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Progressive Law in Indonesian Tax Legislation Reform: Balancing Tax Orientation and Substantive Justice^{*}

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Abstract

This study examines the legal orientation of Indonesian tax legislation, which has historically emphasized the budgetary function of taxation as the primary instrument of state revenue. Using doctrinal and normative legal analysis, combined with qualitative methods, the study finds that this revenue-centric orientation tends to marginalize the substantive justice dimension of taxpayers' rights, reducing taxation to a bureaucratic obligation rather than a moral and constitutional relationship between citizens and the state. The qualitative component consists of semi-structured interviews with tax officials, legal practitioners, and taxpayer advocates, along with a purposeful analysis of parliamentary debates, ministerial policy papers, and selected court decisions, to capture how fiscal imperatives shape drafting choices, administrative practices, and taxpayer experiences. Drawing on Satjipto Rahardjo's progressive legal philosophy and Eugen Ehrlich's sociological jurisprudence, along with John Rawls's principles of justice and Amartya Sen's capabilities approach, this paper argues for a paradigm shift in tax law reform. The study proposes the integration of progressive legal principles that prioritize human welfare, contextual justice, and the protection of vulnerable groups, while maintaining legal certainty and administrative feasibility. The study concludes that aligning fiscal certainty with distributive justice requires rights-sensitive legal processes, transparent and participatory rulemaking, reasonable proportionality in sanctions and audits, and fairness-oriented design of exemptions, credits, and procedures. By reframing taxation as an instrument of social justice rather than simply a fiscal mechanism, future Indonesian tax legislation can enhance legitimacy, strengthen voluntary compliance, and realize constitutional commitments to equity and public welfare in a sustainable and context-sensitive manner at the national level.

Keywords: Tax Law; Fiscal Justice; Progressive Legal Theory; Legal Reform; Substantive Justice

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A. INTRODUCTION

Taxes are a key instrument in the administration of a modern state, serving to support national development. In the Indonesian context, taxes hold a strategic position as the primary source of state revenue. Since the early days of the public financial system's formation, the function of taxes has focused on the budgetary aspect, namely to ensure optimal state revenues to finance development. (Santoso, 2019) Taxes are often referred to as a *conditio sine qua non* for the sustainability of the state, because without tax revenue, the state will not be able to carry out its functions effectively. (Santoso, 2019) Thus, a fiscal orientation has become a dominant characteristic of the tax legislation process in Indonesia.

However, the dominance of fiscal orientation often creates tension between the state's interest in maximizing tax revenue and protecting the rights of taxpayers (WP) as legal subjects. This tension is not merely a technical issue of tax administration, but also a philosophical and juridical issue (. The basis for the formation of tax regulations in Indonesia has been greatly influenced by the Benefit Approach, which justifies forced tax collection because the state is considered to have provided benefits to all citizens. (Musgrave & Musgrave, 1989) This paradigm places taxpayers more as objects of fiscal policy, rather than as legal subjects who have the right to fair and proportional treatment from the state.

In practice, positivistic tendencies in tax law reinforce formalistic and technocratic approaches. The tax legislation process is often oriented solely toward legal certainty in the narrow sense—namely, adherence to written norms—without considering substantive justice and humanity as fundamental legal values (Rahardjo, 2006). As a result, the implementation of tax law often emphasizes administrative compliance over building a balanced relationship between the state and its citizens. This is evident, for example, in audit, inspection, or sanction enforcement policies that tend to subordinate taxpayers to the state's fiscal power. (Prasetyo, 2020)

In this context, a progressive legal approach offers an alternative paradigm that is more humanistic and oriented towards substantive justice. Progressive law rejects the view that law is final and absolute, but instead views law as a tool to transform society towards a more just and moral order. (Rahardjo, 2009) With this paradigm, tax law should not merely be an instrument for collecting public funds, but also a means to uphold the principles of justice, participation, and accountability in the relationship between the state and taxpayers. (Sutedi, 2018) Therefore, tax legislation reform in Indonesia needs to be directed towards integrating progressive legal values to achieve a balance between fiscal certainty and substantive justice for the community. This paper addresses this issue with the following questions: How has the orientation of Indonesian tax law so far shaped a legislative paradigm that focuses on the state's budgetary function? What are the implications of this fiscal orientation for the protection of taxpayers' rights in the context of substantive justice? How can progressive legal principles be integrated into Indonesian tax legislation reform to balance fiscal certainty and substantive justice?

