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REVIEW ARTICLE

**FINAL INCOME TAX: A CLASSIC
CONTEMPORARY CONCEPT TO INCREASE
VOLUNTARY TAX COMPLIANCE AMONG LEGAL
PROFESSIONS IN INDONESIA**

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ABSTRACT

Legal profession such as advocate, law consultant and civil law notary is a profession in law that plays a dominant role in providing legal services to the Indonesian public. By providing the legal services, they are entitled to receive honorarium in return. Empirical facts actually show that these legal professions' tax compliance are still lacking. Main questions in this research are the legal aspects related to income tax on honorariums received by legal professions in connection with the legal services they provide and the concept of reconstruction to the laws and regulations related to income tax on honorarium received by legal professions. This research will answer the legal aspects related to the laws on income tax on these legal professions' honorarium in Indonesia and the concept of reconstruction of the regulations related to income tax on these legal professions' honorarium so that it may provide positive impetus to the legal profession's tax compliance, and in turn contributes to the welfare of the nation. This normative juridical research approach is conducted using secondary data consisting of primary, secondary and tertiary legal materials. The aspects of the reconstruction are using the philosophical, constitutional and juridical paradigmatic studies with the Utilitarianism Theory by Jeremy Bentham, Progressive Legal Theory by Satjipto Rahardjo and Legal System Theory by Lawrence M. Friedman as basis of analysis. The results of this study found that there is a concept of contemporary reconstruction to the laws and regulations related to the income tax on honorarium received by legal professionals.

Keywords: final income tax; tax compliance; legal profession

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INTRODUCTION

Indonesia is a state of law (*rechtsstaat* or the rule of law) which upholds the supremacy of law. Even the presence of regulations in Indonesia is inseparable from the influence of European Continental version of *rechtsstaat*.¹ The provision of this rule of law is stipulated in the provision of Article 1 paragraph (3) of the Republic of Indonesia's Constitution of 1945 which states that: "The state of Indonesia is the state of law". the ideals of Indonesia as the state of law (*rechtsstaat*) is based on Pancasila and the Republic of Indonesia's Constitution of 1945 is the philosophical and constitutional basis of the state which mandates that the government must guarantee legal certainty, legal order and legal protection for each of its citizens. One of the tangible manifestations of the realization of guaranteed legal certainty, legal order and legal protection for each of its citizens are the needs for legal assistance, legal counsel, and authentic deed as a perfect form of proof/evidence in law, and so on. Those mentioned above are the main task of advocate and civil law notary as legal profession.

Advocate giving out legal advices, legal assistance and legal counselling for those in need of such services, so to uphold their rights as guaranteed by the law. Advocate as a free and independent profession is also a law enforcement institution by the virtue of Article 5 paragraph (1) of the Law of the Republic of Indonesia Number 18 of 2003 concerning Advocate (which hereinafter will be referred to as "UU Advokat"). In civil law notary's part, legal order and legal certainty is the driving factor for the need for an authentic deed as a written proof of every action, agreement, determination and legal event made before or by an authorized public official. This authentic deed constitutes a small part of the Law of the Republic of Indonesia Number 30 of 2004 concerning Notary Position, as amended by the Law of the Republic of Indonesia Number 2 of 2014 (in Indonesian also known as *Undang-Undang Jabatan Notaris* or UUJN, which hereinafter will be referred to as "UUJN").

The philosophical and constitutional basis as mentioned above that gave birth to the position of legal profession such as advocate as law

¹ Willy Riawan Tjandra, *Dinamika keadilan dan kepastian hukum dalam Peradilan Tata Usaha Negara*, 4 J. MIMB. HUK. 75-88 (2011).

enforcement and civil law notary as a public official (*openbaar ambtenaar*) authorized to make authentic deeds and other authorized deed based on the virtue of law, in the place where the said public official has jurisdiction to do so. This authority also underlies the nature of the civil law notary's position as a representative of the state in civil matters.² Although they are generally not government employees, they are representatives of the public faith (*publica fides*).³

Talking about honorarium in the scope of legal professions in Indonesia, whether advocate, civil law notary, legal consultant and other legal professions is not the main focus. For instance, honorarium in the scope of *notaryism* is not the main thing because one of the general obligations of the spirit of the Notary Code of Ethics is to carry out his position with trustworthy, honesty and carefully, independent and not influenced by personal gain considerations.⁴

Even so does not mean that the honorarium is not important at all. It is precisely stated that notary who receives an honorarium has taxation obligations as well. As can be seen in the provision of Article 36 paragraph (1) UUJN is the legal basis that grants the right to civil law notary to receive honorarium in return for legal services rendered in accordance with its authority. Likewise, advocates who are entitled to honorarium are also stipulated in the provision of Article 21 paragraph (1) of the *UU Advokat*. On the other hand, the provisions of the Article 4 paragraph (1) of the Law of the Republic of Indonesia Number 7 of 1983 concerning Income Tax which, has been amended several times, recently with the Law of the Republic of Indonesia Number 36 of 2008 concerning the Fourth Amendment of the Law of the Republic of Indonesia Number 7 of 1983 concerning Income Tax (which hereinafter will be referred to as "Income Tax Law"), regulates and classifies honorarium received by legal professions (advocate, legal consultant, civil law notary, curator, etc.) as income classes from free

² Bachrudin, *Jabatan Notaris di Indonesia dalam Jerat Liberalisasi*, II J. PEMBAHARUAN HUK. 185–196 (2015).

³ Paavo Monkkonen, *Are civil-law notaries rent-seeking monopolists or essential market intermediaries? Endogenous development of a property rights institution in Mexico*, 43 J. PEASANT STUD. 1224–1248 (2016), <http://dx.doi.org/10.1080/03066150.2016.1216983>.

⁴ HERLIEN BUDIONO, KUMPULAN TULISAN HUKUM PERDATA DI BIDANG KENOTARIATAN: BUKU KE-DUA (2013).

employment (*golongan penghasilan dari pekerjaan bebas*), so that by virtue of law it is also an object of income tax based on the Income Tax Law.

Like all other positions or professions that receive income, legal professions receiving honorarium are also not exempted from being taxed. The notion to tax legal profession was introduced long ago, at least in the town of Perth, recorded the birth of the attorney tax introduced by the Stamp Duty Act 1785. The tax was immediately controversial in England. Petitions from attorneys across England were presented to parliament in 1786 and 1787 seeking changes to the legislation.⁵

Despite tax as the nation's major contributor for state's revenue,⁶ previous research shows that despite the government's efforts to boost the amount of state revenue through taxes, Indonesia's tax ratio remains at a stagnant level, which is between approximately 10% to 12% year-on-year. Tax ratio of that amount is considered as relatively low. Ideally, the tax ratio can reach 15% to 17%.⁷ Even though the tax ratio is maintained at a stagnant level it means there is no optimization, there is still the potential for tax revenue that can be extracted and there is still the potential for tax revenue that has not been touched.⁸

Based on the researcher's investigation, the level of tax compliance of the legal professions such as advocates, civil law notary and curator is still very low when faced with taxation obligation, for example the reporting and paying of income tax upon receiving honorarium. As explained by the Minister of Finance of the Republic of Indonesia, Sri Mulyani at the Tax Amnesty Dissemination on 23rd November 2016, where she claimed to be concerned about seeing the tax data from advocates, notaries and curators. The reason is that none of these legal professions has a tax compliance rate above 50%. Civil law notary profession based on the data owned by the Directorate General of Taxes of the Republic of Indonesia estimates approximately 430.000 taxpayers from civil law notary. The Taxpayer

⁵ John Finlay, 'Tax the attorneys!' *Stamp Duty and the Scottish Legal Profession in the Eighteenth Century*, 34 J. SCOTTISH HIST. STUD. 141-166 (2014).

