The operation of these digital media presents high complexity due to their inclusion in a vast digital ecosystem that transcends physical national boundaries. This ecosystem has a complex structure and utilizes dynamically changing technology, posing unique challenges for taxation authorities aiming to ensure fair and effective tax collection in the digital age.

Because of the profits generated through monetization, income tax can be levied on digital platforms. However, the application of this income tax must consider crucial aspects related to the substantive provisions in Indonesia's existing tax laws. Firstly, the Law Number 36 of 2008 on the Fourth Amendment to Law Number 7 of 1983 on Income Tax, as last amended by Law Number 7 of 2021 (hereinafter referred to as the "Income Tax Law"), does not adequately address the developments of the digital economy due to the requirement to establish a Permanent Establishment (hereinafter referred to as "PE") and the criteria for a PE outlined in Article 2 Paragraph (5) of the Income Tax Law. Secondly, the global operations of digital platform businesses may lead to the imposition of double taxation or, conversely,

¹⁹ Sofia Lopez and Irina Popova, "2019 G20 Osaka Summit Final Compliance Report," (G20 Research Group Report, 2020), 349.

double non-taxation due to the challenges in allocating taxing rights between jurisdictions. Thirdly, it is critical to safeguard the Indonesian state's taxation rights on digital platforms, given that the jurisdiction for tax imposition on digital platforms remains a contentious issue with diverse viewpoints. The resolution of these issues requires careful consideration and adaptation of tax laws to ensure they are inclusive of the digital economy's unique characteristics while preventing tax evasion and ensuring fair taxation practices.²⁰

In response to the issue of digital taxation on a global scale, known as Pillar One, this concept is an initiative proposed by the Organization for Economic Co-operation and Development (OECD) detailed in the Blueprint for the Pillar One project. Pillar One aims to allocate taxation rights to countries where Multinational Enterprises (MNEs) generate profits within their jurisdictions, with a threshold profit of at least EUR1 million. Countries with a Gross Domestic Product (GDP) below EUR 40 billion, they would gain taxation rights if MNEs within their jurisdiction earn a minimum profit of EUR 250,000. Moreover, Pillar One suggests a distribution of 20% to 30% of residual earnings to the state based on a specific allocation formula. This proposal is deemed highly urgent, compelling member countries of the Inclusive Framework on Base Erosion and Profit Shifting (BEPS) to adopt and implement this strategy, with its effective application slated to commence in 2023. The Pillar One initiative represents a significant step towards addressing the challenges of digital taxation and ensuring a fair distribution of taxing rights among nations impacted by the digital economy.

C. Realization of Tax Sovereignty in Indonesia

In the framework of statehood, sovereignty is a foundational concept, empowering the state and its government to impose taxes on its citizens or relevant entities. This concept, later termed taxation sovereignty (*belastingsovereiniteit*) by Soemitro, underscores the intrinsic right of a sovereign state to levy taxes.²¹ Within the boundaries of a nation, the state's absolute authority is circumscribed by the constitution or fundamental law, ensuring governance within a legal framework. Beyond its territorial confines, the state's authority is moderated by international principles that have been universally acknowledged and consented to and that require authorization for administrative actions to be undertaken in foreign jurisdictions. This delineation between domestic authority and international

²⁰ Amelia Cahyadini (et.al.), "Market Jurisdiction: Opportunity for Imposing Income Tax For Potential User Countries in the Era of Economic Digitalization," *Quality - Access to Success* 24, no. 192 (2023): 319, 10.47750/QAS/24.192.37.

²¹ Rochmat Soemitro, *Hukum Pajak Internasional Indonesia Perkembangan dan Pengaruhnya* (Bandung: Eresco, 1986), 30.

constraints highlights the nuanced balance of sovereignty in the context of global interactions and the regulatory framework governing taxation.²²

The concept of taxation sovereignty in Indonesia is delineated by Article 23A of the Constitution, which stipulates that taxes and other obligatory levies for the purpose of the state must be regulated by law. This provision ensures that although the state possesses the authority to impose taxes, such imposition must be grounded in legal statutes. Article 23A inherently places limitations on tax collection, safeguarding against arbitrary demands by the state. According to Rochmat Soemitro, taxation is defined as contributions from the populace to the state treasury, established by law (hence enforceable), without the provision of direct reciprocal services (*quid pro quo*), and utilized to fund public expenditures.²³

Arbitrary taxation poses a risk of infringing upon the rights of citizens due to the lack of a clear legal foundation and challenges the very essence of taxation. Taxation should not be perceived as an act of theft or appropriation by the state but as a consensual contribution by the citizens facilitated by a legal framework. Hence, the requirement for laws and regulations serves as a manifestation of public consent to contribute financially to the state.