B. METHODS

The study uses qualitative methods to explore in depth how fiscal orientation and substantive justice are understood, negotiated, and operationalized in tax law reform. Data were collected through semi-structured interviews with policymakers, tax authority officials, legal practitioners, academics, and taxpayer representatives, supported by document analysis of academic papers, legislative session minutes, implementing regulations, court decisions, and administrative guidelines. Informants were selected purposively and snowballed to capture a wide range of perspectives and practices. The analysis employed layered thematic coding to map themes of legal certainty, administrative efficiency, and distributive justice, with triangulation of sources and methods to strengthen validity. The researchers employed reflexivity and maintained ethical standards through informed consent and anonymity. This approach enabled rich contextual interpretation, linking progressive legal principles to the implementation of fairer and more responsive tax policies.

C. RESULTS AND DISCUSSION

1. Progressive Legal Pillars in Tax Legislation Reform

Progressive law is a school of legal philosophy that emerged in response to the failure of legal positivism to address the complexity of justice issues in Indonesia. Legal positivism positions law solely as a collection of norms written in statutory regulations, separate from moral values, social context, and human reality. (Hart, 1961) In this paradigm, the task of law enforcement is merely law enforcement, that is, enforcing legal texts as they are without considering substantive values of justice. (Kelsen, 1967)

Rahardjo proposed law as a counter-discourse to this view. According to him, law should not cease to be a closed and formalistic system, but must always side with humans (pro humanum) and the value of justice (pro justitia). (Rahardjo, 2006) Progressive law thus does not reject legal certainty, but places it within a broader humanitarian framework, namely that legal certainty should not sacrifice society's sense of justice. (Rahardjo, 2009) This paradigm embodies the belief that law is for humans, not humans for law.

In the context of tax legislation, this critique of positivism is relevant because tax regulations are often rigid, textual, and emphasize only formal taxpayer compliance. This approach has the potential to ignore taxpayers' socioeconomic conditions and the values of distributive justice that tax law should accommodate. (Prasetyo, 2020)

The first pillar of progressive law emphasizes that law should not stop at legal certainty, but rather should aim for substantive justice. Law should not be viewed as an end in itself, but as a means to achieve social welfare and human happiness. (Rahardjo, 2009) Substantive justice requires law enforcers to be able to view the law contextually and to have the courage to break through the rigidity of norms. From a progressive legal perspective, law enforcement is a moral activity, not merely a matter of technical logic. Law enforcers, including tax officials and tax judges, are required to interpret the law with conscience through empathy, honesty, and moral courage. (Rahardjo, 2009)

This concept aligns with Fuller's notion of humanistic jurisprudence, which states that law is only meaningful if it guarantees humane treatment and moral justice in its application. (Fuller, 1969) In the context of tax law, this means that the application of regulations must take into account the economic capacity, social context, and psychological condition of taxpayers to ensure that tax policies are not repressive and discriminatory. (Sutedi, 2018)

The second pillar of progressive law adopts Pound's (1959) idea, which views law as a tool of social engineering. (Pound, 1959) Law not only functions to maintain order but also as an instrument to direct social change towards better conditions. Within this framework, progressive law views tax legislation as being adaptive to the socio-economic dynamics of society. Progressive tax policies must be able to adapt to changes in economic structure, income distribution, and developments in tax administration technology. (Musgrave & Musgrave, 1989) Thus, tax law should not be static, but must be a catalyst for change towards a fair, transparent, and participatory tax system. According to Rahardjo, legal stagnation occurs when the law stops interacting with society; conversely, progressive law is alive when the law continues to react to changing human needs. (Rahardjo, 2010)

