

## Income Tax as an Instrument for Preventing Money Laundering from the Perspective of Pancasila Justice

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### Abstract

*Pancasila is the foundational ideology and moral compass of the Indonesian nation, serving not only as the basis of national identity but also as the supreme legal foundation for the formation and implementation of laws and regulations in Indonesia. In the context of law enforcement in the field of taxation, Pancasila must be the primary reference, especially in efforts to position tax law as a strategic instrument in the prevention of money laundering crimes. Conceptual reflections on the role of tax law in combating money laundering need to be examined thoroughly, particularly by analyzing the changes occurring in both fundamental and organic tax regulations. These changes must be capable of identifying and addressing various legal issues that arise, both from normative and implementation perspectives. In this regard, the Government of the Republic of Indonesia has both a moral and constitutional obligation to ensure that every tax policy and regulation implemented remains grounded in the values of justice, humanity, and mutual cooperation as reflected in the principles of Pancasila. Thus, the application of tax law as a means of preventing money laundering should not only be repressive but must also reflect a fair and civilized legal system. This effort is expected to realize a tax system that is not only effective and efficient but also aligned with the noble ideals of the Indonesian nation, leading to good governance that is clean, transparent, and socially just for a better Indonesia in the future.*

**Keywords** : Tax Law, Money Laundering Prevention, Legal Instruments, Pancasila, Indonesia

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## 1. Introduction

Every Indonesian citizen who is legally deemed "competent under the law" and has an occupation or business that results in income or salary is subject to a legal obligation to the state in the form of income tax. The state, through its tax authorities (fiscus), has the authority to collect this tax and enforce this obligation based on applicable laws and regulations, particularly in relation to the calculation and supervision of tax reporting by taxpayers. Income Tax (PPH) itself is defined as a tax imposed on income earned by taxpayers, whether sourced domestically or from abroad. The legal basis for Income Tax is outlined in Law No. 7 of 1983, which has undergone several amendments, including Law No. 7 of 1991, No. 10 of 1994, No. 17 of 2000, and No. 36 of 2008. The most recent provisions are also contained in Law No. 11 of 2020 on Job Creation and Law No. 7 of 2021 on the Harmonization of Tax Regulations.

The 1983 tax reform often criticized that previous tax laws were products of colonial powers and reflected capitalist and liberal ideologies (*ius constitutum*), prompting reforms to align with the ideals of independence (*ius constituendum*). However, to this day, there has been no clear and measurable explanation of how the current tax law reflects the values contained in the principles of Pancasila. The imposition of Income Tax Article 21 under Law No. 36 of 2008 (the fourth amendment to Law No. 7 of 1983) categorizes taxpayers into two groups: employee taxpayers and non-employee taxpayers. Employee taxpayers are subject to Article 21 income tax, which is deducted directly from their monthly salary and reported through Form 1721 A1, whereas non-employee taxpayers are taxed based on 50% of their gross income after the deduction of Non-Taxable Income (PTKP).

The process of resolving money laundering cases often begins with tracing personal income tax records and the assets of taxpayers. In this context, income tax can serve as an entry point in efforts to prevent money laundering. However, the implementation of policies such as Law No. 11 of 2016 on Tax Amnesty has sparked controversy. Specifically, Article 20 of the law prohibits the use of taxpayer data for investigation or prosecution purposes, potentially conflicting with Article 221 paragraph (1) of the Indonesian Penal Code (KUHP), which regulates sanctions for obstructing investigations. This legal inconsistency raises concerns about legal certainty and justice, especially when viewed through the lens of Pancasila as the foundational ideology of the Indonesian legal system.

The need for a tax law rooted in the philosophy of Pancasila is becoming increasingly urgent, as Pancasila is the soul of the nation and the source of all sources of law (Notonagoro, 1983). However, legal studies that deeply explore the relationship between Pancasila values and taxation practices, particularly in the context of money laundering prevention, remain scarce. Another challenge lies in the narrative and phrasing of tax legislation, which have yet to fully accommodate values of social justice and transparency. Theoretically, there are five universal principles of taxation: Adam Smith's Four Maxims emphasizing equity, certainty, convenience, and efficiency; John Stuart Mill's principles rooted in utilitarianism; Francis A. Walker's emphasis on social justice and ability to pay; Henry C. Adams' apportionment principle advocating proportional tax burden distribution; and Edwin R.A. Seligman's focus on tax-bearing capacity and fairness among individuals.

