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ANALYSIS OF THE IMPLEMENTATION OF BASE EROSION AND PROFIT SHIFTING (BEPS) INCLUSIVE FRAMEWORK ON INDONESIAN TAX REGULATION

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ABSTRACT

This study aims to analyze the legal and technical basis for the implementation of the Inclusive Framework Base Erosion and Profit Shifting (BEPS) on tax regulations in Indonesia. The research method used is a qualitative study with a descriptive approach. Primary and secondary data are used, with data collection techniques in the form of interviews and document analysis. The analysis results reveal that implementation of Pillar One and Pillar Two of the BEPS Inclusive Framework in Indonesian tax regulations is a new concept of international tax treaty to overcome BEPS practices, especially in the digital era. Indonesia already has domestic regulations and laws that are consistent with the Inclusive Framework, but they have yet to be implemented. Several obstacles may prevent Indonesia from implementing the new concept, including the need for Indonesia to develop derivative regulations to govern the implementation of the Inclusive Framework, prepare tax authorities and taxpayers to implement new policies, consolidate and make data on multinational corporations transparent, and commit to previous tax policies.

Keywords: Digitalized Economy, Taxing Rights, Profit Allocation, International Tax, Inclusive Framework

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1. INTRODUCTION

Technological advances in economic activity create a new market concept that opens up opportunities for a country's economic progress. Everyone can make transactions from anywhere with anyone around the world. Technology changes people's economic activities to be mobile and intangible. Economic activities no longer require a physical presence, and the scope of business is getting wider and more integrated. Digital transactions also create new jobs even more widely than conventional jobs. Technological evolution makes it easier for people to carry out economic transactions of goods and services online, transfer funds electronically, transfer data with a wide range, trade financial instruments quickly, and other digital transactions known as e-commerce. All digital transactions can be done through a single application on a mobile phone.

Differences in tax regulations between countries in the world encourage multinational companies to carry out tax burdens efficiently. Multinational companies take advantage of this loophole to minimize their tax burden. This condition causes losses to the state in terms of tax revenue.

Reforming the international taxation system to address tax challenges arising from economic digitization has become a priority for the international community. To answer the challenges of economic digitization, The Organization for Economic Co-operation and Development (OECD) has made a consensus to formulate a common policy on taxing digital economic activities fairly. In 2015, the OECD released an agenda regarding Base Erosion and Profit Shifting (BEPS) as a step to create justice in the taxation sector. A Public Consultation Document has been issued by the OECD to allow market jurisdictions to tax certain incomes (OECD, 2019).

In October 2020, OECD released the BEPS Inclusive Framework blueprint which is divided into Pillar One and Pillar Two. The release of Pillar One and Pillar Two blueprints by the OECD aims to develop a framework for addressing digital economy taxation by reallocating profits to market countries and continuing efforts to address BEPS practices through the introduction of a global minimum tax regime. On July 1, 2021, the OECD/G20 Inclusive Framework on BEPS agreed on a two-pillar solution to address tax challenges arising from economic digitization.

Pillar One discusses the taxation rights on the profits of multinational corporations that will be reallocated to the market jurisdictions where the corporation earns profits. The focus of Pillar One is to establish new nexus and profit allocation rules which have been limited by regulations for the physical presence of business forms in a country.

Pillar Two agrees on the minimum corporate tax rate of 15%. The main objective of Pillar Two is to reduce BEPS practices that multinational companies still carry out. Pillar Two wants to ensure that every company pays taxes at the minimum rate in each country where its headquarters or jurisdiction is located.

Indonesia as a member of the G20 supports the establishment of a tax collaboration platform and the implementation of the BEPS Inclusive Framework into domestic tax provisions. This participation is driven by the huge loss of potential revenue derived from digital businesses. In addition, Indonesia is one of the largest market jurisdictions and a source of income for multinational companies. The tax regulatory framework created must be able to create justice for Indonesia as a source of revenue for the multinational company. An example of a digital taxation case in Indonesia is the Google case where the Indonesian tax authority investigated Google and issued a Tax Assessment Letter so that Google had to pay its income tax to Indonesia (el Haq, 2016).

According to Jinyan Li's research, The Legal Challenges of Creating a Global Tax Regime with the OECD Pillar One Blueprint, domestic legal barriers could constrain the agreement, so more research is needed in each country to implement Pillar One on domestic tax regulations. Tambunan (2021), in her journal entitled Adopting the BEPS Inclusive Framework in Indonesia: Taxation Issues and Challenges in a Digital Era found that the Indonesian government needs to provide legal certainty in implementing the BEPS Inclusive Framework. In addition, the journal also emphasizes the Indonesian tax authorities' readiness to implement the policy.