A country's tax sovereignty is subject to limitations across three dimensions: territoriality, persons or subjects, and objects. Firstly, territoriality restricts tax laws from operating solely within the nation's borders, acknowledging the inherent jurisdictional limits of legal systems. Secondly, regarding persons or subjects, tax law does not encompass all individuals indiscriminately but is confined to those residing within the nation's territory or those who maintain a substantial connection to it. Lastly, in terms of objects, this dimension is governed by extraterritorial principles widely recognized in the international realm, dictating the scope and reach of tax laws beyond a country's physical boundaries.²⁴

Tax sovereignty, granting the state authority to levy taxes, is an integral component of efforts to collect funds for the public good in a manner that promotes fairness and prosperity.²⁵ It is imperative, therefore, that such regulation and limitation of tax powers are enshrined within the nation's constitution. Through Article 23A of the Constitution, Indonesia articulates the foundational values and philosophy of taxation, establishing that taxes and other obligatory levies must be grounded in law. Furthermore, the process of tax collection through democratic institutions embodies the principle of popular sovereignty. Ultimately, the

²² Avi-Yonah, Reuven S. and Nicola Sartori, "International Taxation and Competitiveness: Introduction and Overview," *Law and Economics Working Paper* 58 (2012): 6, <https://dx.doi.org/10.2139/ssrn.2050329>.

²³ Rochmat Soemitro, *Asas dan Dasar Perpajakan* (Bandung: Rafika Aditama, 2011), 1.

²⁴ R. Santoso Brotodihardjo, *Pengantar Ilmu Hukum Pajak* (Bandung: PT Refika Aditama, 2010), 31-32.

²⁵ Wirawan B. Ilyas dan Richard Burton, *Perspektif Keadilan dan Kepastian dalam Penerapan Hukum Pajak* (Jakarta: Mitra Wacana Media, 2018), 1.

prerogative to collect taxes is reserved exclusively for the state, operationalized through the governing authority at any given time.

In alignment with the discourse on tax sovereignty, it is evident that the concept of tax sovereignty is intricately linked to state sovereignty. This close association between the two concepts of sovereignty stems from the perspective that tax sovereignty constitutes a state's right, through its incumbent government, to levy taxes within its jurisdiction as dictated by national laws. This perspective aligns with the principle of territoriality, underscoring that a country retains the right to tax when there is a geographic nexus between the taxpayer and the sovereign territory of the state.²⁶ The employment of the territorial principle extends beyond merely serving as a foundation for tax imposition; it should be interpreted as the basis for a country's right to maximize and harness the potential of its national revenue. Concurrently, it establishes a framework for taxpayers to acknowledge and fulfill their obligations in accordance with pertinent national regulations.

The authorization for collecting taxes, as regulated by law and stipulated in Article 23A of the Constitution, embodies the principle of popular sovereignty. This is evident in law formation, which involves the legislative branch, represented by the House of Representatives, and the executive branch, represented by the government. The involvement of the House of Representatives in the enactment of tax legislation legitimizes that such regulations are in line with the populace's needs and have garnered public consent. Moreover, the establishment of a legal foundation, especially in the realm of tax collection, can also be perceived as a nation's endeavor to establish order and structure in the context of reform or development. Consequently, this legal basis becomes crucial and is deemed indispensable in its existence.²⁷

Related to Article 23A of the Constitution, the provisions contained within this article echo the fundamental philosophy found in the British taxation system, known as "No Taxation without Representation." This principle asserts that the government must only levy taxes if such collections are legislated and ratified through the House of Representatives.

This slogan gained significant popularity between 1750 and 1760 in the British colonies and was a catalyst for the American Revolution, which was in opposition to the rule of King George II.²⁸ Reflecting on these historical contexts, it becomes

²⁶ Ujang Badru Jaman dan Endah Pertiwi, "Kedaulatan Pajak Negara Indonesia Terhadap Perusahaan Multinasional Digital," *Jurnal Aktiva: Riset Akuntansi dan Keuangan* 5, no. 1 (2023): 34, <https://doi.org/10.52005/aktiva.v5i1.178>.