⁶ Husen Abdul Ghoni, *Pengaruh motivasi dan pengetahuan wajib pajak terhadap kepatuhan wajib pajak daerah*, 1 J. AKUNT. AKUNESA 1-21 (2012), <https://jurnalmahasiswa.unesa.ac.id/index.php/jurnal-akuntansi/article/view/296>.

⁷ Lintje Kalangi, *Pengaruh Tarif Pajak dan Probabilitas Audit terhadap Kepatuhan Pajak Penghasilan (Studi Eksperimen Laboratorium)*, 5 J. RIS. AKUNT. DAN AUDIT. 'GOODWILL' 20-29 (2014).

⁸ Sihar Tambun, *Anteseden Kepatuhan Wajib Pajak Orang Pribadi Dan Moderasi Sosialisasi Perpajakan*, 1 MEDIA AKUNT. PERPAJAK. 11-25 (2016), <http://journal.uta45jakarta.ac.id/index.php/MAP/article/view/163>.

Identification Number (Indonesian: *Nomor Pokok Wajib Pajak* or abbreviated NPWP) of the civil law notary profession is recorded as many as 14.686, while the Taxpayer Identification Number identified is only 11.314 civil law notaries. Sri Mulyani again explained that seeing from the past five years, indications of tax reports by civil law notary profession were only around 35%. But yearly data trend is decreasing from 39% to 30%. Advocates based on the data from Directorate General of Taxes of the Republic of Indonesia also recorded a total of 16.879 taxpayers with a Taxpayer Identification Number (NPWP) identified as not reaching 10%, with only 1.976 Taxpayer Identification Number (NPWP). The Directorate General of Taxes of the Republic of Indonesia also recorded 533 curators, but only 277 Taxpayer Identification Number (NPWP) were identified. The profession of curators has a better tax compliance rate of 45%, but none of these three legal professions has tax compliance figure that exceeds 50%.⁹

The laws and regulations regarding the legal profession's income tax currently already exist. But in practice, the nature of the tax arrangements for income received by these legal professions in the form of honorarium can still be improved to better. Legal professions by virtue of law is classified as income classes from free employment (*golongan penghasilan dari pekerjaan bebas*) which based on Income Tax Law concretely calculates the amount of tax payable based on 2 main methods, namely they who organizes bookkeeping (*menyelenggarakan pembukuan*) and who organizes records using the income tax calculation norm (*menyelenggarakan pencatatan dengan menggunakan norma perhitungan pajak penghasilan*). This provision is specifically regulated in Regulation of the Director General of Tax Number PER-17/PJ/2015 concerning Net Income Calculation Norms.

The majority of legal professions if comply, will use the second method, which is to record using the income tax calculation norm. The Second alternative was chosen before the first alternative because in the first alternative, these legal professionals are obliged to make and hold a bookkeeping and make a comprehensive and accountable financial statement regarding the implementation of his/her activities as legal professionals. The first alternative is also required for legal professionals

⁹ Hukumonline, *Memprihatinkan!! Kepatuhan Pajak Advokat, Notaris dan Kurator Rendah*, HUKUMONLINE, <https://www.hukumonline.com/berita/baca/lt5836d2fdc73c1/memprihatinkan-kepatuhan-pajak-advokat-notaris-dan-kurator-rendah/> (last visited Aug 28, 2019).

who are a taxpayer with a gross circulation in one year equals to Rp4.800.000.000,00 or more. In addition to the above reasons, the legal profession tends to choose to record using the income tax calculation norms because the Tax Basis (Indonesian: *Dasar Pengenaan Pajak* or DPP) is calculated at 50% of the gross income they receives (although they cannot charge any operational costs and other costs arising).

As for the current empirical practice, tax deduction, payments have been made according to the Income Tax Law. Where every business entity that deducts income tax from the honorarium paid to the legal professions often does not submit proof of withholding tax deduction to the respective legal profession. As a result, each legal professional must return to remind and ask for the original proof of withholding tax deduction. If they fail to request the proof of the withholding tax deduction, then the withholding tax deduction already made cannot be recognized and the legal professionals must pay on their own, their withholding income tax as a consequence of our income tax legal system that adheres to the self-assessment system. The consequence is multiple tax payment made on the same income object.

In the Income Tax Law, there is also no regulation regarding income tax deduction on honorariums paid by individuals (*naturalijk persoon*) that uses the legal services from the legal profession. Based on our income tax law, individuals (*naturalijk persoon*) who are the recipients of legal services that pay honorariums to the notary must deduct taxes and note it in their own records so that at the end of the tax year the deduction is reported to the Directorate General of Tax through the reporting of Annual Tax Report (Indonesian: *Surat Pemberitahuan Tahunan Pajak* or SPT). Of course this cannot be effectively practiced given the understanding of tax knowledge of every person is different. As a consequence, the legal profession must again pay his own withholding income tax as our income tax legal system adopts a self-assessment system. Again this condition illustrates the double tax payments made towards the same income object.

Every taxpayer including legal profession has the right to file the double-paid tax as an overpayment and hence as a tax credit, but this must be proven by original proof of withholding tax deduction and must firstly carried out a tax audit. This condition is felt by researcher that can be improved in order to be even better, one thing and another considering the taxation principles proposed by Adam Smith are among others: equality,

certainty, convenience of payment and economic of collection.¹⁰ Users of legal profession's services, both legal entities and individuals, must deduct tax on the honorarium paid to every legal professions, this is in accordance with the mandate of Article 21 paragraph (1) letter d of the Income Tax Law. However, in its pragmatic implementation, not everyone knows and understands the imposition of tax tariffs applied to these legal professions, because the determination of the tax rate imposed by to the legal profession by law is progressive based tariff. Calculated on the amount of gross income it has received (this of course only the legal professionals himself knows so far where their income have far progressed). With regard to the above conditions, the legal professionals at the end of the every tax year must recapitulate and pay his income tax in accordance with our income tax law system which adopts a self-assessment system.

In addition to the issues commonly faced practice as mentioned above, every legal profession are also required by Article 25 of the Income Tax Law to pay monthly income tax instalments. The amount of tax instalments that must be paid regularly each month in the current tax year is the amount of Income Tax (Indonesian: *Pajak Penghasilan* or PPh) owed according to the previous year's Annual Tax Report (SPT). In short, the amount of income tax paid in the last year becomes a reference to the amount of tax that must be paid in the current year each month in instalments. Here the Income Tax Law makes a projection of the value of income tax to be paid in instalments in instalments using performance in the previous tax year. The problem faced in real terms is for example the number of deeds made by a civil law notary, of course, always different (inconsistent) every month. The civil law notary must again provide funds every month to be paid as income tax instalments for the current year regardless of the number of deeds he made and how many honorariums he has received.

The complexity of tax calculation, deduction, payment and reporting is what the researcher feel can result in a decrease in tax compliance by these legal professions towards tax regulations. As a general official appointed by the state, of course this will have a negative impact on the legal professions institution's image. Moreover, civil law notary appointed by the state and advocate as law enforcement institution, both are from graduates of law

¹⁰ Pranoto & Ayub Torry Satriyo Kusumo, *Reformasi Birokrasi Perpajakan sebagai Usaha Peningkatan Pendapatan Negara dari Sektor Pajak*, 5 J. YUST. 395–414 (2016); Magdalena Jarczok-guzy, *The principles of tax law equality in the context of direct taxation*, 30 J. ECON. MANAG. 70–84 (2017).

should give a good example of obedience and compliance with regulations and laws, including tax regulations. Instead, they show a high level of non-compliance.