On the other hand, this research is unique in analysing Indonesian tax regulations that are in line with Pillar One and Pillar Two BEPS Inclusive Framework. This research also wants to find out the potential and challenges that Indonesia will face in implementing the framework.

The Pillar One and Pillar Two proposals aim to address the tax challenges of significant changes in the world trading system. However, the application of this new system still requires further study to find the right scheme for dividing taxation rights equitably into jurisdictions and setting the appropriate income tax rate. The concept requires discussion of tax rights, transfer pricing, profit allocation between jurisdictions, tax treaties, and the application of mutually agreed procedures.

This research is expected to provide an overview of the implementation of Pillar One and Pillar Two of the BEPS Inclusive Framework and analyze Indonesia's tax regulations that align with the agreement. Also, the findings of

this study are expected to contribute to the advancement of international tax regulation, particularly in Indonesia.

2. LITERATURE REVIEW

2.1. BASE EROSION AND PROFIT SHIFTING (BEPS)

Base Erosion and Profit Shifting or BEPS is a tax planning strategy used by multinational companies to exploiting gaps and discrepancies in tax rules between countries in the world to avoid paying taxes (Darussalam & Tobing, 2014). Multinational companies take advantage of the weakness of domestic tax regulations, causing losses to the state in terms of tax revenue. Based on OECD data (2021), BEPS causes losses to countries in the world amounting to USD 100-240 billion in lost income every year. The OECD defines BEPS as tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity or to erode tax bases through deductible payments such as interest or royalties. Although some of the schemes used are illegal, most are not.

2.2. BEPS INCLUSIVE FRAMEWORK

The OECD/G20 BEPS Inclusive Framework is an agreement with countries in the world that was formed to address the BEPS problem. In July 2021, the OECD and the G20 convened a global tax consensus and agreed on two pillars to address the challenges of digital transformation globally. The two pillars are known as Pillar One and Pillar Two.

Pillar One formulates a new concept of the international income tax system with a new business model through changes in profit allocation and communication rules that apply to business profits (OECD, 2020). Pillar One grants broader taxation rights to market jurisdictions where there is active and sustained participation from within the economy if the activity is carried out, or remotely directed, it does. Multinational companies with a turnover above EUR 20 billion and profitability above 10% (i.e. profit before tax/revenue) with a turnover threshold reduced to 10 billion euros are included in Amount A. For smaller jurisdictions with a GDP lower than 40 billion euros, the linkage will be set at EUR 250.000.

Pillar Two, or Global Anti Base Erosion (GloBE), is a tax concept that aims to restructure the international tax system as a whole by eliminating tax rate competition between countries by setting minimum tax rates across jurisdictions (income inclusion rule). Pillar Two agrees on a global minimum rate for corporate tax of at least 15%.

2.3. ELEMENTS OF THE BEPS ACTION PLAN

The OECD draws up an action plan to address base erosion and profit transfer international taxation issues. The BEPS Action Plan sets out 15 action plans to address BEPS problems in a comprehensive and coordinated manner. The Action Plan is based on three elements, including:

a. Coherence: The domestic tax system implemented can be deducted or deducted with income taxes from other countries to complement the standards that prevent double taxation with a new set of standards designed to avoid double taxation.
b. Substance: Current tax rules should be modified to align taxes with economic substance. Domestic and international tax rules must relate to income and the economic activity that generates it.
c. Transparency: International tax regulations require taxpayers to report aggressive tax planning arrangements and rules regarding transfer pricing documentation, providing country-by-country reporting. Transparency aims to help governments identify risk areas and focus on audit strategies.

2.4. INDONESIAN TAX REGULATIONS FOR E-COMMERCE

Tax obligations for domestic e-commerce are the same as conventional business tax obligations, following the provisions and laws of domestic taxation in this case, subject to Income Tax and Value Added Tax. However, the imposition of taxation for foreign e-commerce in Indonesia has obligations in line with international tax treaties. Tax regulations that apply in Indonesia include the following.

