

CHAPTER I

INTRODUCTION

A. Background of Research

Paying tax to the state is a duty for every citizen. State revenue from tax sector is the source of funds for state citizen prosperity. That sources of funds used to finance the needs of the country consists of the public sector and the private sector. In Indonesia, the tax arrangements regulated in Article 23A of Constitution 1945 which reads, "All tax for utility of country cash are according to the law." So then come the arrangements related to tax collection was regulated in a variety of tax laws. Because of that becomes obligatory for Indonesian state taxpayers to obey with the law in Indonesia. Most of taxpayers Indonesia are Muslims. In Islamic law has been set in an-Nisa verse 59, which reads:

يا ايهاالذين امنوا اطيعواالله واطيعوا الرسول واولى الامر منكم فان تنزعتم
في شئى فردوه الى الله والرسول ان كنتم تؤمنون بالله واليوم الآخر ذلك
خير واحسن تأويلا

It means, "O you who believe, obey Allah and obey the Messenger (His), and ulil amri among you. Then if you differ on anything, then give it back to God (Al-Qur'an) and the Messenger (Sunnah), if you truly believe in Allah and the last day. That is (advantageous) and better the consequence."

Beside that, there is also the setting for citizens to provide correct information related to the amount of wealth. It is intended to determine how much wealth citizens may be subject to tax. Thus, the state can do justice to every citizen, and so does a citizen have to do what is right for his country. But, in line with the changing times that indicated by the progress of the mindset of society and the progress of technology, the ability to manipulate the amount of wealth to reduce the amount of taxes payable increasingly emerge and evolve. For example, by utilizing tax haven policy (protection tax) contained in tax haven countries. By saving wealth in a country that imposes tax haven, it was safe the wealth without have to pay a higher tax rate to the own of country.

Tax haven is a policy that provides a variety of easiness and facilities to its users. In addition, lack of transparency of tax haven in their activities become something that can attract the conglomerates to save their wealth in tax haven countries. Beside not being transparent, tax haven also has very strict bank secrecy so it is difficult to known the informations concerning any users and how much wealth is stored. Tax haven is also fax its control over foreign exchange flows and deposits in order to so many conglomerates interested to deposit their money in tax haven countries. In the tax haven country, tax imposed at a rate very low or no taxes levied at all, and also hide the amount of customer wealth of their own country in order not to be taxed.

In Islam, the tax is called the *dharibah*. According to Yusuf Qaradawi in his book *Fiqh az-Zakah*, taxes are the obligations imposed on taxpayers who must be paid to the state in accordance with the provisions without feed back from the state, and the results are to finance public spending on the one hand and to realize the most economic objectives, social, political, and other goals to be achieved by state.¹ Look at from the definition of tax by Yusuf Qaradawi, that pay taxes to the state is an obligation for taxpayers. Because taxes are remitted to the state to finance state expenditures are intended for general benefit. If the taxpayer does not pay taxes, or pay taxes but not according to the amount of the wealth held, the state has the authority to impose penalties on taxpayers who are not honest, because such actions including *zalim*.

The rise of the phenomenon of tax havens in the business community is one of the causes of the taxpayer actually keep confidential the information to his own country. This is intended to be a low tax rate payable. In other words, business community who utilize tax haven policy in tax haven countries namely to secure their wealth and minimize the obligation to pay the tax to the own country. These actions include the *zalim* act according to Islamic law. Because the total amount of wealth that should be paid for taxes, the tariff deliberately used to manipulate the amount of wealth decreases. In other words, if the amount of wealth that reported to the state is little, so the tax that must be paid is little too. Islam strictly prohibits any dishonesty, especially to the state referred to as *ulil amri*.

¹ Gusfahmi, *Pajak Menurut Syariah* (Jakarta: Grafindo Persada, 2007). p. 31.

Therefore against this background that this study was conducted, namely to discuss more deeply related to the tax haven concepts in the tax haven countries, along with how the perspective of Islamic law about this phenomenon which linked the concept of tax haven by the five sharia principles, which do not contain *riba*, *maysir*, *gharar*, *haram*, and *zalim*.

B. Statement of Problem

According to the explanation of background above then in this step will be formulated briefly about the main problem that will be explained specifically in the next chapter. The main problems are:

1. How is the tax haven concept in tax haven country?
2. How is the perspective of Islamic law on tax haven?

C. Objective of Research

Accord with the statement of problem above, so the objectives of research are as follows:

1. To analysis tax haven concept in tax haven country.
2. To reveal the perspective of Islamic law on tax haven

D. Significance of Research

1. Theoretical Benefits

This research expected can give the theoretical contribution in education world, specifically in Islamic Business Law Sector. The benefits are as follows:

- a. Give the contribution to university student and Islamic Business Law lecturer for increasing science as the efforts of teaching learning process.
- b. Contribute the result of research in certain sectors such as word or expression matter in the connection with tax.