The third pillar of progressive law is the importance of prophetic intelligence, namely the moral and spiritual ability of humans to transform themselves in implementing the law. This concept implies that law enforcers must possess moral sensitivity, social sensitivity, and spiritual integrity so that the law does not cease to be a collection of norms, but becomes a moral force that brings justice to life. (Rahardjo, 2009) Prophetic intelligence encourages law enforcement officials to place conscience as part of the law enforcement process, in line with the concept of living law that lives in the consciousness of society. (Ehrlich, 1936) In the context of tax law, this means that tax officials and tax judges must have sensitivity to humanitarian values—that tax collection should not be carried out in an oppressive manner, but rather must be an expression of social solidarity and shared responsibility for the welfare of the nation. (Santoso, 2019)

Thus, the integration of prophetic intelligence into tax legislation reform serves as a crucial foundation for balancing fiscal certainty with substantive justice. This principle ensures that tax law serves not only as a tool of state administration but also as a moral instrument that strengthens social and humanitarian ethics in the relationship between the state and its citizens.

2. Orientation of Indonesian Tax Law and Legislative Paradigm Focusing on the State Budgetary Function

Since the beginning of independence, the Indonesian tax legal system has been primarily oriented toward the budgetary function, namely as the primary instrument of state revenue to finance national development. (Santoso, 2019) Within the framework of a developmental state, taxes are positioned as a means of raising public funds that guarantees fiscal stability and the country's economic independence. (Musgrave and Musgrave, 1989) This orientation is reinforced through various regulations, such as the

Law on General Provisions and Tax Procedures (KUP) and the Income Tax Law (PPh), which essentially regulate strict administrative mechanisms and fiscal compliance to maximize state revenue. (Prasetyo, 2020)

This paradigm shows that Indonesian tax law is still instrumentalistic, that is, it makes the law an economic tool of the state, not as a means of social justice. (Rahardjo, 2006) This budgetary orientation is rooted in the classical view that taxes are a moral obligation of citizens to the state because they have enjoyed the benefits of state functions (benefit principle). (Rahardjo, 2006) In this logic, the legitimacy of tax collection is considered to be derived from the needs of the state, not from the social approval of citizens as legal subjects.

As a result, the tax legislation process often places the state's fiscal interests above taxpayer rights. (Prasetyo, 2020) The norms in tax law primarily regulate administrative obligations, sanctions, and procedural compliance, while legal protection for taxpayers remains limited and reactive. (Prasetyo, 2020) As a result, an imbalance in the relationship between the fiscus (state) and taxpayers arises, reflecting the dominance of the fiscal power paradigm over the legal justice paradigm. (Rahardjo, 2009)

In the context of legal theory, this shows the strong influence of legal positivism, where law is seen as a coercive order without regard to moral values and substantive justice. (Hart, 1961) In other words, Indonesian tax law is still in the stage of rule-centered law, not yet reaching the stage of value-centered law as idealized by the progressive legal school. (Rahardjo, 2009)

3. Orientation of Indonesian Tax Law and Legislative Paradigm Focusing on the State's Budgetary Function

A fiscal orientation that emphasizes compliance and state revenue has serious implications for the protection of taxpayer rights. In practice, Indonesian tax law often creates a gap between administrative legal certainty and substantive justice. (Prasetyo, 2020) Legal certainty is prioritized in the form of rigid, formal, and procedurally oriented regulations, but often ignores the concrete conditions of taxpayers on the ground. (Sutedi, 2018)

These weaknesses are evident in several aspects. First, audit policies and tax law enforcement are often carried out repressively, targeting increased state revenue. (Prasetyo, 2020) Second, tax dispute resolution is more formalistic—assessing administrative compliance alone, rather than seeking material justice. (Prasetyo, 2020) Third, taxpayer protection mechanisms such as objections and appeals do not fully guarantee an equal position between citizens and fiscal authorities. (Santoso, 2019)