1. Law Number 7 of 1983 concerning Income Tax as last amended by Law Number 11 of 2020 concerning Job Creation, the Seventh Part of Taxation;
2. Law Number 8 of 1983 concerning Value Added Tax of Goods and Services and Sales Tax of Luxury Goods as last amended by Law Number 11 of 2020 concerning Job Creation, Seventh Part of Taxation;
3. Circular Letter of the Director General of Taxes Number SE-62/PJ/2013 dated December 27, 2013, concerning Affirmation of Tax Provisions on E-Commerce Transactions (SE-62). In the attachment to SE-62, several models or forms of e-commerce exist in Indonesia, including Online Marketplace, Classified Ads, Daily Deals, and Online Retail.
4. Circular Letter of the Director General of Taxes Number SE-06/PJ/2015 dated February 5, 2015, concerning Withholding and/or Collection of Income Tax on E-Commerce Transactions (SE-06). The objectives of the SE-06 are providing a reference for the implementation of withholding and/or collection of Income Tax on e-commerce transactions;

5. Law Number 2 of 2020 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Corona Virus Disease 2019 (Covid-19) Pandemic and/or in Facing Dangerous Threats National Economy and/or Financial System Stability Becomes Law. Article 6 explains that the imposition of tax for PMSE is carried out through the imposition of Value Added Tax and Income Tax or so-called electronic transaction tax on PMSE activities carried out by foreign tax subjects who meet the provisions of significant economic presence.
6. Law Number 7 of 2021 concerning Harmonization of Tax Regulations. Article 32A describes Indonesia's commitment to international cooperation in the taxation sector. The government is authorized to make and/or carry out tax agreements with the governments of partner countries or partner jurisdictions, both bilaterally and multilaterally, to avoid double taxation and stop tax evasion, stop the tax base from shrinking and shifting profits, exchanging tax information, helping with tax collection, and other tax cooperation.

3. RESEARCH METHOD

The qualitative case study research was employed, using a descriptive approach to understand and evaluate the implementation of BEPS Inclusive Framework. Data collection was done through literature studies and in-depth interviews. There are three steps that the researchers followed as described below:

3.1. DATA

This study uses a qualitative research approach with research instruments in the form of primary data and secondary data. Primary data includes interviews, and secondary data used are Indonesian tax regulations, OECD Documentation Reports, journals, and electronic and social media information. Researchers carried out the data collection process from 2018 to early 2022.

In the initial stage of the research, the researcher analyzed documents in the form of OECD Documentation to collect important points from the OECD/G20 BEPS Inclusive Framework. Then, the researcher analyzes the Indonesian tax regulations by comparing the elements in the two documents. In addition, researchers also read international journals to get an overview of international tax conditions and then compare them with conditions in Indonesia.

The researcher collected primary data by conducting interviews with experts such as the Directorate General of Taxes and DDTC tax practitioner to get an overview and views on Indonesian tax regulations related to the BEPS

Inclusive Framework. Various publications and literature are also used as secondary data such as OECD documentary reports, international and domestic journal publications, and mass media.

The discussion was recorded and the researcher made interview notes on the important points of the discussion. The data analysis was done manually due to the size of the informants. The interview notes are analyzed based on themes and memos.

Research evidence from tax authorities was collected through a semi-structured in-depth interview process. The discussion was conducted via email where the researcher asked a list of questions related to Indonesian tax policies and the issue of the BEPS Inclusive Framework.

The researcher also interviewed a tax practitioner who is an expert in international taxation. This interview aims to determine the perspective of tax practitioners on the BEPS Inclusive Framework. The interview was conducted via the Zoom application for approximately 45 minutes.

The researcher chose the Directorate General of Taxes, especially the Sub-directorate of Tax Regulations II and the Sub-directorate of Internasional Taxation Agreements and Cooperation, as resource persons for the study because they are the main stakeholder who plays a very important and responsible role in the process of formulating and implementing Indonesian tax regulation. Tax practitioners also play an important role in providing input in the implementation of tax regulations because they assist taxpayers in understanding the regulations.

Interviews were conducted with a series of basic questions and then the informants were encouraged to explain in more detail and comprehensively so that the interview process was not controlled by the interviewer (Sutopo, 2006). All the interviews were digitally recorded and then transcribed to explain the results of the study. Interview questions with the Sub-directorate of International Taxation Agreement and Cooperation are as follows.

a. Why did Indonesia agree to the OECD/G20 BEPS Inclusive Framework agreement?
b. Is the BEPS Inclusive Framework agreement the right policy to be implemented in Indonesia?
c. Will Indonesia benefit from applying the agreement to Indonesian tax regulations?
d. Are there any obstacles that will be experienced in implementing Pillar One and Pillar Two in Indonesia? (From the side of the tax authorities and taxpayers)
e. What are the anticipations and solutions that will be taken to overcome these obstacles?

f. Will the RUU KUP be the legal umbrella for the implementation of the two pillars?
g. Are there other laws that will be drafted or revised regarding the implementation of these two pillars?
h. With the implementation of Pillar One in tax regulations, will the BUT concept still apply?
i. Under Pillar Two, the agreed minimum tax rate is 15%. Regarding the determination of corporate income tax rates, what rates will be set in Indonesia?