2. Practical Benefits

The result of this research expected can give the contribution in practical sector, as follows:

- a. Give the contribution and input to practitioners about the tax haven in tax haven country under perspective Islamic law, to be advisement in making the decisions concerning of tax.

E. Research Method

1. Type of Research

This research is a normative legal research. Normative legal research is legal research method to examine the material library or a secondary data merely.² Normative legal research is also called doctrinal legal research. In this type of legal research, law often conceptualized as what is written in the legislation (law in books) or legal conceptualized as a rule or norm which is the benchmark of human act is considered appropriate.³ In this research, the author conducted the identification of what are the concepts of tax haven appropriate or not in accordance with *sharia* principles are five, which does not contain *riba*, *maysir*, *gharar*, *haram*, and *zalim*.

2. Approaches

In the connection with this type of research is a normative legal research, the approach used is the legislation approach (statute approach). In this legislation approach do assessment legislation related to the theme of the research, namely Law 21 of 2008 concerning Islamic Banking, and Law 36 of 2008 concerning Income Tax, as well as other regulations relating to the object of research. Beside that, this research uses conceptual approach because of to understand about the concept of tax haven which

² Soerjono Soekanto & Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Rajawali Pers, 2001), p. 13-14.

³ Amiruddin & Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: PT Raja Grafindo Persada, 2004). p. 118.

assumed by Islamic perspective. Legal materials that examined in this study are various rules of law so that the law is seen as a closed system that has the following characteristics:⁴

- a. *Comprehensive*, it means legal norms that exist in it is related to one and another logically.
- b. *All-inclusive*, that set of legal norms that are quite capable of accommodating the existing legal issues, so there will be no shortage of law.
- c. *Systematic*, that beside related to one and another, the legal norms are also arranged hierarchically.

3. Type of Material Law

In this research used secondary material law. Secondary material law is all the publicity about the law which is not an official document. The publication consists of: (a) the text books that discuss a and/or some of the legal issues, including the thesis, and legal dissertation, (b) legal dictionaries, (c) legal journals, and (d) comments on the judge's decision.⁵

⁴ Jonny Ibrahim, *Teori dan Metode Penelitian Hukum Normatif* (Malang: Banyumedia, 2006). p. 303.

⁵ Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2011). p. 54.

4. Technique of Material Law Collecting

The collecting of material law was collected by studying literature, namely by locating, collecting, and reviewing legal materials that relevant to the issues discussed in this study. Any data related to this study will be analyzed and presented in a systematic explanation.

5. Material Law Analysis Technique

The material law that had been obtained from the literature study will be described and linked in such a manner and presented in a systematic discussion. On normative legal research that examine this secondary material law, the material law presentation made in both the analysis.⁶ Technical analysis of the material law in this research using the basics of norms, jurisprudence and doctrine that will be analyze normative logically. While the step in the analysing of material law done through the examination of data, classification, verification, analysing, and manufacturing of conclusions to answer the problem formulation.

6. Previous Research

The research related to tax haven under perspective Islamic law has been done by several researchers. The full details will be presented as follows:

⁶ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 1986). p. 68-69.

a. Ria Achmadiyah Research

This research by Ria Achmadiyah, student of UIN Sunan Ampel Surabaya, 2009, “Transaksi Rekayasa Pajak Pada Transfer Pricing Dalam Perspektif Hukum Islam.”⁷ This thesis is the result of research literature to answer how the mechanism of manipulation transaction taxes, how the mechanism of manipulation transaction tax on transfer pricing, and how Islamic law perspective on manipulation transaction tax on transfer pricing. Data were collected through the reading of text study (text reading) and then analyzed with descriptive method, by deductive mindset. The results of that research to get an overview of manipulation transaction tax on the transfer pricing is done by diverting profits of a company in a high state tax cost to the company branches located in low-tax countries cost (tax-haven) through transfer pricing. One of them with the sale or purchase at a price different from the market price, so that the taxes paid becomes smaller. As the result, state income tax sector is being reduced. Transactions of transfer pricing itself is legal to do if intended for non-tax motive, namely to control the management, control the market, and so on, because when viewed from the pillars and the terms of buying and selling, transfer pricing transactions already meet them. This research concluded that the manipulation transaction tax on transfer pricing in Islamic law perspective include act of *zalim* although substantially transfer pricing

⁷ Ria Achmadiyah, “Transaksi Rekayasa Pajak Pada Transfer Pricing Dalam Perspektif Hukum Islam”, Skripsi, (Surabaya: Muamalah-UIN Sunan Ampel Surabaya, 2009).

transactions classified as a legitimate purchase. Further to the company in Indonesia which have branches abroad or in tax-haven countries in order to run their business properly and honestly, including by paying taxes according to the amount that it was his duty, because the tax is necessary to finance the construction.