Referring to the description as written above, this research will mainly answer 2 problems namely how are the legal aspects related to income tax on honorariums received by legal professions in connection with the legal services they provide and the concept of reconstruction such as what can be done against regulations related to income tax on honorarium received by legal professions.

The subject matter raised by the researcher is also substantively feasible to be examined because it is original. As the researcher has an obligation to show that the research conducted offers new perspectives, ideas or solutions to a legal problem that previously existed.¹¹ From the researcher's investigations, no research has ever been conducted that seeks to reconstruct regulations related to income tax received by legal profession in connection with the legal profession's honorarium received. Therefore this research is a pioneer research, meaning that academically and scientifically, this research has a novelty element so that it becomes a guarantee that this research is an original work and can be justified. The topic raised also fulfils the requirement of non-obviousness because the topic raised is something that is not too clear, not too easy and general, so that it cannot be known without prior research.

The final objective of this research is expected to be able to answer the legal aspects related to income tax on legal profession's honorarium and the concept of reconstruction such as what can be done to regulations related to income tax on legal profession's honorarium, one and the other so that it can provide a positive impetus to the tax compliance of legal profession in Indonesia. In addition, this research is expected to produce recommendations for a more applicable contemporary reconstruction concept, in the form of an arrangement regarding income tax on honorarium received by legal profession in accordance with his/her service in legal sector. This research is expected to contribute to the reconstruction of tax regulations on income received by legal profession so that they can better accommodate the needs of legal profession in Indonesia.

¹¹ Andri Gunawan Wibisana, *Menulis di Jurnal Hukum: Gagasan, Struktur dan Gaya*, 49 J. HUK. PEMBANG. 471-496 (2019).

This research is expected to benefit theoretically for the development of legal theories that are being used, adding to the treasury of knowledge, especially in the field of taxation law. Practically this research is expected to be beneficial for the development of tax laws and regulations in Indonesia (*ius constitutum* into *ius constituendum*), for executive branch that carry out statutory provisions and for legal professions and legal profession's organizations that are directly related to the topics rose in this study.

This study uses a paradigmatic study of legal politics in the formation of legislation from a philosophical, constitutional and juridical perspective. The problem will then also be analysed based on the use of legal theory, namely Utilitarianism Theory by Jeremy Bentham, Progressive Legal Theory by Satjipto Rahardjo and Legal Systems Theory by Lawrence M. Friedman as the basis for analysis.

Utilitarianism¹² arose in the West in the discipline of Western legal philosophy. The originator was Jeremy Bentham. According to this theory, the benchmark of utilitarianism is happiness, hence the adage “the greatest happiness for the greatest number of people”.¹³ Therefore, when a person is able to produce more pleasure and suppress sadness/plight, it means he will get happier. The standard of achieving happiness, therefore, is individual in nature (individualism).¹⁴ Jeremy Bentham's (1789) utilitarianism is thought to be the first to systematically examine the “Economic Analysis of Law”, it is how people act towards legal incentives and evaluate their results according to the social welfare measures.¹⁵ According to the Utilitarianism Theory a person can be ignored and it is pursued as much satisfaction as possible, but it was also asked that to a certain people to sacrifice themselves for the happiness of the greater.¹⁶

¹² Utilitarianism, as originally formulated by Jeremy Bentham and later qualified and modified by John Stuart Mill and Henry Sidgwick, was, the inspirator for great legal and social reforms, as well as the principal theoretical basis for progressive social thinking. H. L.A. Hart, *The new challenge to legal positivism* (1979), 36 OXF. J. LEG. STUD. 459–475 (2016).

¹³ Khairul Fahmi, *Menelusuri konsep keadilan pemilihan umum menurut UUD 1945*, 4 J. CITA HUK. 167–186 (2016); Yong Ohoitmur, *Tujuh teori etika tentang tujuan hukum*, 1 STUD. PHILOS. THEOL. 90–105 (2001); Ni Made Dwi Kristiani, *Kejahatan kekerasan seksual (perkosaan) ditinjau dari perspektif kriminologi*, 7 J. MAGISTER HUK. UDAYANA 371–382 (2014).

¹⁴ Ahmad Zayyaduz Zabidi, *Paradigma utilitarianistik dalam istinbâth hukum islâm*, 3 J. HUK. DAN PRANATA SOS. 368–382 (2008).

¹⁵ Ady Irawan, *Analisis ekonomi terhadap hukum dalam kebijakan penegakan hukum pidana di Indonesia*, 7 J. PENDIDIK. IPS 29–36 (2017), <http://ejournal.tsb.ac.id/index.php/jpi/article/view/80>.

¹⁶ This means that the greater satisfaction for a group of people is sufficient compensation enough for the reduced satisfaction of another group. It is clear that in this way humans are treated as a

Utilitarianism theory is a theory that determines the right or wrong of something based on happiness. In simple terms it can be understood that utilitarianism is a theory that considers everything based on the aspect of benefits that is presented behind a certain action (series of causes and effects).¹⁷ The Utilitarianism Theory can actually also be included in Legal Positivism, bearing in mind that this theory has finally come to the conclusion that the goal of law is to create public order, as well as to provide maximum benefits to the largest number of people. This means that the law is also a reflection of the authority's command, not a mere reflection of the ratio.¹⁸ The stability of a utilitarianism conception of justice depends on the willingness of individuals to make potentially unlimited sacrifices for one another. This apparently requires that the members of a society form strong bonds even with those members with whom they have no personal contact or even direct knowledge.¹⁹

Prof. Satjipto Rahardjo in his Progressive Legal Theory views that the law is intended to strengthen and secure the implementation of development and its results. The law must be able to provide support and direction to efforts for development in order to achieve equitable prosperity. Ultimately the law must be able to create a climate and environment that fosters creativity and community participation in development and supports healthy and dynamic national stability.²⁰ Even in his perspective, Satjipto Rahardjo views that as an object of knowledge, the laws that is codified in the law is not something sacred to be tested for its persistence and value.²¹

means; economic principles take precedence over the needs of the human. Rawls argues that in a society governed according to the principles of utility people will lose self-esteem, and that service for mutual development will disappear. Rawls also believes that this theory is actually harder than what is considered normal by the people. It may be that people are asked to sacrifice in the public interest, but it cannot be justified that this sacrifice was first requested from people who are already disadvantaged in today's society. M. Yazid Fathoni, *Konsep keadilan dalam pengelolaan dan pemanfaatan sumber daya alam menurut Undang-Undang Pokok Agraria Tahun 1960*, 1 J. IUS KAJI. HUK. DAN KEADILAN 44–59 (2013).

¹⁷ Iqraq Sulhin, *Filsafat (sistem) masyarakat*, 7 J. KRIMINOLOGI INDONESIA. 134–150 (2010), <http://www.ijil.ui.ac.id/index.php/jki/article/view/1097>; Mas Ahmad Yani, *Pengendalian sosial kejahatan: Suatu tinjauan terhadap masalah penghukuman dalam perspektif sosiologi*, 3 J. CITA HUK. 77–90 (2015).