Interview questions with DDTC tax practitioners include the following.

a. What do you think about the digital-based business tax regulations currently in force in Indonesia? What are the weaknesses of this rule?
b. Are there any obstacles that will be experienced in implementing Pillar One and Pillar Two in Indonesia? (From the side of the tax authorities and taxpayers)
c. Can the implementation of Pillar One create status uncertainty for taxpayers?
d. Is there a risk of double taxation for taxpayers?
e. Why do BEPS cases still occur in Indonesia? Was there an administrative error?

The stage was important for the research because the aim was to gain knowledge and understanding of all the information about Indonesian tax regulations that are in line with BEPS Inclusive Framework. The interview also wanted to obtain data on the challenges and readiness of Indonesia to implement the new taxation concept.

3.2. DATA ANALYSIS

After collecting the data, the researchers then analyzed by distinguishing, presenting, and classifying information obtained from the results of the interviews and documentation analysis (Miles and Huberman, 1992). The researcher chooses the information needed to answer the key research questions and then combines it so that conclusions can be drawn and verified.

4. ORGANIZATION PROFILE

The OECD and the G20 are working together to form an Action Plan to address international tax issues, particularly BEPS. The Action Plan consists of 15 Action Plans, one of which specifically discusses tax challenges in the digital economy era. The Action Plan brings more coherence, substance, and transparency to the international tax system. An important part of the OECD/G20 BEPS Project is addressing the tax challenges arising from the

digitalization of the economy, which has undermined the basic rules governing the taxation of international business profits over the past century.

Several important steps have been taken to address the BEPS problem through economic digitization, including:

- October 2015: Publication of BEPS Action 1 - Addressing the Tax Challenges of the Digital Economy
- March 2018: Submission of an interim report
- January 2019: Submission of policy notes (Policy Note)
- February-March 2019: Public Consultation
- May 2019: Consensus Solutions Development Work Program to Tax Challenges due to Economic Digitization
- November 2019: Public Consultation – Secretariat Proposal on a “Unified Approach” under Pillar One
- December 2019: Public Consultation - Global Anti-Base Erosion (GloBE) Proposal under Pillar Two
- January 2020: Statement of the OECD/G20 BEPS Inclusive Framework on BEPS to address economic digitization
- October 2020: OECD/G20 Inclusive Framework Statement on BEPS and submission of reports on Pillar One and Pillar Two Blueprints, and Economic Impact Assessment
- October-December 2020: Public Consultation - Pillar One and Pillar Two Blueprint Report
- January 2021: Public Consultation Meeting - Pillar One and Pillar Two Blueprint Report
- July 2021: Statement on Two Pillar Solutions to Addressing Tax Challenges Emerging from Economic Digitization
- October 2021: Statement of Two Pillar Solutions to Overcoming Tax Challenges Emerging from Economic Digitization
- December 2021: Global Anti-Base Erosion Model Rules (Pillar Two)
- Early 2022: Public consultation on implementation aspects of Pillar One and Pillar Two

As of October 2021, more than 136 countries and jurisdictions have joined the new two-pillar concept to reform international tax rules and ensure that multinational corporations pay their fair share of taxes wherever they operate.

5. RESULT AND DISCUSSION

5.1. FUNDAMENTAL ASPECTS OF BEPS INCLUSIVE FRAMEWORK ON E-COMMERCE TAXATION IN INDONESIA

Digital business increases the possibility of tax avoidance or base erosion profit shifting (BEPS) practices carried out by multinational companies in various countries including Indonesia. The tax regulations currently in force in Indonesia have not been able to address the BEPS problems because of the substance and technical problems in their implementation.

Taxation of the digital economy of multinational companies is generally the same as taxation of conventional businesses which consists of two types of taxes, namely VAT and income corporate tax. Indonesian tax regulations have not regulated the income tax (PPh) of multinational companies. These arrangements include determining taxpayer status, calculating the proportion of business profits, and how the taxation rights distribution scheme can apply to all multinational companies because no agreement applies globally. In this regard, DDTC tax practitioners state the following:

> *"The real issue is the income tax. In income tax, there is still the issue of the distribution of tax rights between countries will look like. The previous system was with a tax treaty in which the right of taxation was given to the customer's country, the source country, only when there was a physical presence."*

To prevent BEPS practices, Indonesia and 133 other countries signed an agreement known as the Inclusive Framework on Base Erosion and Profit Shifting or the BEPS Inclusive Framework. Indonesia is a member of the G20, one of the jurisdictions that has stated its commitment to be part of the Inclusive Framework initiated by the OECD. The objective of the BEPS Inclusive Framework is in line with Indonesia's tax policy considerations. The informant from the Directorate General of Taxes states as follows.