b. Irfansyah Research

This research by Irfansyah, student of University of Indonesia, 2010, “Analisis Peran Tax Haven Dalam Melakukan Penghindaran Pajak Lintas Batas Negara”.⁸. This study discusses the role of tax havens in cross-border tax avoidance criteria in the form of tax havens, tax avoidance schemes through tax havens, government policy and OECD in the handling of the phenomenon of tax havens. This study is a descriptive qualitative research design. The conclusion of this study stated that a tax haven is the global economic phenomenon which is applying tax rates are low, even zero percent, no transparency, and financial secrecy that tax havens are used as a tool for cross-border tax evasion. To minimize the occurrence of tax evasion tax haven countries to domestic legislation needs to be made more clear set of tax havens and the need for policies of the OECD (Organization for Economic Cooperation and Development) to tax havens. The results of this study also suggest that Indonesia is making a list of tax haven

⁸ Irfansyah, “*Analisis Peran Tax Haven Dalam Melakukan Penghindaran Pajak Lintas Batas Negara*”, Skripsi, (Depok: FISIP-UI, 2010).

countries and their state criterion-criteria may be regarded as a tax haven and the need for firmness in dealing with tax havens OECD.

c. Andri Kurniawan Research

This research by Andri Kurniawan student of UIN Syarif Hidayatullah Jakarta, 2009, “Praktik Pemungutan Pajak Pertambahan Nilai Dalam Perspektif hukum Islam.”⁹ This thesis discuss about the Islamic view that wealth and income derived by humans from various economic activities is a property owned by Allah and mandated to humans. Therefore in such assets are the rights of others and one of the ways to spend the treasure is by paying *zakat* to be given to those who deserve it based on the Qur’an and the hadith, and pay taxes to the state for use in improving the living standards of the people. In Islamic legal theory and practice of collection of Value Added Tax (VAT) is not justified, because this lack of clarity in the consumption of goods or services either lawful or unlawful. Besides that, the imposition of Value Added Tax (VAT) is charged to all segments of society, and therefore low-income segments of society will be affected by charges of Value Added Tax (VAT) so that they will have more load. The taxation on a types of goods or services on the Value Added Tax (VAT) will have an impact that the goods are at a reasonable price above.

⁹ Andri Kurniawan, “*Praktik Pemungutan Pajak Pertambahan Nilai Dalam Perspektif hukum Islam,*” skripsi, (Jakarta: UIN Syarif Hidayatullah, 2009).

For more details explanation about the formal object and material object from the researches above will be presented in the following tabulation:

No.	Name/University/ Year	Title	Formal Object	Material Object
1.	Ria Achmadiyah, UIN Sunan Ampel Surabaya, 2009.	Transaksi Rekayasa Pajak Pada Transfer Pricing Dalam Perspektif Hukum Islam.	Discuss about manipulation issues of tax from the perspective of Islamic law.	Tax issues discussed related to the manipulation of tax on transfer pricing.
2.	Irfansyah, University of Indonesia, 2010.	Analisis Peran <i>Tax Haven</i> Dalam Melakukan Penghindaran Pajak Lintas Batas Negara.	Discuss about tax haven issues (protection tax).	Analyze tax haven role that linked with avoidance of tax activities.
3.	Andri Kurniawan, UIN Syarif Hidayatullah Jakarta, 2009.	Praktik Pemungutan Pajak Pertambahan Nilai Dalam Perspektif hukum Islam.	Discuss about taxed phenomenon in Islamic law perspective.	Discuss about Value Added Tax (VAT) practice in Indonesia.
4.	Riqqa Soviana, UIN Maulana Malik Ibrahim Malang, 2015.	Tax Haven In Tax Haven Country Under Perspective Islamic Law.	Discuss about tax issues in Islamic law perspective.	Discuss about tax haven issues that used by Indonesia citizens to manipulated tax payable in order to minimize tax liability.

7. Discussion Structure

This research comprise of four chapters are as follows:

Chapter I Introduction

This chapter explain about Background of Research, include philosophical aspect about paying tax liability, the general representation about tax haven, and Islamic concept about tax. And also in this chapter explain about Statement of Problem, Objective of Research, Significance of Research, Research Method, Previous Research, and Discussion Structure.

Chapter II Review of Related Literature

This chapter explain about perspective Islamic law on tax, and about general perspective of tax haven that composed of tax haven, tax law in tax haven countries, bank secrecy principle in tax haven countries, company formation options, Double Tax Avoidance Agreement (DTA), tax haven impact toward economics matters and also explain about the issue of Tax haven.

Chapter III Findings and Discussions

This chapter explain about the concept of tax haven in tax haven countries, and explain about perspective Islamic law on tax haven which is to connect between the concept of tax haven with sharia principle that not contains *riba*, *maysir*, *gharar*, *haram*, and *zalim*.

Chapter IV Conclusions and Suggestions

This chapter conclude the explanation from chapters before, and improvement suggestion based on problem analysis that might be useful.