²⁷ Mochtar Kusumaatmadja, *Fungsi dan Perkembangan Hukum dalam Pembangunan Nasional* (Bandung: Bina Cipta, 1970), 13.

²⁸ A. Ahsin Thohari, "Epistemologi Pajak, Perspektif Hukum Tata Negara," *Jurnal Legislasi Indonesia* 8, no. 1 (2011): 70, <https://doi.org/10.54629/jli.v8i1.347>.

apparent that tax collection not grounded in law and conducted arbitrarily by the government can lead to a crisis of trust among the citizenries. Therefore, although tax collection is not obligated to provide direct reciprocal benefits, it must still aim for the welfare of society at large and must not be exploited for improper purposes.

When public trust in the state's tax collection efforts wanes, it is plausible that such collection may encounter numerous obstacles, adversely affecting state revenues. Consequently, it becomes imperative for the state to elucidate to the public or tax subjects the rationale behind imposing specific taxes. This is especially crucial for tax sectors that are relatively unknown and need a clear collection mechanism, such as digital taxes. Despite the significant potential of digital taxes to enhance state revenue, the absence of a legal framework and robust justification for the imposition of digital taxes may lead to suboptimal tax collection outcomes.

Furthermore, tax sovereignty extends beyond the domestic responsibilities of a government to encompass international cooperation among countries. For instance, the introduction of Pillar One by the Organization for Economic Co-operation and Development (OECD) could serve as a foundation for a government to levy taxes. This underscores the imposition of taxes, particularly those transcending national boundaries, necessitates coordinated efforts and consensus among global nations to adopt a unified taxation system. In cases of cross-border taxes, such as international taxes, the tax subject and object often lack a physical presence within the same jurisdiction, so international collaboration becomes essential for effective tax collection.

The establishment of Pillar One represents a foundational aspect of tax sovereignty, enabling states to levy taxes on Multinational Enterprises (MNEs) that derive profits within their jurisdictions. The primary challenge currently revolves around establishing a legal foundation for state sovereignty to collect cross-border taxes, mainly digital ones. Should the Pillar One proposal receive widespread acceptance and implementation by numerous countries, it could significantly enhance a nation's tax sovereignty in relation to digital tax collection. This shift would ensure that profits generated by digital activities within a country's borders contribute somewhat to its fiscal resources, aligning international tax practices with the realities of the digital economy.

D. Prospects and Challenges of Tax Imposition in the Era of Society 5.0

The advent of the Society 5.0 era undoubtedly enhances efficiency across all facets of life, yet this convenience has challenges and potential negative consequences stemming from digital disruption. Thus, the emergence of Society 5.0 and technological and internet network developments can be seen as a double-edged sword, simultaneously presenting both positive and negative impacts.

This situation extends to the realm of taxation. In the Society 5.0 era, the tax sector faces opportunities for enhancement and challenges that must be navigated. If leveraged effectively, the Society 5.0 era can significantly boost state revenues. However, if the management of these opportunities is not matched with the capability to address the challenges of tax imposition in the Society 5.0 era, the tax sector may incur losses due to an inability to optimize state revenues.

Discussing the potential and challenges of tax imposition in the Society 5.0 era is essential. The potential for tax imposition in this new era includes several key aspects, one of which is the rapid development of the digital economy. This growth is a direct consequence of the proliferation of internet-based digital platforms accessible to users worldwide.²⁹ Prakash Kamdar, CEO of Dentsu Indonesia & Singapore, highlighted at Dentsu Connest 2023 that activities such as content consumption, online shopping, and socializing on digital platforms drive the digital economy's expansion. Research by Google, Temasek, and Bain & Company reveals that Indonesia's digital economy was valued at USD70 billion in 2021, with projections indicating a surge to USD146 billion by 2025. This burgeoning digital economy presents a significant opportunity for Indonesia to implement digital taxation.

Secondly, the era of Society 5.0 greatly benefits from the utilization of big data and artificial intelligence (AI) for decision-making. Big data technology facilitates processing vast amounts of information efficiently, monitoring overall performance, and employing specialized benchmarking techniques. Concurrently, AI, manifesting primarily as sophisticated computer programs, emulates human intelligence to perform tasks and make decisions. The advent of Society 5.0 is intrinsically linked to leveraging big data and AI, thereby enhancing data-driven understanding and decision-making. In this context, the government possesses the potential to levy taxes on data management activities that have a significant impact on the country.