> *"The BEPS Inclusive Framework agreement through the new taxation scheme, Pillar One and Pillar Two, can be seen as the right momentum to improve Indonesia's international tax architecture. Indonesia fully supports the global consensus on digital economic taxation to create justice, especially for source countries and the conventional economy."*

The Inclusive Framework resulting from the BEPS Action forum by the OECD/G20 contains 3 elements, namely coherence, substance, and transparency. Based on these three elements, Indonesia implements a two-pillar solution in international tax treaty policies.

The element of coherence to prevent double taxation in Indonesia's international tax regulations is contained in Law Number 7 of 2021 concerning

the Harmonization of Tax Regulations. Article 32A describes Indonesia's commitment to international cooperation in the taxation sector. However, this article has not been fully implemented because there are no implementing regulations, especially those that regulate the BEPS issue.

The substance element aims to adapt the tax rules to the substance of the current economy. In Indonesian regulations, this element is already contained in Law Number 2 of 2020 which discusses significant economic presence. However, this element has not been fully applied to Indonesian tax regulations, namely the imposition of Corporate Income Tax.

Table 1. Application of Action Plan Elements in Indonesian Tax Regulations

ELEMENT	INDONESIA TAX REGULATION	DERIVATIVE REGULATION
Coherence	Law No. 7 of 2021	not yet at some points
Substance	Law No. 2 of 2020	Not yet on income tax
Transparency	Law No. 7 of 2021	PMK No. 213/PMK.03/2016

The element of transparency to prevent BEPS practices has been regulated in Law Number 7 of 2021. The Indonesian government is committed to transparency and data collection by providing clear regulations regarding country-by-country reporting (CbCR). The implementation of CbCR has been regulated in PMK Number 213/PMK.03/2016 concerning Types of Documents and/or Additional Information Required to Be Retained by Taxpayers Conducting Transactions with Related Parties, and Management Procedures.

The substance element aims to adapt the tax rules to the substance of the current economy. In Indonesian regulations, this element is already contained in Law Number 2 of 2020 which discusses significant economic presence. However, this element has not been fully applied to Indonesian tax regulations, namely the imposition of Corporate Income Tax.

The element of transparency to prevent BEPS practices has been regulated in Law Number 7 of 2021. The Indonesian government is committed to transparency and data collection by providing clear regulations regarding country-by-country reporting (CbCR). The implementation of CbCR has been regulated in PMK Number 213/PMK.03/2016 concerning Types of Documents

and/or Additional Information Required to Be Retained by Taxpayers Conducting Transactions with Related Parties, and Management Procedures.

5.2. ANALYSIS OF THE LEGAL BASIS FOR THE APPLICATION OF PILLAR ONE ON TAX REGULATIONS ON FOREIGN E-COMMERCE IN INDONESIA

The Indonesian government realizes that developing the digital economy market will greatly benefit the national economy. One sector that will benefit from the presence of e-commerce is the taxation sector not only through the domestic market but also internationally. The more business transactions that occur, the greater the potential tax obtained by the country. However, the current international tax system still applies the concept of a Permanent Establishment (BUT) which requires a physical presence. This condition is a barrier for market countries to tax multinational companies that operate digitally and do not require a physical presence in their business activities.

5.2.1. Legal Basis of Taxation Rights Pillar One in Indonesian Tax Regulations

The informant from the Directorate General of Taxes in an interview stated that the implementation of Pillar One in the Indonesian tax regulations is guided by the domestic taxation regulations that have been stipulated.

> *"From the legal basis for the application of Pillar One as referred to the amendments to the KUP Law in the HPP Law, the imposition of Corporate Income Tax on all taxpayers (both domestic and foreign) who are included in the Amount A Pillar One coverage, and have a nexus in Indonesia based on the provisions of the Pillar One nexus, will be taxed in Indonesia on Amount A allocated to Indonesia."*

Law No. 7 of 2021 on the Harmonization of Tax Regulations (UU HPP) Article 32A outlines Indonesia's commitment to international cooperation in the field of taxation. The government is authorized to form and/or implement taxation agreements with governments of partner countries or partner jurisdictions, both bilaterally and multilaterally, in the context of:

a. avoidance of double taxation and prevention of tax evasion;
b. prevention of erosion of the tax base and shifting of profits;
c. exchange of tax information;
d. tax collection assistance; and
e. other tax cooperation.