¹⁸ Yogi Prasetyo, *Legal truth (Menakar kebenaran hukum)*, 1 LEG. STANDING J. ILMU HUK. 1–21 (2017).

¹⁹ Vladislav Valentinov, *The Rawlsian Critique of Utilitarianism: A Luhmannian Interpretation*, 142 J. BUS. ETHICS 25–35 (2017).

²⁰ SATJIPTO RAHARDJO, *Pendidikan Hukum sebagai Pendidikan Manusia* (2009).

²¹ Muhammad Rustamaji, *Menakar pengawasan pemberian bantuan hukum dalam pandangan Richard A Posner*, 2 J. RECHTS VINDING 95–106 (2013), <https://rechtsvinding.bphn.go.id/ejournal/index.php/jrv/article/view/84>.

The process to find the best law must be carried out considering the human factor in the law has been ignored. The concept of progressive law that emphasizes the never-ending process of searching for the truth, is an opportunity to strengthen the human factor in law.²²

The Legal System Theory by Lawrence M. Friedman will be the basis of researcher's analysis in answering the second problem rose, namely how the concept of reconstruction can be carried out on regulations related to income tax on honorarium received by legal profession. To answer this problem, it will be assessed based on 3 elements/instruments, namely legal substance, legal structure and legal culture. These elements support the operation of the legal system in a country. Where in social reality, the existence of the legal system contained in society will experience changes as a result of the influence of what is called modernization or globalization. These elements according to Lawrence M. Friedman will apply as a determining factor, whether a legal system can work well or not. Soerjono Soekanto said that these three components were factors that could not be ignored because if ignored would lead to not achieving the expected result of law enforcement.²³ For this research and study, the authors will also emphasize on the idea of legal culture. When Lawrence Friedman introduced the idea of legal culture into sociology of law and legal theory, it was intended to serve as a “term of art”, part of his effort to show that social pressures and needs shape legal change more than autonomous developments within legal tradition itself.²⁴

To answer the issues raised in this study, researcher will use the research specifications/type of research in the form of normative juridical legal research. This research was conducted by merely examining library materials and secondary data. According to Abdulkadir Muhammad, normative law research uses normative legal case studies in the form of legal behaviour products, such as reviewing draft laws. The main point of study is the law which is conceptualized as a norm or rule that applies in society and becomes a reference for behaviour towards people. So that normative legal

²² Sulaiman & Derita Prapti Rahayu, *Pembangunan Hukum Indonesia Dalam Konsep Hukum Progresif*, 2 HERMENEUT. J. ILMU HUK. 128–139 (2018).

²³ Secsio Jimec Nainggolan et al., *Analisis Yuridis Penentuan Kedudukan Saksi Pelaku sebagai Justice Collaborators dalam Tindak Pidana Narkotika di Pengadilan Negeri Pematang Siantar (Studi Putusan No: 231/Pid.Sus/2015/PN)*, 5 USU LAW J. 108–117 (2017).

²⁴ David Nelken, *Thinking About Legal Culture*, 1 ASIAN J. LAW SOC. 255–274 (2014).

research focuses on an inventory of positive law, principles and doctrine of law, legal discovery *in concreto* cases, systematic law, the extent of legal synchronization, comparative law and legal history.²⁵

In this legal research, secondary materials include primary, secondary and tertiary legal materials. The secondary data above was obtained by the method of collecting data through library research. Literature study is carried out to find conceptions, theories and opinions as well as findings which mainly discuss the topics raised. Literature study is also carried out on the relevant laws and regulations. The approaches used in this research are the statute approach and philosophical approach. Statute approach is carried out by reviewing all laws and regulations relating to the research conducted. Whilst the philosophical approach is carried out by examining in depth the background of a rule or concept of law by basing the discussion on the theory and philosophy of law that revolves around issues of nature, values, methods and objectives of a particular law and/or regulation.²⁶ The data that has been collected is then analysed using qualitative juridical analysis methods.

I. LEGITIMACY AND JURISDICTION OF TAX COLLECTION BY THE STATE THROUGH THE GOVERNMENT

Prof. Dr. Rochmat Soemitro, S.H. define tax as a public contribution to the state treasury based on the law (which can be forced) by not getting a counter-service (*kontra prestasi*), which can be directly shown and used to pay public expenses. Prof. Dr. Rochmat Soemitro, S.H. explain that the element 'can be forced' means that if the tax is not paid, then the tax can be collected by using violence such as issuing forced letters and confiscating even by taking hostage, whereas the payment of the tax will not always be followed by certain shown reciprocal services, as does retribution.²⁷ Tax has a very close relationship with human rights (Indonesian: *Hak Asasi Manusia* or abbreviated HAM). Researchers take the example of the constitution of

²⁵ ABDULKADIR MUHAMMAD, HUKUM DAN PENELITIAN HUKUM (2004).

²⁶ Jawahir Thontowi, *Pengembangan Ilmu Hukum Berbasis Religiuos Science: Dekonstruksi Filsofosfis Pemikiran Hukum Positivistik*, 6 PANDECTA RES. LAW J. (2011).

²⁷ WIRAWAN B. ILYAS & RICHARD BURTON, HUKUM PAJAK (2001).

the Netherlands. In Dutch constitutional law, the notion of basic/fundamental rights (*grondrechten*) is generally used to refer to basic rights and freedoms (fundamental rights and liberties). Here, classic fundamental rights are conceptually differentiated into social rights and economic rights. The sources of these basic rights are the Dutch constitution, international conventions on human rights and European Union law.²⁸

One of the biggest sources of state revenue in the context of national income comes from the tax sector. As one source of income, tax has an important role in the development process in Indonesia. Tax as one of the main capital to realize the independence of a nation in terms of financing development by exploring domestic resources. To realize the independence of this funding requires public participation in national development funds through its obligation to pay taxes as a source of state revenue. It is inevitable that tax revenue is one of the biggest revenues in the state revenue budget. Tax revenue reaches up to 77% of all national income. This condition will certainly have an impact on the financial system and national economic system in order to achieve a common goal, namely social welfare.²⁹ Taxes are even more important for the survival of this country because its role/influence is very large on state revenue, which is more than the overall state revenue from other sources, such as natural resources, state owned enterprises profit share (Indonesian: *Badan Usaha Milik Negara* or abbreviated BUMN), other non-tax state revenue (Indonesian: *Penerimaan Negara Bukan Pajak* or abbreviated PNBPN) and revenue from public service agencies (Indonesian: *Badan Layanan Umum* or abbreviated BLU).³⁰

Similar to the definition of taxes and ideas in the constitution of the Netherlands, the act of collecting taxes by the state through a legitimate government is in principle an act of taking what is a person's right by force. Rights in this case are human rights of every human being which are basic economic rights. Therefore, it is specifically regulated in the Republic of

²⁸ Hans Gribnau, *Legislative Instrumentalism vs. Legal Principles in Tax Law*, 16 COVENTRY LAW J. 89–109 (2013); Hans Gribnau, *Equality, Legal Certainty and Tax Legislation in the Netherlands Fundamental Legal Principles as Checks on Legislative Power: A Case Study*, 9 UTR. LAW REV. 52–74 (2013).

²⁹ Zainal Muttaqin, Dewi Kania Sugiharti & I Tajudin, *Law Enforcement on Taxation Through Non Litigation Mechanism (an Alternative)*, 27 J. MIMB. HUK. 374–387 (2015).