One notable instance of a platform that employs artificial intelligence (AI) to process data, subsequently presenting specific conclusions, is the Adobe Experience Platform (AEP). This platform aids companies in comprehending consumer behavior and conducting in-depth analyses of consumer trends. As a novel offering from the Adobe Experience Cloud division, the Adobe Experience Platform (AEP) is specifically designed to construct, optimize, manage, and personalize customer experiences. Moreover, the Adobe Experience Platform (AEP) facilitates the connection of various existing Adobe products and offers rapid integration with third-party platforms, thereby enhancing its utility and application.

Thirdly, automation and the substitution of human roles by technology are

²⁹ Amelia Cahyadi (et.al.), "Pajak Penghasilan Bagi Over The Top di Indonesia: Sebuah Peluang dan Tantangan," *Veritas et Justitia* 8, no. 1 (2022): 174, <https://doi.org/10.25123/vej.v8i1.4735>.

hallmark features of the Society 5.0 era, closely associated with the efficiency gains derived from technological applications. Undeniably, many tasks previously performed by humans are now being taken over by technologies such as robots. This shift not only represents a significant transformation in the workforce but also introduces the potential for tax imposition on the utilization of robot technology that supersedes human labor.

An illustrative example of automation and job replacement in the era of Society 5.0 includes the deployment of Artificial Intelligence (AI) within the banking and e-commerce sectors, notably through chatbot services that deliver quick and precise responses to user inquiries and issues. Previously, such assistance and problem-solving tasks were entirely managed by human personnel. However, the implementation of AI-powered chatbots has become increasingly prevalent. Furthermore, another example of technological automation and job substitution is observed in the manufacturing industry. In this sector, robots are often equipped with advanced sensors and algorithms, enabling them to undertake tasks formerly carried out by human workers, such as lifting, sorting, or assembling specific items.

Moving on from discussing potential, let's explore the challenges of imposing taxes in the Society 5.0 era. A primary challenge arises from the complex business models inherent in the digital economy. This first challenge stems from the inclusive framework of the digital economy, which aims to foster inclusive economic growth. As a result, the digital economy proliferates and touches all societal levels.³⁰ This rapid expansion introduces challenges due to the dynamic nature of digital economy business models. Such dynamism poses a significant challenge for the imposition of digital taxes, as the calculations for tax imposition must continuously adapt to the rapidly changing dynamics of these business models.

The issue of juridical boundaries presents a significant challenge in the era of Society 5.0, as it effectively blurs physical distances and jurisdictional boundaries across the globe. This blurring directly impacts the imposition of digital taxes on digital platforms, leading to ongoing discussions about which countries have the right to levy digital taxes. A case in point is the taxation of advertisements on Google Adwords, where there remains a lack of clarity regarding the responsible jurisdiction for taxation: whether it should be the advertiser's country, the country where Google operates, or the country where Google Adwords is registered.

The rapid pace of technological advancements and internet networks presents another challenge in the era of Society 5.0. While technology evolves swiftly, the legal framework often needs help to keep up. The law plays a crucial role in adapting to technological changes, ensuring it can regulate and provide guidance in a rapidly

³⁰ Plamira Permata Bachtar (et.al.), *Ekonomi Digital untuk Siapa? Menuju Ekonomi Digital yang Inklusif di Indonesia* (Jakarta: The SMERU Institute, 2020), 10.

evolving digital landscape. Unfortunately, existing laws, including tax laws in Indonesia, have not adequately accommodated the complexities of taxing digital platforms. This creates a discrepancy between technological advancements and legal regulations, hindering the effective imposition of taxes on digital platforms. Tax imposition needs to be grounded in legal frameworks, as mandated by Article 23A of the Indonesian Constitution, to ensure fairness and adherence to legal principles.