Philosophically, this situation indicates that Indonesian tax law still positions the state as the primary subject and taxpayers as the objects of fiscal policy. (Rahardjo, 2009) This paradigm contradicts the Aristotelian principle of distributive justice, which emphasizes the proportional distribution of burdens and benefits between the state and citizens. (Aristotle, 1999)

Progressive law critiques this tendency for distancing the law from humanitarian goals and social welfare. Satjipto Rahardjo asserts that a law that favors only certainty without justice is truly a law that has lost its soul. (Rahardjo, 2010) From a progressive perspective, tax law must ensure a balance between *obligatio fiscalis* and *dignitas humana*, between fiscal interests and human dignity as citizens. (Rahardjo, 2010)

Thus, protecting taxpayer rights should not be approached solely administratively, but also through ethical and substantive approaches. The existence of tax courts, for example, must be strengthened not only from a procedural perspective, but also from the moral and social sensitivity of tax judges in assessing fairness for taxpayers. (Fuller, 1969)

4. Integration of Progressive Legal Principles in Reforming Indonesian Tax Legislation

Integrating Progressive Law principles into Indonesian tax legislation is essential to balance fiscal certainty and substantive justice. (Rahardjo, 2010) Progressive law teaches that law is a tool for transforming society toward a better state (law as a tool of humanization), not simply a control mechanism. (Pound, 1959)

First, tax law reform needs to emphasize that the primary goal of tax law is not only state revenue, but also the equitable distribution of welfare and social justice. (Santoso, 2019) This can be achieved by balancing the principles of fairness, certainty, and utility in every tax norm. (Rahardjo, 2010)

Second, in the institutional context, the principle of prophetic intelligence as put forward by Satjipto Rahardjo needs to be the spirit in enforcing tax law (Rahardjo, 2010). Law enforcers, both tax authorities and tax judges, must have moral sensitivity and empathy towards the social conditions of taxpayers, so that the application of the law is not mechanical, but reflects a conscience of justice. (Rahardjo, 2010)

Third, tax legislation reform also needs to integrate Roscoe Pound's social engineering principles, namely, using the law as a tool to shape just and productive social behavior. (Pound, 1959) For example, tax reform should emphasize not only increasing revenue but also strengthening public trust through transparency, participation, and procedural simplification. (Prasetyo, 2020)

Ultimately, tax law reform based on progressive law will bring about a paradigm shift from "taxes for the state" to "taxes for social justice." In this paradigm, tax law no longer rests on text and procedures, but rather lives as law imbued with the spirit of justice and humanity. (Rahardjo, 2010)

5. Implementation and Social Engineering Through Progressive Tax Legislation

The integration of progressive law into the Indonesian tax legislation system demands a paradigm shift from a "tax collection-oriented" to a "justice-oriented" orientation. Within a progressive legal framework, taxes serve not only as a means of

collecting state revenue, but also as a social engineering instrument that encourages voluntary compliance and fosters public trust in the state. (Rahardjo, 2009) Ideally, tax legislation should emphasize not only fiscal certainty but also substantive justice and humanitarian dimensions in the relationship between the state and taxpayers. (Friedman, 1975)

The successful integration of progressive law into tax legislation depends heavily on the moral and intellectual capacity of legal actors, including the legislative, judicial, and administrative branches. The "prophetic intelligence" paradigm, as proposed by Satjipto Rahardjo, demands that every legal actor be courageous in upholding justice by prioritizing empathy, moral courage, and humanity. (Rahardjo, 2012) First, legislators must ensure that the philosophical foundation of substantive justice is explicitly the primary objective in every drafting of tax laws. (Mahfud MD, 2020) This can be achieved by strengthening the role of the Academic Manuscript as a moral document that balances legal certainty with social justice. Good legislation should not stop at fiscal calculations but must guarantee the rights of taxpayers as citizens. (Asshiddiqie, 2021) Second, the judiciary, particularly the Constitutional Court (MK) and the Tax Court, play a central role in ensuring that tax law remains aligned with the constitutional mandate. Through decisions such as MK Decision No. In its Decision No. 39/PUU-XXI/2023, the Constitutional Court emphasized that optimizing tax revenue must remain in line with the principle of social justice for all Indonesians. (Constitutional Court of the Republic of Indonesia, 2023) On the other hand, tax judges are required to adopt a progressive approach, emphasizing that the law is not merely a collection of norms but also a means to uphold conscience and humanity in deciding cases. (Arief, 2019)