³⁰ Harsanto Nursadi, *Tindakan Hukum Administrasi (Negara) Perpajakan yang Dapat Berakibat pada Tindakan Pidana*, 48 J. HUK. PEMBANG. 110–136 (2018).

Indonesia's Constitution, specifically in the provisions of Article 23A of the Republic of Indonesia's Constitution of 1945 which reads: "Taxes and other levies that are coercive for the purposes of the country are regulated by law". The provisions of the constitution outline an obligation from the state to regulate in advance the legal instruments in the form of laws before tax collection. The purpose of promulgation into the law is because through the law, the participation of all people in the promulgation of tax laws can be guaranteed, one another to create an understanding and awareness of tax law for all Indonesian people. That the tax must be regulated by law reflects that the tax collection is determined jointly by the people through its representatives in the parliament (Indonesian: *Dewan Perwakilan Rakyat* or abbreviated DPR), including the determination of the tax rate. This includes the provision that upholds the rights of citizens and places tax obligations as a state obligation which is the participation of the community in state financing and national development.³¹

In order for the tax collection to not injure the public's sense of justice, then a legal coercive effort is needed. Legality in this case is to rely on tax collection through law. Without the law, tax collection is not binding on society and is illegal.³² The tax regulation in the law is not only to provide legitimacy in terms of collection and jurisdiction, but also to ensure that tax collection is carried out in accordance with the principles of good taxation. Adam Smith is widely known as one of the most important writers of the principles of good taxation. In the early 18th century, Smith formulated four principles or canons, namely: equality, certainty, convenience and the economy of taxation. These principles are based on liberal economic thought which is still relevant today. Adam Smith replaced the concept of equity with the concept of equality with the view of the practical application of this principle; Adam Smith combines two separate factors into a factor of "benefit" and "ability to pay". John Stuart Mill is another economist who discusses the principle of equality in tax law. According to him, the principle of equal treatment of taxpayers means "the same financial sacrifice or the same loss in property". The second principle of Adam Smith's taxation is that

³¹ Fuad Bawazier, *Reformasi pajak di indonesia*, 8 J. LEGIS. INDONES. 1–28 (2011).

³² Dwi Sulastyawati, *Hukum pajak dan implementasinya bagi kesejahteraan rakyat*, 1 SALAM J. SOS. DAN BUDAYA SYAR-I 119–128 (2014).

the tax must be guaranteed and not arbitrary (tax ought to be certain and not arbitrary).³³

Moving on from two main principles of good taxation by Adam Smith, the law aims to guarantee both taxation principles to be implemented properly. The rule of law aims to protect against arbitrary interference. Therefore the principle of the rule of law is to prevent the application of tax solely as a political instrument of the government and to keep it fully within the scope of legislative freedom (the principles of a state under the rule of law within the sphere of legislative freedom)³⁴. Therefore the importance of the substance of tax regulation, specifically regarding matters of taxation must be regulated in the legislation class/hierarchy of law. This was certainly realized by the Indonesian founding fathers at the time of the formulation of the Republic of Indonesia's Constitution of 1945.

II. POSITIVE LAWS RELATED TO INCOME TAX ON LEGAL PROFESSIONALS' HONORARIUM

Positive law related to tax in Indonesia has undergone many changes. Tax reform in Indonesia began in 1983, with the introduction of the principle of self-assessment in calculating income tax. Post 1997 or in the reformation order (*orde reformasi*), changes to changes towards taxation arrangements continue to occur even though it feels nuanced "undirected changes" because it starts to lose direction and clear goals. The latest post 1997 changes include Law of the Republic of Indonesia Number 36 of 2008 concerning the Fourth Amendment to Law of the Republic of Indonesia Number 7 of 1983 concerning Income Tax, Law Number 16 of 2009 concerning Implementation of Government Regulations in lieu of Laws Number 5 of 2008 concerning the Fourth Amendment of Law Number 6 of 1983 concerning General Provisions and Procedures for Taxation into Law, Act Number 42 of 2009 concerning the Third Amendment to Law Number 6 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods, and the transfer of responsibility for collection of BPHTB (Land and Building Acquisition Fees) from the central government to local governments since 2011. Specifically for income tax (PPh) is imposed with a

³³ Gribnau, *supra* note 28.

³⁴ *Id.*

self-assessment system in calculating income tax by charging more progressive rates, as a sharpening of the principle of simplicity and the principle of legal certainty.³⁵

Legal changes with the terminology of tax reform in Indonesia increasingly reflect the reality that there is a holistic commitment to improvement in the taxation sector. Specifically, the regulations governing taxation on honorariums received by legal professions in connection with the legal services they provide that have been legally regulated in the provisions of Article 4 paragraph (1) of the Income Tax Law. The provisions of Article 4 paragraph (1) of the Income Tax Law regulate and classify honorarium received by legal professions as income classes from free employment (*pekerjaan bebas*), so that by law the honorarium received by legal professions is subject to income tax based on the Income Tax Law. The position of legal professions according to the explanation of the provisions of Article 4 paragraph (1) letter a of the Income Tax Law is also included in the types of work classified as free employment. Free employment means that the work carried out by individuals who have special expertise as an effort to earn income that is not bound by a work relationship.³⁶

A. Empirical Implementation of Withholding Tax Deduction, Payment and Report of Income Tax on Legal Professionals' Honorarium

In this particular section, the researcher will emphasize more on one legal profession, namely civil law notary. Mainly because in all other legal profession, civil law notary is the only one that has a unique mix of thick public and private sector. In some countries, the civil law notary is carried out as a "free employment" (*vrij beroep*), while in other countries it is a non-salary position (*staatsambt* or *onbezoldigd*). In fact there are also (in some countries) as government officials who are given an honorarium (*gehonoreerd staatsambt*).³⁷ The position of notary is included in the category of public

³⁵ Bawazier, *supra* note 31.

³⁶ Direktorat Jenderal Pajak, *Pengertian Pekerjaan Bebas* (2016), <http://www.pajak.go.id/sites/default/files/2019-05/PL-15 PEKERJAAN BEBAS.ppsx> (last visited Sep 4, 2019).

³⁷ KOMAR ANDASASMITA, *NOTARIS I: PERATURAN JABATAN, KODE ETIK DAN ASOSIASI NOTARIS/NOTARIAT* (1991).

official (*openbaar ambtenaar*) in the field of law which is also an extension of the government. Public officials in this case are state organs equipped with general powers, authorized to carry out a portion of state power to produce written and authentic evidence in the field of civil law.³⁸ Therefore, civil law notaries are public officials and not public servants. Civil law notary was appointed in his position because of the law. Civil Law notary is a public official that also acts like a "businessman". The civil law notary position can be seen as an anachronism, on the one hand it carries out a portion of state power and on the other hand works for itself by carrying out a "free" profession.³⁹ This is one of the reasons why civil law notaries can receive an honorarium by law.