In addition, the legal basis for imposing a tax on income received by multinational companies in Indonesia has also been regulated in Law No. 11 of 2020 on Job Creation, the Seventh Part of Taxation Article 2 paragraph (4)

d which states that one of the foreign tax subjects is an entity that is not established and is not domiciled in Indonesia that conducts business or carries out activities through a permanent establishment in Indonesia or which can receive or earn income from Indonesia not from running a business or conducting activities through a permanent establishment in Indonesia. The Indonesian government has the authority to impose taxes on income earned in Indonesia from multinational companies with or without a permanent establishment status.

In practice, the imposition of income tax received by multinational companies in Indonesia has not been fully implemented. The imposition of income tax is still carried out only for multinational companies registered as permanent establishments. DDTC Tax Practitioners in the interview stated that all countries still apply the old international concept of BUT and P3B, that focus on physical presence. The informant from the Directorate General of Taxes also stated that Indonesia and the G20 countries had agreed on Pillar One as a new concept of international taxation. However, its implementation is still awaiting a multilateral convention that is planned to be agreed in 2022.

5.2.2. Legal Basis for the Concept of Permanent Establishment, Pillar One of the Indonesian Tax Regulations

Pillar One also agreed on Amount B, which is the simplified arm's length principle for multinational companies that carry out routine marketing and distribution activities. Amount B still uses the old approach, which requires a permanent establishment or a subsidiary in the source country to determine the status of a tax subject.

Pillar One defines entities included in Amount B, namely as part of a group of companies in a jurisdiction either in the form of a subsidiary or a permanent establishment (BUT) that carries out marketing and distribution activities. In its explanation, Pillar One describes marketing and distribution activities as controlled transactions which may consist of:

a. Purchase of products from related foreign companies for resale to unrelated customers mainly in their country of residence, and related performance of the specified basic distribution activities; and
b. Carrying out basic marketing and distribution activities determined by the distribution entity in the country of residence, transacting or dealing with related foreign companies.

Pillar One has not provided a complete and detailed explanation regarding the BUT and its subsidiaries that can be categorized as Amount B. A complete and detailed description of the controlled transactions, taking into account all relevant comparative factors including functional analysis that forms the basis

of activities within the specified scope, will facilitate the determination of entities that fall within the scope of Amount B. An entity will be categorized in Amount B if it performs its functions, owns assets, and bears risks that will characterize it as a regular distributor at arm's length.

Indonesia has adopted a tax policy that is in line with the new concept of BUT formulated by the OECD. The Indonesian Tax Regulations in Law No. 2 of 2020 Article 6 state that foreign business actors who meet the provisions of significant economic presence can be treated as BUT and subject to Income Tax. Significant economic provisions may be in the form of the consolidated gross turnover of business groups up to a certain amount, sales in Indonesia up to a certain amount, and/or active users of digital media in Indonesia up to a certain amount. However, in practice, Indonesia still applies the old BUT concept because there are no further provisions or derivative regulations governing the Act.

5.3. ANALYSIS OF THE IMPLEMENTATION OF PILLAR TWO ON FOREIGN E-COMMERCE IN INDONESIA

Pillar Two, known as Global Anti-base Erosion (GloBE) is an agreement on a minimum tax rate to overcome the problem of tax rate competition between countries so far. Pillar Two provides a minimum tax rate limit of 15%. In addition, Pillar Two provides the state with the right to tax certain income such as interest and royalties, at a minimum rate of 9%.

Through Law No. 7 of 2021, UU HPP, Indonesia has set the tax rate for domestic corporate taxpayers and permanent establishments at 22%. The tariff is higher than the provisions of Pillar Two but still lower than some countries in the world such as Australia at 30%, China at 25%, and Germany at 30%. In an interview, the informant from the Directorate General of Taxes stated that the Indonesian government has no plans to reduce taxpayers' tax rates.

> *"Regarding the implementation of Pillar Two, currently, the DGT has no plans to change the corporate income tax rate. If necessary, the DGT will conduct an analysis and study."*

5.4. ANALYSIS OF POTENTIAL AND CHALLENGES OF IMPLEMENTING BEPS INCLUSIVE FRAMEWORK IN INDONESIAN TAX REGULATIONS

5.4.1. The Potential of the Implementation of the BEPS Inclusive Framework in Indonesian Tax Regulations

The size of Indonesia's e-commerce business is the largest in Southeast Asia, reaching USD 40 billion in 2019, with an average growth of 49% per year (e-Conomy, 2020). Based on a report released by e-Conomy SEA in 2020,

the value of e-commerce in Indonesia will reach USD 124 billion in 2025. This data shows a huge market potential that Indonesia must exploit.