E. The Indonesian Government's Efforts to Regulate Indonesia's Digital Tax

Indonesia, recognized for its substantial internet user base, possesses the capacity to harness digital taxation as a significant revenue source for the government. With the extensive user demographic, digital platforms that operate within the country and serve Indonesian users gain financially. This potential for revenue generation aligns with the international principle of imposing income tax based on the source of income.³¹

However, the digital taxation framework in Indonesia requires further examination to ensure the imposition of taxes on digital platforms rests on a robust legal foundation, as mandated by Article 23A of the Constitution. This requirement does not imply a lack of existing regulations to facilitate digital taxation. The income tax law and other relevant regulations should ideally include digital taxes. However, the current limitations arise from the definition of permanent establishment (PE), which traditionally encompasses entities with a physical presence. The government, therefore, faces constraints in imposing income taxes unless the economic activities meet the PE criteria. However, the digital taxation framework in Indonesia requires further examination to ensure the imposition of taxes on digital platforms rests on a robust legal foundation, as mandated by Article 23A of the Constitution. This requirement does not imply a lack of existing regulations to facilitate digital taxation. The income tax law and other relevant regulations should ideally include digital taxes. However, the current limitations arise from the definition of permanent establishment (PE), which traditionally encompasses entities with a physical presence. The government, therefore, faces constraints in imposing income taxes unless the economic activities meet the PE criteria.

Moreover, digital taxation regulations are mentioned in Law Number 2 of 2020. However, the full enforcement of this law remains pending due to Indonesia's commitment to the consensus of the Organization for Economic Co-operation and Development (OECD). Broadly speaking, the regulation of the digital economy receives attention in several other legislative documents, including Government Regulation Number 71 of 2019 on the Implementation of Electronic Systems and Transactions, Minister of Communication and Information Technology Regulation

³¹ Van Raa, Kees, *Nondiscrimination in International Law* (Deventer: Kluwer, 1986), 26.

Number 10 of 2021 on Amendments to the Regulation of the Minister of Communication and Information of the Republic of Indonesia Number 5 of 2020 on Private Scope Electronic System Operators, and Government Regulation Number 80 of 2019 on Trade Through Electronic Systems. These regulations collectively aim to provide a comprehensive legal framework for the digital economy, including aspects of digital taxation.

The current state of positive law in Indonesia indicates a need for more readiness to accommodate the effective imposition of digital tax. Despite the Indonesian government's efforts to legislate digital taxation, it must undertake additional, comprehensive measures to optimize the digital tax sector. Among the initiatives required are the following: Firstly, updating and integrating regulations concerning digital tax in Indonesia is imperative. This legal measure aims to provide a solid legal foundation for digital tax imposition. For instance, reevaluating the definition of Permanent Establishment (PE) within the income tax system is crucial. The revised definition should encompass digital platforms as taxable entities, enabling Indonesia to levy income tax on these platforms that serve Indonesian users.

Secondly, Indonesia should foster international cooperation regarding the frameworks or principles governing digital taxes. The challenge of jurisdiction, which obscures the borders of countries in the digital domain, underscores the necessity for global collaboration to establish an effective and efficient system for digital tax imposition. An agreement among nations to adhere to a unified digital tax regulation is essential for the systematic enforcement of digital taxes. Indonesia has already initiated dialogues on digital taxation through engagements organized by the Organization for Economic Co-operation and Development (OECD). In these discussions, Indonesia has expressed support for the OECD's initiative to develop a global framework for digital taxation and has actively participated in efforts to reform digital tax policies. To fully leverage the potential of the digital taxation sector in enhancing state revenue and ensuring the financing of public welfare, Indonesia must adopt the outlined strategies. Given the rapid and complex growth of the digital economy, more than unilateral actions by a single country is needed. Instead, nations worldwide, including Indonesia, must engage in active discussions and reach a consensus on digital taxation principles and provisions. Such collaborative efforts are crucial to ensuring a cohesive approach and understanding in the implementation of digital taxes on entities emerging from the burgeoning digital economic activities.

F. Conclusion

The era of Society 5.0 brings with it both potential and challenges for tax imposition. On the potential side, the acceleration of economic development, the increasing use of big data and artificial intelligence, and the automation driven by technological

advancements contribute to a broad array of digital tax objects, which could significantly enhance state revenue. However, the challenges of tax imposition in this era include the complexity and rapid evolution of digital economy business models, the erosion of juridical boundaries, and the lag in legal frameworks keeping pace with the swift advancements in technology and internet networks.

Recent developments have seen the international community recognizing the importance of tax sovereignty in relation to digital taxes payable by Multinational Enterprises (MNEs). Despite this acknowledgment, a universal mechanism for the imposition of such taxes remains absent. The Pillar One proposal emerges as a promising solution, offering a well-conceived approach to states' imposition of digital taxes. This proposal moves beyond the conventional requirement for a physical presence (Permanent Establishment) of the concerned MNEs, a concept that is increasingly seen as outdated and irrelevant in the context of tax sovereignty in the Society 5.0 era.