Civil law notaries are professionals who provide legal services. A civil law notary does not get a salary/income from the government, but she/he has the right to withdraw fees for services rendered. Civil law notary services are intangible even though a notary in providing his services produces a deed. The determination of the honorarium of a civil law notary public is therefore not certain. Can only be limited by statutory provisions for the sake of regularity and to avoid arbitrariness. The civil law notary honorarium is regulated in Article 36 UUJN. However, the limitation in Article 37 UUJN shows that the position of a notary may not merely be seen as a livelihood profession that prioritizes money and income, but also has the social function of providing assistance to people who cannot afford it.⁴⁰

The position of civil law notary that based on the provisions of Article 4 paragraph (1) letter a of the Income Tax Law falls into the types of work that are classified as free employment obliged to do bookkeeping, one and the other in accordance with the provisions of Article 28 paragraph (1) of Law Number 6 of 1983 as has been amended by Law Number 16 of 2000 concerning General Provisions and Tax Procedures (hereinafter referred to as "*UU KUP*"). But more specifically (*lex specialis*) regulated further in the Regulation of the Director General of Tax Number: PER-17/PJ/2015 concerning Norms of Calculation of Net Income, especially in the provisions of Article 1 paragraph (1), paragraph (2) and paragraph (3) provide further details on the categories of individual taxpayers such as whether to keep

³⁸ HERLIEN BUDIONO, KUMPULAN TULISAN HUKUM PERDATA DI BIDANG KENOTARIATAN: BUKU KETIGA (2015).

³⁹ *Id.*

⁴⁰ FREDDY HARRIS & LENY HELENA, NOTARIS INDONESIA (2017).

bookkeeping or records. the provisions of Article 1 paragraph (1) of the Regulation of the Director General of Taxes requires that individual taxpayers who carry out free employment whose gross circulation in one year exceeds Rp4,800,000,000.00 is required to maintain bookkeeping. For taxpayers who do not qualify in the provisions of Article 1 paragraph (1), they are free to choose not to keep books, but are obliged to keep records by notifying the use of such records to the Director General of Taxes.

Therefore, based on the provisions of the Income Tax Law, *UU KUP* and Regulation of the Director General of Tax Number: PER-17/PJ/2015 concerning Norms of Calculation of Net Income, in general the civil law notary and other legal profession will conduct 2 models of withholding tax deduction, payment and reporting of income tax on the honorarium it receives, i.e., with the following model:

a. **Legal Profession that Organize Bookkeeping (*Menyelenggarakan Pembukuan*)**

The legal profession who organizes bookkeeping is a legal professional who, in carrying out his duties and authority, has a gross circulation in one year exceeding Rp4,800,000,000.00 or less than it, but chooses to keep bookkeeping. The obligation to maintain bookkeeping in this case is the same as the corporate taxpayer carrying out business activities. Bookkeeping based on the provisions of Article 1 number 29 of the *UU KUP* is a process of recording that is carried out regularly to collect financial data and information which includes assets, liabilities, capital, income and costs, as well as the total acquisition and delivery price of goods or services, where data and information The finance is closed by preparing financial statements in the form of a balance sheet and income statement for a certain tax year period.

In this model, the fees paid to the legal profession by the service user must be deducted by the service end user first and then the rest of the amount is paid to the legal profession. This is in accordance with the provisions of Article 21 paragraph (1) letter d of the Income Tax Law that requires users of legal profession's services, both legal entity and individuals to make withholding tax deductions for honorariums paid to the legal profession. But in practice the withholding tax deduction that deducts the legal profession tax from the honorarium to be paid is only in the form of

corporate taxpayers, one and the other because the corporate taxpayers have comprehensive bookkeeping, knowledgeable staff and adequate infrastructure. In addition, in essence the taxpayer entity will always keep bookkeeping because it is required by law, so there will be no difficulty in reporting any taxes withheld at the time of reporting the Annual Tax Report (SPT).

Tax deduction by individual taxpayers is very minimal in practice because most of the individual taxpayers do not understand at all the applicable taxation provisions, individual taxpayers who tend to pay in cash/directly in full the honorarium billed by legal professionals to him/her. Individual taxpayers also will not carry out all tax deduction administration until reporting of tax deduction activities in the current tax year at the time of reporting their Annual Tax Report. As a result, it is the legal profession who then self-pays the owed income tax that must be paid as a consequence of the self-assessment system. Not infrequently even the legal profession then does not follow up on his tax obligations in the form of paying the tax payments that he/she owed.

At the end of the taxation period, the legal professional must independently (as a consequence of the self-assessment system) calculate his taxation obligation and liabilities within the 1 tax year as evidenced in the books made during the current tax year. In the case of bookkeeping, they may calculate all burdens that have been legally and really issued in connection with the implementation of his duties and authority as legal profession. The results of calculations obtained from bookkeeping held by a notary after deducting expenses and expenses constitute net income that must be reduced by Non-Taxable Income (Indonesian: *Penghasilan Tidak Kena Pajak* or abbreviated PTKP) so that a Taxable Income (Indonesian: *Penghasilan Kena Pajak* or abbreviated PKP) is obtained. The taxable income (PKP) is multiplied by the imposition of a progressive tax rate as specified in the provisions of Article 17 of the Income Tax Law. The results of these calculations are income tax payable to the legal professional during the year. If the honorarium paid is tax deductible, then the tax deduction can be a deduction factor for the income tax payable (of course, evidenced by valid proof of withholding from the tax cut). The tax difference owed by the legal professional must be paid in full and then reported to the Directorate

General of Taxes through the local Tax Service Office in the form of an Annual Tax Report (SPT) that has been prepared and signed.

b. Legal Profession that Organize Records (*Menyelenggarakan Pencatatan*)

The legal professional who administers and organize records is a legal professional who, in carrying out his duties and authority, has a gross circulation of less than Rp4,800,000,000.00 in 1 year. Records are an obligation that must be done by taxpayers who do free employment but do not keep bookkeeping. In this case what is meant by recording based on the provisions of Article 28 paragraph (9) of the *UU KUP* is data collected regularly about gross circulation or revenue and / or gross income as a basis for calculating the amount of tax owed, including income that is not a taxable object and/or subject to final tax.

In this model, the fees paid to the legal professionals due the legal service given by the user must be deducted by the service user first and then the rest is paid to the legal professionals. This is in accordance with the provisions of Article 21 paragraph (1) letter d of the Income Tax Law that requires users of legal professionals' services, both legal entity and individuals to make tax deductions for honorariums paid to the legal professionals. But in practice the tax deduction that deducts the notary tax from the honorarium to be paid is only in done by corporate taxpayers, one and the other because the corporate taxpayers have comprehensive bookkeeping, knowledgeable staff and adequate infrastructure. In addition, in essence the taxpayer entity will always keep bookkeeping because it is required by law, so there will be no difficulty in reporting any taxes withheld at the time of reporting the Annual Tax Report (SPT). Tax deduction by individual taxpayers is very minimal once again for the same reasons as mentioned in the previous model. As a consequence, it is the legal professions who then have to pay his own withholding income tax which is then paid as a result of our income tax system which adopts a self-assessment system.

At the end of the taxation period, the legal professional must independently (as a consequence of the self-assessment system) calculate his tax liability within the 1 tax year with the following calculation: the legal professional looks for the entire accumulated (amount) of gross income he/she gets multiplied by 50% (special method for the legal profession who

organizes records with the calculation norm). The results of these calculations are then net income legal professional must pay by reducing the Non-Taxable Income (PTKP) in order to obtain a Taxable Income (PKP). The taxable income (PKP) is multiplied by the imposition of a progressive tax rate as specified in the provisions of Article 17 of the Income Tax Law. The results of these calculations are income tax payable to by legal professional during the year. If the honorarium paid is tax deductible, then the tax deduction can be a deduction factor for the income tax payable (of course, evidenced by valid proof of original withholding tax deduction). The tax difference owed by the legal professional must be paid in full and then reported to the Directorate General of Taxes through the local Tax Service Office in the form of an Annual Tax Report (SPT) that has been prepared and signed.