The budgetary function of taxation is non-negotiable, as the state requires funding to carry out governance and development functions. The Indonesian Constitution, through Article 23A of the 1945 Constitution, states that taxes may only be levied based on law, as elaborated in Law No. 7 of 2021 on the Harmonization of Tax Regulations. On the other hand, Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering asserts that suspicious financial transactions include those that deviate from a client's profile, potentially avoid reporting, or are suspected to originate from criminal activity.

One common money laundering technique is “mingling,” which involves mixing proceeds of crime with legally obtained funds. This technique aims to obscure the illicit origin of the funds, making them appear legal (Husein, 2013). According to data from the Financial Transaction Reports and Analysis Center (PPATK), compliance with the obligation to report suspicious financial transactions among business actors remains low. Therefore, public education and targeted training are essential to raise legal awareness, including among financial sector businesses. To date, money laundering case resolutions have been predominantly handled by law enforcement institutions such as the police, prosecutors, and courts. However, it is crucial to involve tax authorities as part of a more comprehensive legal enforcement mechanism.

Thus, there is a pressing need for a tax law framework that not only focuses on fulfilling fiscal obligations but also serves as a legal instrument in preventing and eradicating money laundering. This framework must be grounded in Pancasila values, which uphold justice, legal certainty, and utility. This paper seeks to critically examine how tax law can be optimized as an integral part of the national strategy to combat money laundering while emphasizing the urgency of reforming tax law from the perspective of Pancasila-based justice.

## 2. Method

The research presented in this paper employs a normative juridical approach, which focuses on the analysis of applicable written legal norms, including statutory regulations and legal doctrines. This method is chosen because it is appropriate for addressing legal questions of a normative and conceptual nature, particularly those concerning the position of income tax within the Indonesian legal system and its relevance to efforts in preventing money laundering crimes (TPPU). Normative juridical research does not require empirical field data; instead, it relies on legal materials as the primary data, which are then processed systematically, argumentatively, and critically. In this context, the author identifies legal issues that arise in practice and analyzes them by referring to relevant legal principles, theories, and doctrines—especially the principle of justice as embedded in Pancasila, the philosophical foundation of the Indonesian state.

Data collection is conducted through library research, utilizing primary, secondary, and tertiary legal materials as the main sources. Primary legal materials include statutory regulations governing income tax, the prevention and eradication of money laundering, and the Constitution of the Republic of Indonesia (the 1945 Constitution). Secondary legal materials consist of legal literature such as textbooks, national and international scholarly journal articles, as well as authoritative opinions from legal experts in the fields of tax law and economic criminal law. Meanwhile, tertiary legal materials include legal dictionaries, legal encyclopedias, and other supporting documents that reinforce the understanding of legal concepts used. All materials are analyzed using a qualitative method, emphasizing interpretation and logical reasoning of legal texts to draw valid and relevant legal conclusions.

This type of research falls under the category of legal issue identification, with the primary aim of providing concise yet substantial and clear explanations of the issues under investigation. Through this method, the author seeks to formulate key findings that are not only descriptive but also argumentative and solution-oriented. The results of the analysis are presented in a coherent narrative, ultimately synthesized into conclusions and recommendations as part of the academic contribution of this paper. The references used include sources of positive law, recent academic literature, reputable journals, and other official documents that are academically accountable. With this approach, the research aims to enrich the discourse on tax law studies in Indonesia and open new avenues of discussion on the importance of integrating Pancasila values into national taxation regulations,

particularly in strengthening the legal enforcement system against financial crimes such as money laundering.