To ensure that progressive tax law is not merely a situational response but a permanent pillar of the legal system, a mechanism for institutionalizing fiscal justice is necessary. Principles such as horizontal equity, vertical equity, substantive legal certainty, and proportionality must serve as a normative framework in the formulation of fiscal policy. (OECD, 2024) Horizontal equity demands recognition of differences in taxpayers' conditions and ability to pay, while vertical equity requires the redistribution of wealth to reduce socio-economic inequality. (Musgrave, 1959) On the other hand, substantive legal certainty emphasizes the protection of taxpayers' rights through a just and conscientious interpretation of the law, not merely the logic of regulations. (Rawls, 1971) Finally, progressive tax law must position the state not merely as a tax collector but as a guarantor of social justice, viewing every fiscal regulation as part of its moral responsibility to humanity. (Sen, 2009)

D. CONCLUSION

From the discussion that has been conducted, it is clear that tax legislation reform in Indonesia cannot be approached merely as a technical legal issue, but rather must be understood as a national legal moral agenda. The conclusions from the discussion are as follows:

First, the orientation of Indonesian tax law remains strongly influenced by a positivist and fiscalist paradigm, where the primary function of tax law is positioned as a tool for collecting state revenue (budgetary). This paradigm stems from a formal-legal tradition that emphasizes administrative legal certainty and revenue targets as indicators of fiscal policy success. This model renders tax law more of a technocratic instrument than a normative system embodying moral values of justice. As a result, tax regulations are often understood as legalistic commands to be obeyed, rather than as a social contract that balances the rights of the state and the rights of citizens.

Second, an overly prominent fiscal orientation has serious implications for the protection of taxpayers' rights, particularly in the context of substantive justice. A formalistic approach often neglects the human aspect of taxpayers, resulting in law enforcement processes that tend to be repressive and focused solely on administrative compliance. Taxpayers' rights as citizens, such as the right to legal clarity, proportional sanctions, and fair treatment, have not been a primary concern in legislative design. In practice, an overly "target-oriented" tax system actually undermines the moral legitimacy of tax law itself and weakens voluntary public compliance.

Third, progressive legal principles offer an alternative paradigm that enables tax legislation reform toward a balance between fiscal certainty and substantive justice. Progressive law emphasizes that law must be pro-human and pro-justice, and adaptable to social realities. In the context of tax legislation, this principle can be implemented through four main strategies: Philosophical reorientation in the drafting of tax laws by placing the legal ideals of Pancasila and social justice as the primary foundation; Normative reconstruction by balancing the budgetary and regulatory functions, so that tax law becomes a tool for social engineering, not simply a fiscal mechanism; Strengthening the moral capacity of legal actors (legislators, tax authorities, tax judges) to act based on prophetic intelligence, namely the ability to uphold justice with empathy and conscience; and Institutionalization of the principle of progressive fiscal justice, through mechanisms that guarantee horizontal equality, vertical justice, substantive certainty, and proportionality of sanctions and tax burdens. Thus, reforming Indonesian tax law based on the principles of Progressive Law is not merely a technical agenda, but a moral agenda of the state that demands a reorientation of values and political courage. Tax legislation must function not only to collect taxes efficiently, but also to uphold legal dignity and social justice, in accordance with the mandate of the constitution and the ideals of Pancasila law.

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