B. Constraints and Consequences of Implementing Prevailing Tax Regulations related to Legal Professionals' Income Tax (A Classical-Contemporary Point of View)

Researcher refer to this view as a classic-contemporary view because in reality the implementation and imposition of tax regulations related to income tax that is paid legal professional in connection with the honorarium received has referred to the concept of regulation in the Income Tax Law that has been in force since 1983. The implementation of the draft regulation continues until now and the obstacles faced are always the same from year to year. That is what then gives the view that these constraints have existed since the past (classical) to the present (contemporary), despite the tax reforms that have been carried out, particularly in the area of convenience in terms of payment, deduction and tax reporting.

The constraints faced related to the implementation and imposition of tax regulations in connection with income tax received by a legal profession, including the following:

1. The deduction, payment and income tax reporting model for the honorarium received by the legal profession, namely the legal profession model that maintains bookkeeping and the legal profession model that organize records still impose obligations for service users who pay the

honorarium to deduct income tax from the honorarium to be paid. Pragmatic implementation, not all service users know and understand the imposition of tariffs imposed on respective legal profession, one and the other because the determination of the tax rate imposed by the legal profession is progressive, it keeps on changing (increasing) based on the amount of gross income that has been received (of course only the legal professional itself that knows the extent of his income, not other party). With regard to the above conditions, the legal professional at the end of the tax year must recapitulate and return to pay his income tax as our income tax legal system adopts the self-assessment system. This means that in paying income tax on the honorarium received by a legal profession is carried out by 2 parties, namely: the service user who deducts withholding income tax and the legal professional him/herself.

2. Withholding income tax deductions made by service users can only be recognized as a tax credit if the legal profession himself has valid proof of deduction for reporting purposes on the Annual Tax Report (SPT). The proof of deduction must be requested by them to each and every person who deducts his tax. This is not effective, of course, because legal profession in providing legal services not only focuses to specific person or certain group. The proof of deduction is also not immediately accepted by the legal professional because in the process of issuance it requires time for the signing of the withholding tax deduction slip. The burden of recalling the income tax withholding who has not submitted the original proof of withholding tax will be an obstacle for the legal profession in carrying out his main duties and authority.
3. In the Income Tax Law, there is also no regulation regarding income tax payments on honorariums paid by individuals (*naturlijk persoon*) recipients of services to legal professional. Based on our income tax law, individuals (*naturlijk persoon*) service recipients who pay honorariums to the legal professional must deduct taxes and make their own records so that at the end of the tax year the deduction is reported to the Directorate General of Taxes through the reporting of Annual Tax Report (SPT). Of course this cannot be practiced given the understanding of tax knowledge every person is different. As a consequence, the legal professional must again pay his income tax as a consequence of our income tax legal system which adopts a self-assessment system. Again,

this condition illustrates the payment of tax which has the potential to cause multiple imposition of the same tax object.

4. The legal profession may be able to file an overpayment of tax as a tax credit, but this must be proven by original proof of withholding tax deduction and by first carrying out a tax audit that takes a long time.
5. Legal professional are also required by Article 25 of the Income Tax Law to pay monthly income tax instalments. The amount of tax instalments that must be paid regularly each month by a legal professional in the current tax year is the amount of Income Tax (PPh) owed according to the previous year's Annual Tax Report (SPT). In short, the amount of income tax paid in the last year becomes a reference to the amount of tax that must be paid in the current year each month in instalments. Here, the Income Tax Law makes a projection of the value of income tax that must be paid in the current year in instalments using the performance of the previous tax year. The problem faced in real practice is that no legal profession can tell the number of legal service they will be giving out because every month will always be different (inconsistent) from time to time. Every legal professional must again provide sufficient funds each month to be paid as income tax instalments for the current year regardless of how many honorariums he/she has received in the current month.

The complexity of the legal profession tax calculation, deduction, payment and reporting has the potential to result in a legal profession compliance and compliance with tax regulations. As a public official appointed by the state, of course this will negatively impact the image and dignity of the legal profession institution itself. Moreover, the legal profession appointed by the state and as a graduate of law should give a good example of obedience and compliance with regulations, including tax regulations.

The researcher quotes one of the opinions of Tan Thong Kie in his book that discusses civil law notary and tax. Tan Thong Kie explained that although a civil law notary has received education in taxation, it must be recognized that he/she does not practice daily in that particular field, so he/she does not know the twists and turns in taxation matters like a tax consultant do. Except for giving general advice on the subject, a civil law notary should encourage the customer to discuss the matter freely with a tax

expert. A civil law notary is not a tax official.⁴¹ This opinion reinforces that there is a very relevant relationship related to tax regulations along with their complexity and its effect on the understanding and tax compliance of legal profession.

C. Are the Tax Regulations related to the Income Tax on Legal Professionals' Honorarium is Still Relevant and Feasible?

To address the issue of the relevance of special tax regulations on this legal profession's honorarium, researcher used the view of Progressive Legal Theory by Satjipto Rahardjo as the basis for analysis. The view of Progressive Legal Theory, according to Satjipto Rahardjo, is an exploration of an idea with 9 core points as follows:⁴²

1. law rejects the analytical tradition of jurisprudence or *rechtsdogmatiek* and shares understanding with streams such as legal realism, *freirechtslehre*, sociological jurisprudence, *interessenjurisprudenz* in Germany, natural law theory and critical legal studies;
2. the law rejects the opinion that order only works through state institutions;
3. progressive law is aimed at protecting the people towards the ideal of law;
4. the law rejects the status-quo and does not want to make the law as a technology that has no conscience, but rather a moral institution;
5. law is an institution that aims to bring people to a just, prosperous life and make people happy;
6. progressive law is "pro-people law" and "pro-justice law";
7. the basic assumption of progressive law is that "law is for humans", not vice versa; related to this matter, the law does not exist for itself; so every time there is a problem in and with the law, the law is reviewed and corrected, not the people who are forced to be included in the legal system;
8. law is not an absolute and final institution, but very much depends on how people see and use it, people are the determinants;

⁴¹ TAN THONG KIE, *STUDI NOTARIAT & SERBA-SERBI PRAKTEK NOTARIS* (2013).

⁴² ROMLI ATMASASMITA, *TEORI HUKUM INTEGRATIF* (2018).

9. law is always in the process of continuing to be (*law as a process, law in the making*).

Moving on from the great thought of progressive law by Satjipto Rahardjo, researcher considered that the legal view rejected order in taxation which would only work through state institutions. Awareness of tax regulations cannot only be created through regulations enforced by taxation institutions, but also awareness of the people as determinant (taxpayers) themselves. However progressive legal thinking is to protect all Indonesian people in general with the aim of going towards the ideal of law. As a positive legal view that does not want to make law as a technology that is not conscientious, but a moral institution, then efforts must be made to "humanize" the law. The law must learn from the processes of human life.

The established law must pay attention to the conditions and processes of human life in an agile manner. Therefore, each tax regulation product that is promulgated must reflect the situation as much as possible to contribute and benefit to humans themselves. This view is also inspired by progressive law that is pro-people, meaning that the law formed is the law that is on the side of the people, not on the side of the ruler or certain class. The basic assumption of progressive law that law is for people and vice versa also sharpens the analysis and discussion of funds in this section. Existing tax laws and regulations are concepts of thought and regulation that began in 1983. Tax laws, especially income tax, do not exist for themselves, but for something broader and larger. Therefore, every time there is a problem with the application of the law, the law must be reviewed and corrected, not the other way around when people are forced to be part of the legal system. It should be remembered that the current law is not an absolute and final regulatory institution, but always moves in line with the people who use the law. The law always develops and grows along with human life. This concept of thinking is what Satjipto Rahardjo called law always in the process of continuing to be (*law as a process, law in the making*).