### 3. Results and Discussion

#### Tracing the Originality of Optimal Taxation: Between Equity and Economic of Collection

The exploration of the originality of optimal taxation reveals that the concept is rooted in two seemingly contradictory criteria within Adam Smith's *Four Maxims of Taxation*: the principles of equity and economic of collection. The principle of equity refers to the idea that individuals with equal ability to pay should be subject to the same tax burden (horizontal equity). Optimal taxation theory is essentially a study in the design and implementation of tax systems that minimize inefficiencies and market distortions under certain economic constraints (Mirrlees, 1971; Slemrod & Bakija, 2017). At its core, optimal tax theory seeks to allocate tax burdens based on taxpayer income levels and emphasizes the importance of honesty in income reporting. In other words, the greater the income earned by the taxpayer, the higher the tax liability to the state should be. However, the government as the policy-maker must also ensure a balanced tax imposition on taxpayers, particularly through equitable and well-calculated assessments.

Over time, the notion emerged that higher taxes should be levied on individuals with greater ability to pay. This evolution is influenced by the principle of distributive justice, which calls for a flat tax on consumption while imposing regressive taxes on income (Musgrave & Musgrave, 1989). On the other hand, taxation through legislative processes embodies the democratic principle of tax consensualism, meaning tax collection is legitimized through public consent, delegated via elected representatives in parliament. The effectiveness of tax policies, therefore, partly hinges on the analytical capacity and fairness of legislative commissions tasked with fiscal matters, ensuring that tax rules serve the broader interests of justice and national welfare.

According to Law No. 36 of 2008 (amending Law No. 7 of 1983 on Income Tax) in Indonesia, the following are recognized as tax subjects:

1. Individual taxpayers, i.e., persons residing in Indonesia, those present in Indonesia for more than 183 days within a 12-month period, or individuals intending to reside in Indonesia.
2. Undivided inheritance, which generates income and thus becomes taxable.
3. Corporate taxpayers, i.e., legal entities established or domiciled in Indonesia, excluding certain government units fulfilling specific criteria regarding budgetary and administrative oversight.
4. Permanent establishments, referring to business forms used by non-resident individuals or entities operating within Indonesia (Law No. 36/2008).

The economic of collection principle also known as the efficiency principle applies a cost-benefit approach to taxation. It argues that taxation becomes inefficient when it imposes significant burdens on individuals while yielding relatively small revenue for the state (Stiglitz, 2015). This principle stems from the recognition of limited individual resources and assumes that individuals make utility-maximizing decisions based on available alternatives. Taxation alters these behaviors, often causing deadweight loss, or a decline in economic welfare. Additionally, differing types of taxes carry unique characteristics and associated administrative costs. Thus, an efficient taxation system should involve measurable and educational enforcement, ensuring a balanced approach that considers income disparities across taxpayers.

The primary objective of taxation is to promote justice in its imposition. One way to achieve this is through the implementation of appropriate tax rate structures, which include:

1. Fixed tax rates, where the tax remains constant regardless of the base amount.
2. Proportional tax rates, where the percentage remains unchanged despite changes in the taxable base.
3. Regressive tax rates, which decrease as the taxable base increases.

4. Progressive tax rates, which increase in proportion to the taxable base.
5. Degressive tax rates, where the rate increases more slowly as income or tax base declines.

Each type of tax rate should reflect a rational calculation based on the taxpayer's income. The distinction between domestic and foreign business entities operating in Indonesia is also essential in determining applicable tax obligations. According to Director General of Tax Regulation No. PER-24/PJ/2021, Article 6(3), procedures for verifying the accuracy of tax calculations and payments are elaborated in an annex to the regulation, highlighting their role as instruments for anti-money laundering efforts (Ditjen Pajak, 2021).

James Mirrlees (1971), in his seminal work on optimal taxation, outlined three postulates: (1) individuals differ in their income-generating abilities; (2) tax authorities have limited capacity to observe these abilities; and (3) high taxes on high-ability individuals create disincentives for income generation. These postulates reveal the core challenge of optimal taxation lies in asymmetric information between taxpayers and policymakers. While progressive taxation aims to redistribute welfare from the high-ability to the low-ability groups, care must be taken to avoid eroding the incentives that drive productivity among top earners.