Indonesia has a great opportunity to optimize the potential of state revenue because it is a market jurisdiction for many products. However, the change in the economic system that is becoming very digital is a challenge for state revenues in the tax sector because there is no comprehensive regulation of digital taxes both at the national and global levels. This condition caused Indonesia to experience losses in state revenues due to the potential for digital taxes that were not optimally exploited. The tax case experienced by Google in 2017 is an example of Indonesia's weak tax regulations in regulating digital taxes. The process of resolving digital tax cases in Indonesia is still not based on definite tax regulations because there is no legal basis that forces e-commerce to pay income taxes generated from certain jurisdictions.

Before the Two-Pillar solution, Indonesia only legally imposed a digital tax on value-added tax (VAT). Indonesia has not imposed income tax on multinational companies that operate digitally and do not yet have permanent establishment status. Tax practitioners through interviews stated that the imposition of VAT can be applied because it adheres to the destination principle, while the imposition of corporate income tax is still constrained by the issue of the distribution of taxation rights.

> *"In the income text, there is still the issue of what the distribution of tax rights between countries is like. The previous system was with a tax treaty, taxation rights were given to the customer's country, the source country only when there was a physical presence.*

The BEPS Inclusive Framework through the Two Pillars solution is a mutual commitment of countries in the world to agree on a new concept of international taxation, especially in the era of digital transactions. By applying the Two Pillars to domestic tax regulations, Indonesia will have a clear and strong legal basis for taxing the corporate income of multinational companies, especially those that move digitally under agreed thresholds and conditions. The legal basis has the potential to increase national income from the tax sector.

Pillar One of the BEPS Inclusive Framework will expand the tax base in Indonesia. The implementation of Pillar One in Indonesia's tax regulations, one of which has been stated in Law No. 11 of 2020 concerning Job Creation, the Seventh Part of Taxation. Article 2 paragraph 4 point d has provided a clear definition of foreign tax subjects, namely entities that are not established and are not domiciled in Indonesia that carry out business or carry out activities through a permanent establishment in Indonesia or which can receive or earn income from Indonesia not from run a business or carry out activities through a permanent establishment in Indonesia. Based on this definition, multinational

companies that earn income in Indonesia with or without BUT status have the same tax obligations as domestic tax subjects. The expansion of the tax base will increase national income from the taxation sector.

Law No. 2 of 2020 Article 6 is also in line with the concept formulated in Pillar One. Indonesia may impose income tax or electronic transaction tax on Trading Through Electronic Systems (PMSE) activities carried out by foreign tax subjects who meet the provisions of significant economic presence. The law has been passed and applies in Indonesia. However, the imposition of tax on the income of multinational companies that do not have the status of BUT has not been implemented by the law. Based on interviews with the informant from the Directorate General of Taxes, the implementation of the law is still waiting for the multilateral convention that will be held in 2022.

> *"The imposition of Digital Tax Services as stated in Law no. 2 we are still holding. The technical implementation of Pillar One will be discussed at the multilateral convention."*

The application of Pillar Two to domestic tax regulations also has the potential to reduce international tax competition. Pillar Two sets a minimum tax rate of 15% so multinational corporations must pay a minimum tax of 15% in all countries where the corporation is located. Based on the concept of the Income Inclusion Rule (IIR) in Pillar Two, the country of the parent multinational company may impose a top-up tax of up to 15% if the subsidiary in the source country is not subject to or is subject to tax below 15%. Pillar Two also provides the formulation of tax imposition on intra-group payments in the form of interest, royalties, and certain services called Subject to Tax Rules (STTR). The source country of income may impose an additional tax of up to 9% for multinational companies that do not or pay taxes below 9%.

5.4.2 Challenges of Implementing the BEPS Inclusive Framework in Indonesian Tax Regulations

The implementation of Pillar One and Pillar Two of the BEPS Inclusive Framework is a joint commitment of countries in the world to overcome the erosion of revenues and profits. However, the process of ratifying the two pillars will face challenges in their implementation. The government needs to regulate derivative regulations governing the implementation of Pillars One and Pillars Two in the Indonesian tax system. In the interview, the informant from the Directorate General of Taxes stated that the implementation of Pillar One and Pillar Two would require a derivative regulatory process for their implementation to be reviewed and mapped.