In response to these potential challenges, governments, including Indonesia's, can take measures to refine digital tax regulations. Such efforts should focus on modernizing and integrating digital tax rules within Indonesia and pursuing international cooperation on digital tax imposition principles and frameworks. Furthermore, the Pillar One proposal warrants further development and discussion in international forums to ensure its maturity and adaptability to the diverse digital taxation needs of countries worldwide. Through these initiatives, the implementation of digital taxes can be grounded in a robust and universally applicable concept, accommodating the varied conditions of digital tax imposition across different nations.

References

Books

- Bachtiar, Plamira Permata (et.al.) *Ekonomi Digital untuk Siapa? Menuju Ekonomi Digital yang Inklusif di Indonesia*. Jakarta: The SMERU Institute, 2020.
- B Ilyas, Wirawan and Richard Burton. *Perspektif Keadilan dan Kepastian Dalam Penerapan Hukum Pajak*. Jakarta: Mitra Wacana Media, 2018.
- Brotodihardjo, R. Santoso. *Pengantar Ilmu Hukum Pajak*. Bandung: PT Refika Aditama, 2010.
- Harjo, Dwikora. *Perpajakan Indonesia*. Jakarta: Mitra Wacana Media, 2019.
- Kusumaatmadja, Mochtar. *Fungsi dan Perkembangan Hukum dalam Pembangunan Nasional*. Bandung: Bina Cipta, 1970.
- McCarthy, John. *What is Artificial Intelligence?* California: Stanford University, 2007.

- Soemitro, Rochmat. *Hukum Pajak Internasional Indonesia Perkembangan dan Pengaruhnya*. Bandung: Eresco, 1986.
- Utamawati, Herlina dan Suparna Wijaya. *Pajak Penghasilan Ekonomi Digital*. Indramayu: CV Adanu Abitama, 2020.
- _____. *Asas dan Dasar Perpajakan*. Bandung: Rafika Aditama, 2011.
- Van Raa, Kees. *Nondiscrimination in International Law*. Deventer: Kluwer, 1986.

Other Documents

- Ailie K.Y. Tang, "Mobile App Monetization: App Business Models in the Digital Era." *International Journal of Innovation* 7, no. 5 (2016): 224-227.
- Alphabet Inc. "Alphabet Announces Third Quarter 2020 Results." Accessed on June 18, 2023. <https://abc.xyz/investor/news/2020/1029/>.
- Avi-Yonah, Reuven S and Nicola Sartori. "International Taxation and Competitiveness: Introduction and Overview." *Law and Economics Working Paper* 58 (2012): 1-12. <https://dx.doi.org/10.2139/ssrn.2050329>.
- Badan Pusat Statistik (BPS). "Realisasi Pendapatan Negara (Milyar Rupiah), 2021-2023." Accessed on July 11, 2023. <https://www.bps.go.id/indicator/13/1070/1/realisasi-pendapatan-negara.html>.
- Badru Jaman, Ujang dan Endah Pertiwi, "Kedaulatan Pajak Negara Indonesia Terhadap Perusahaan Multinasional Digital." *Jurnal Aktiva: Riset Akuntansi dan Keuangan* 5, no. 1 (2023): 32-42. <https://doi.org/10.52005/aktiva.v5i1.178>.
- Bill Clinton. "Jumlah Pengguna Facebook Tembus 2,4 Miliar." Accessed on June 18, 2023. <https://tekno.kompas.com/read/2019/10/31/14160067/jumlah-pengguna-facebook-tembus-2-4-miliar>.
- Cahyadi, Amelia (et.al.) "Market Jurisdiction: Opportunity for Imposing Income Tax for Potential User Countries in the Era of Economic Digitalization." *Quality - Access to Success* 24, no. 192 (2023): 317-321. 10.47750/QAS/24.192.37.
- _____. (et.al.) "Pajak Penghasilan Bagi Over the Top di Indonesia: Sebuah Peluang dan Tantangan." *Veritas et Justitia* 8, no. 1 (2022): 172-190. <https://doi.org/10.25123/vej.v8i1.4735/>.
- Databoks Katadata. "Pendapatan Facebook Meroket 48 Persen pada Kuartal I 2021." Accessed on June 18, 2023. <https://databoks.katadata.co.id/datapublish/2021/07/26/pendapatanfacebook-meroket-48-persen-pada-kuartal-i2021>.
- De Reuver, Mark (et.al.) "The Digital Platform: A Research Agenda." *Journal of Information Technology* 33, no. 2 (2018): 124-135. <https://doi.org/10.1057/s41265-016-0033-3>.
- Kementerian Informasi dan Komunikasi. "Platform Digital Indonesia Untuk Kekuatan di DEWG G20." Accessed on July 10, 2023.