Income tax, therefore, functions as a regulatory tool for anti-money laundering, in addition to serving as a benchmark for state oversight and auditing mechanisms. Its effectiveness rests in enabling investigative processes that can lead to legal certainty and transparency in income reporting and compliance.

### **Money Laundering Modus Operandi and the Legal Paradox in Proof Mechanisms: A Critical Review of Indonesia's Anti-Money Laundering Law**

The modes of money laundering, as stipulated in Articles 3, 4, and 5 of Law No. 8 of 2010 on the *Prevention and Eradication of Money Laundering Crimes* in Indonesia, can be categorized as follows:

- Article 3: Engaging in acts such as placing, transferring, spending, paying, gifting, entrusting, taking abroad, converting, or exchanging assets with the knowledge or reasonable suspicion that such assets are proceeds of crime, with the intent of concealing or disguising their origin.
- Article 4: Concealing or disguising the origin, source, location, allocation, ownership rights, or actual ownership of assets known or suspected to be derived from criminal activities.
- Article 5: Receiving, controlling, transferring, paying, donating, exchanging, or using assets known or reasonably suspected to originate from criminal offenses.

To ensure legal certainty, the burden of proof becomes central to proceedings. This is elaborated in Articles 77 and 78 of the same law:

- Article 77: During court proceedings, the defendant is required to prove that their assets are not derived from criminal conduct.
- Article 78(1): The court may instruct the defendant to demonstrate that their assets are not linked to offenses defined in Article 2(1).
- Article 78(2): The defendant may present adequate evidence to support such claims.

This "reversal of the burden of proof" (or *omkering van het bewijslast*) conflicts with Article 66 of the Indonesian Criminal Procedure Code (KUHAP), which states that a suspect or defendant shall not bear the burden of proof. Implicitly, this allocates the burden to the Public Prosecutor. The contradiction emerges between the procedural law's presumption of innocence and the anti-money laundering law's presumption of guilt (presumption of guilt) a concept wherein the accused is presumed guilty unless proven otherwise (cf. Ashworth & Redmayne, 2021).

As Tobias and Petersen (2016) assert, *due process of law* is a constitutional guarantee ensuring no person shall be deprived of life, liberty, or property without fair and impartial legal procedures. Minimum components of due process include trial, representation, defense, proof, and impartial judgment. The application of reverse proof thus challenges this principle,

potentially undermining humanitarian justice, especially when applied differently in money laundering cases versus the general criminal code.

Article 1(3) of Law No. 30 of 2002, as amended by Law No. 19 of 2019 on the *Corruption Eradication Commission (KPK)*, emphasizes the need for institutional collaboration in corruption eradication efforts, including supervision, monitoring, investigation, prosecution, and trial, with support from public-based regulations.

In this context, a synergistic policy design between the Directorate General of Taxes (DGT) and the KPK becomes vital to tackle money laundering through tax crime indicators. Such synergy requires consideration of:

1. How to detect non-compliant taxpayer behavior,
2. How to identify indicators of tax crimes and corruption, and
3. What forms of inter-agency cooperation are most effective.

One potential form of collaboration is structured information sharing using platforms such as *Approweb*, *e-LH-KPN*, and the KPK Whistleblower's System. These tools facilitate well-managed, mandatory data exchange that enables income tax records to serve as instruments for detecting unlawful wealth accumulation among corruption suspects beyond mere opinion or subjective assessments by DGT or KPK officials.

A notable case of money laundering in violation of Pancasila values occurred in 2021 involving PT. Duta Graha Indah (DGI) and members of the Sidoarjo Regional House of Representatives (DPRD). In this case, DGI allegedly engaged in money laundering by bribing DPRD members to secure access to government projects. This practice violates the principles of justice and honesty, core to Pancasila as Indonesia's philosophical foundation, and reflects deep vulnerabilities in Indonesia's economic and political systems. Bribery as a method of bypassing fair competition weakens public trust in democratic institutions and disrupts the ethical structure of public service (Pieris, 2009).