> *"The Ministry of Finance's internal team (DGT and BKF) are continuing to review and map out what laws and regulations will be affected by the implementation of the two pillars."*

The implementation of new tax regulations also requires a process to prepare human resources (HR) who can work with the new international taxation system. Indonesia's tax authorities must adapt to the system and increase their capacity as organizations and individuals to keep up with the dynamic changes in the internal and external environment. The tax authority must prepare human resources and ensure taxpayers' readiness. Socialization internally and externally to taxpayers is an important step in implementing Pillar One and Pillar Two in Indonesian tax regulations.

Another challenge that will be faced in the process of implementing Pillar One and Pillar Two of the BEPS Inclusive Framework is the consolidation and transparency of multinational company data. Consolidation of data on multinational companies is needed to determine which companies are included in the Amount A coverage. In this regard, the OECD has formulated an action plan, namely BEPS Action 13 Country-by-Country Reporting (CbCR), which aims to facilitate tax authorities in determining transfer price assessments for transactions between related companies. The CbCR document contains information on consolidated financial statements and income of all members of the multinational group of companies. However, the data consolidation process will increase the compliance cost for taxpayers.

Consolidation of data for multinational companies also requires adjustments to the standard methods and calculations used. Differences in accounting standards and calculation methods can lead to inconsistencies and uncertainties in implementing Pillar One and Pillar Two. In line with this, the Association of International Certified Professional Accountants (AICPA), in its recommendation to the OECD, states the following.

> *[t]he GloBE minimum tax should be determined based upon the same tax base as used for regular income tax, and therefore, the ultimate parent company should adjust its global consolidated financial statement for the permanent and temporary differences that apply for regular income tax purposes."*

The challenge that Indonesia must also face in implementing a global minimum tax is related to the provision of tax incentives in the form of tax holidays. The provision of tax incentives aims to attract investors to Indonesia to stimulate the national economy. With Pillar Two, the government can no longer rely on providing tax incentives to attract investors to Indonesia. Reducing tax rates will be ineffective because multinational companies will still be subject to a minimum tax of 15% in the country of domicile of the parent

company (top-up tax). The International Institute for Sustainable Development (IISD) states that if a global minimum tax is applied, domestic tax incentives must be lifted to be in line with international tax rates.

> *"If adopted, a global minimum tax will apply to all sectors of the economy. Countries will have to repeal tax incentives in domestic law and investment agreements to bring the effective tax rate in line with the global tax rate."*

In its domestic tax policy, the Indonesian government has implemented incentives in the form of a tax holiday. With the implementation of Pillar Two, the government must remove the tax holiday so that it is in line with the commitments of the BEPS Inclusive Framework. However, the Indonesian government must also be able to provide legal certainty for taxpayers who have participated in the tax holiday. In an interview with the informant from the Directorate General of Taxes, the government will try to provide rights under the agreed policies.

> *"Certainty for taxpayers who have received tax holidays and tax allowances will be reduced or lost. The government continues to be committed to safeguarding the rights of taxpayers who apply for and receive tax incentives from the government, especially tax holidays."*

6. CONCLUSION AND RECOMMENDATION

Based on research conducted on Indonesian tax regulations, it can be concluded that Indonesia already has tax regulations that can be used as the legal basis for implementing Pillar One and Pillar Two of the BEPS Inclusive Framework. Regulations that can be used as the basis for implementing the BEPS Inclusive Framework include Law No. 7 of 2021 on the Harmonization of Tax Regulations and Law No. 11 of 2020 on Job Creation.

The ratification process of the two pillars will be challenging to conduct. One of the challenges that must be resolved is the preparation of derivative regulations such as Government Regulations (PP), Minister of Finance Regulations (PMK), and/or Circular Letters that need to be ratified to make it easier for tax authorities to implement the new concept. In addition, Indonesia needs to prepare human resources for tax officers who can implement these two pillars.

Another challenge that must be faced by Indonesia is the process of consolidation and transparency of company data (CbCR) and legal certainty for taxpayers who have received tax incentives in the form of tax holidays.

Based on the results of the analysis the following recommendations are made:

a. The Indonesian government needs to formulate regulations and implementation techniques that are clear and easy to understand by tax officials and taxpayers.
b. The Indonesian government needs to establish a conducive business climate, legal certainty, security, and politics that can be the main considerations for investment.
c. The Indonesian government needs to take advantage of the Multilateral Convention held in October 2022 to clarify the provisions of Pillar One and Pillar Two.

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