<https://www.kominfo.go.id/content/detail/44240/platform-digital-indonesia-unjuk-kekuatan-di-dewg-g20/0/artikel>.

Kementerian Perindustrian RI. "Menperin Optimis Kembangkan Potensi Ekonomi Digital di Indonesia." Accessed on June 20, 2023. <https://kemenperin.go.id/artikel/23480/Menperin-Optimis-Kembangkan-Potensi-Ekonomi-Digital-di-Indonesia>.

M. Ramli, Ahmad. "Pentingnya Bangsa Ini Mulai Adaptif dengan Industri 5.0." Accessed on June 18, 2023. <https://republika.co.id/berita/qynv2n371/pentingnya-bangsa-ini-mulai-adaptif-dengan-industri-5-0>.

Perwitasari, Anna Suci. "Pandemi Covid-19 Bikin Pendapatan Iklan Facebook Melesat 22% di Kuartal III-2020." Accessed on June 18, 2023. <https://newssetup.kontan.co.id/news/pandemi-covid-19-bikin-pendapatan-iklan-facebook-melesat-22-dikuartal-iii-2020?page=all>.

Sofia Lopez and Irina Popova. "2019 G20 Osaka Summit Final Compliance Report." (G20 Research Group Report, 2020).

Tanzi, Vito. "Globalization, Technological Development, and The Work of Fiscal Termites." (International Monetary Fund Working Paper, 2000).

Thohari, A. Ahsin. "Epistemologi Pajak, Perspektif Hukum Tata Negara." *Jurnal Legislasi Indonesia* 8, no. 1 (2011): 69-78. <https://doi.org/10.54629/jli.v8i1.347>.

W. Finaka, Andrean. "Pengguna Internet di Indonesia Makin Tinggi." Accessed on June 18, 2023. <https://indonesiabaik.id/infografis/pengguna-internet-di-indonesia-makin-tinggi>.

Legal Documents

Constitution of the Republic of Indonesia 1945 [*Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*].

Law Number 36 of 2008 on the Fourth Amendment to Law Number 7 of 1983 on Income Tax as last amended by Law Number 7 of 2021 [*Undang-Undang Nomor 36 Tahun 2008 tentang Perubahan Keempat Atas Undang-Undang Nomor 7 Tahun 1983 Tentang Pajak Penghasilan sebagaimana telah diubah terakhir dengan Undang-Undang Nomor 7 Tahun 2021*].

Law Number 2 of 2020 on State Financial Policy and Financial System Stability for Handling the Corona Virus Disease 2019 (Covid-19) Pandemic and/or in the Context of Facing Threats that Endanger the National Economy and/or Financial System Stability into Law [*Undang-Undang Republik Indonesia Nomor 2 Tahun 2020 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2020 Tentang Kebijakan Keuangan Negara dan Stabilitas Sistem Keuangan Untuk Penanganan Pandemi Corona Virus Disease 2019 (Covid- 19)*].

dan/atau Dalam Rangka Menghadapi Ancaman yang Membahayakan Perekonomian Nasional dan/atau Stabilitas Sistem Keuangan Menjadi Undang-Undang].

Government Regulation Number 71 of 2019 on Electronic System and Transaction Operators [*Peraturan Pemerintah Nomor 71 Tahun 2019 tentang Penyelenggaraan Sistem dan Transaksi Elektronik*].

Government Regulation Number 80 of 2019 on Trading Through Electronic Systems [*Peraturan Pemerintah Nomor 80 Tahun 2019 tentang Perdagangan Melalui Sistem Elektronik*].

Regulation of the Minister of Communication and Information of the Republic of Indonesia Number 5 of 2020 on Private Scope Electronic System Operator [*Peraturan Menteri Komunikasi dan Informatika Nomor 5 Tahun 2020 tentang Penyelenggara Sistem Elektronik Lingkup Privat*].