John Pieris argued that Pancasila serves as the *grundnorm* or foundational norm of Indonesia, offering the most robust base for governance in a pluralistic society. Its five tenets crystallize intrinsic values that are indispensable in the life of the nation.

Likewise, Gustav Radbruch (1932) in *Einführung in die Rechtswissenschaften* (Introduction to the Science of Law) stated that law should aim for:

1. Justice (Gerechtigkeit),
2. Utility (Zweckmäßigkeit), and
3. Legal Certainty (Rechtssicherheit).

In applying Radbruch's triad, efforts to combat money laundering must align not only with legal formality but also with moral purpose and practical effectiveness.

The views and perspectives of *Pancasila* and the objectives of law as expressed above, when linked to the title of this paper that income tax (*PPh*) is used as one of the "tools and/or instruments" for the prevention of money laundering represent an interconnected formulation, especially in the "process flow" that aligns with prevailing regulations.

The Republic of Indonesia, as a modern legal state (*welfare state*), has goals as stipulated and outlined in the Preamble of the 1945 Constitution, namely:

1. To protect all the people of Indonesia and the entire homeland of Indonesia,
2. To promote the general welfare,
3. To develop the intellectual life of the nation,
4. To contribute to the establishment of a world order based on freedom, lasting peace, and social justice.

The fundamental reference for using income tax (*PPh*) as a "control mechanism" to prevent money laundering in Indonesia arises from the complexity of resolving money laundering cases, which may also involve cross-border jurisdictions and face very limited resources. Therefore, an "ethical and moral safeguard" is necessary within its resolution mechanisms. Universally, any instrument used to achieve legal certainty in the Republic of Indonesia should be grounded in the essential principles of justice embedded in *Pancasila* itself.

*Pancasila* as the foundational philosophy of the state means that it serves as the basis for regulating the conduct of state administrators and all citizens of Indonesia. In the fourth paragraph of the Preamble to the 1945 Constitution, the formulation of *Pancasila* is articulated, which constitutionally and juridically inspires and legitimizes positive law in Indonesia, rendering it valid and binding for all citizens, societal institutions, and every individual without exception. As the state ideology, *Pancasila* can be understood as a system of social life encompassing ethical or moral, political, economic, sociocultural, and defense-security aspects aimed at realizing the ideals and objectives of the nation based on the *Pancasila* state foundation.

This includes strategies for formulating process stages in handling income tax as an instrument for the prevention of money laundering in the Republic of Indonesia. It is expected that the element of justice within *Pancasila* can serve as a “guiding principle” in the evidentiary and resolution processes of such matters, as this requires sincere and well-intentioned purposes to ensure certainty and usefulness in providing benefits for the Indonesian people.

#### 4. Conclusions and Suggestions

Taxation should not merely be understood as a basic term that appears formally elegant; rather, it represents a fundamental instrument of state governance that must reflect justice, education, and social control. The relationship between taxation and societal interests has not yet fully incorporated the principle of justice, either in its normative framework or its practical implementation. Judicial decisions concerning tax disputes generally remain normative in nature, lacking an educational dimension that could inform and shape public understanding. Furthermore, the existing tax system remains underutilized; it is primarily focused on tax collection without optimizing its broader functions, particularly its potential to serve as a preventive tool and control mechanism against current and future criminal acts involving financial misconduct or tax evasion.

First, the concept and meaning of taxation should be widely disseminated and integrated into the formal education curriculum, starting from the elementary school level, to foster early understanding and civic awareness. Second, the principle of justice should become the foundation in the formulation and reform of tax laws and regulations, ensuring that tax policies are equitable and inclusive. Third, the functionality of the taxation system must be maximized not only for revenue collection but also to assist the government in detecting, preventing, and controlling violations and criminal acts within society. Lastly, in shaping future tax policies, the government must remain committed to the national ideals grounded in the values of *Pancasila*, ensuring that taxation aligns with the philosophical and moral foundations of the Indonesian nation.

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