The taxation regulation is related to income tax on the honorarium received by the legal profession at this time if it feels that it does not provide maximum benefits to the legal profession (in particular) and the wider community (in general). If the legal profession is comfortable in paying taxes, it will actually have a positive impact on the level of compliance with the tax law. This of course will also have a direct impact on state revenue,

which will also indirectly contribute to the prosperity and welfare of the Indonesian people. Law exists for the people so that if people are not comfortable with the implementation and application of the law, it is not the people who are forced to follow the will of the law, but the law must be changed to adjust the people's will with the main goal for the welfare of the entire Indonesian people. Of course this view is not intended to reduce the binding power of a law (supremacy of law), but to re-question what the reasons for the existence of the law itself. Of course the final goal is to establish 3 legal objectives according to Gustav Radbruch⁴³ (German lawyer and legal philosopher), namely justice, legal certainty and legal purposiveness.⁴⁴

Changes in tax law are a certain reality. In the Netherlands, for example, the increasing number of tax-related legislation is largely due to the efforts of tax legislators who seek to exercise effective and efficient control in the face of an increasingly complex society. Tax avoidance, for example, often leads to more detailed legislation and tends to lead to too much regulation on anti-abuse. As a result, tax laws are often amended to adjust to changing circumstances. Furthermore, legislators increasingly intervene in the freedom of citizens with the aim of directing society (legislators increasingly interfering with the liberties of citizens in order to steer society). An example is the Dutch tax law that contains all types of tax incentives, mostly in the form of tax deductions, for example, for bicycle trips, employee training, child care centers, Dutch film production, research and development, ecological and investment-friendly investments. No wonder legislators believe that good law is whatever the majority wants in parliament.⁴⁵

⁴³ The main focus is on the ultimate goal of the law according to Gustav Radbruch, the law enacted must be able to reflect the real state of social life in society, with empirical and pragmatic way. If there are other alternatives in the law that can be taken which can provide maximum benefit, the law can be changed and adjusted. Lawmakers who are representatives of the people and the government must be more agile towards such the objectives of law, the law must be able to reflect as much as possible the social life of society and provide maximum benefits to humans. The main purpose of this adjustment is not to question the binding power of the law, but only the method of implementing the law that is adapted to the final goal is to remain the same as what is aspired, which leads to the realization of justice, certainty and ultimately benefit (purposiveness).

⁴⁴ Gribnau, *supra* note 28; Gribnau, *supra* note 28.

⁴⁵ Gribnau, *supra* note 28.

Utilitarianism has the basic characteristics of law which is future oriented and is based on the principle of utility.⁴⁶ The goal to be achieved according to the views of Utilitarianism is underlying the principle of expediency, which is the law must benefit as many people as possible through a sense of justice and equality that can be accepted by all parties, in order to achieve legal certainty.⁴⁷ Tax paid by legal profession as their economical sacrifice would benefit the majority of Indonesian indirectly through the government's planning and development. Thus, an effective taxation would bring happiness to the majority of Indonesian by looking at the Utilitarianism's point of view. After all, morality and law must rely on the fact that humans will always pursue utility (happiness).⁴⁸

The researchers finally reach the idea that the real law is not the final and absolute final result. Law is a process that is actually always changing and continues to be better. The law must be able to answer the problems that exist in society. Law is an instrument that can reflect people's lives that actually take place. Therefore law exists for people and not vice versa. Tax regulations, especially those related to the topics that researchers have adopted, namely: regulations related to income tax (PPh) on honorariums received by legal profession can still be adjusted according to contemporary conditions. Tax regulations related to income tax (PPh) on honorarium received by legal profession should not be an instrument that diverts (focus) the more important position of the legal profession, namely providing legal services in the legal sector to the wider community. Regulation that facilitates legal profession but does not cause financial loss to the state is also a win-win solution for increasing profession's compliance with the tax regulations. Every legal profession in principle wants to obey the law, but it will be even more obedient if the law can provide reasonable comfort to them. Surely this progressive regulation can have a positive impact ultimately on improving the welfare of the Indonesian people at large.

⁴⁶ Ibnu Artadi, *Menggugat efektivitas penerapan pidana penjara pendek: Menuju suatu proses peradilan pidana yang humanis*, 24 J. HUK. PRO JUSTITIA 376–386 (2006), journal.unpar.ac.id/index.php/projustitia/article/download/1148/1115.

⁴⁷ Rio Christiawan, *Kajian filosofis yuridis implementasi sistem kesehatan nasional dalam perspektif utilitarianisme*, 1 J. STAATRECHTS 34–56 (2017), <http://journal.uta45jakarta.ac.id/index.php/STAATRECHTS/article/view/1024>; Afrilian Perdana, Dahlan & Mahfud, *Penyelesaian wanprestasi dalam perjanjian jual beli melalui media elektronik*, 2 J. ILMU HUK. 52–57 (2014), <http://www.jurnal.unsyiah.ac.id/MIH/article/view/4576>.

⁴⁸ Arief Budiono, *Teori utilitarianisme dan perlindungan hukum lahan pertanian dari alih fungsi*, 9 J. JURISPRUD. 102–116 (2019).

III. EFFORTS TO RECONSTRUCT THE LAWS RELATED TO INCOME TAX ON LEGAL PROFESSIONALS' HONORARIUM

From the elaboration stated above, there are several efforts that the legislature and executive can take in order to create a better laws and regulations related to the legal professionals' income tax that are more pro-people. One and another based on the Utilitarianism Theory and the Progressive Law Theory as the basis, the notion to reconstruct a better law and regulation best suited for this contemporary era are essentially needed.

Nevertheless, there are still several considerations that need to be considered for the efforts to reconstruct the laws and regulations related to the legal professions' income tax. Furthermore, many researchers also found out that the knowledge of taxpayers towards the taxation laws, the level of trust in government, tax socialization, professional's commitment, tax apparatus' services and tax awareness are the antecedent of tax compliance.⁴⁹

A. Legal Political Paradigm in the Formation of Laws and Reconstruction of Laws and Regulations

Paradigm is a reference used as a basis for thinking. This is important to emphasize before starting the process of establishing the law in question. The philosophical and constitutional paradigm that must be fulfilled in the formation of the said law must at least contain 4 elements: 1) Preamble of the 1945 Constitution of the Republic of Indonesia; 2) Pancasila; 3) The 1945

⁴⁹ Diah Wahyu Wijayanti & Noer Sasongko, *Pengaruh pemahaman, sanksi perpajakan, tingkat kepercayaan pada pemerintah dan hukum terhadap kepatuhan dalam membayar wajib pajak (Studi wajib pajak pada masyarakat di Kelurahan Pajang Kecamatan Laweyan Surakarta)*, 2 in SEMINAR NASIONAL DAN THE 4TH CALL FOR SYARIAH PAPER (SANCALL) 2017 308–326 (Tim Editor UMS ed., 2017), <https://publikasiilmiah.ums.ac.id/xmlui/handle/11617/9247>; Marisa Setiawati Muhamad, Meinarni Asnawi & Bill J. C. Pangayow, *Pengaruh Sosialisasi Perpajakan, Tarif Pajak, Sanksi Perpajakan, dan Kesadaran Perpajakan Terhadap Kepatuhan Pelapor SPT Tahunan Wajib Pajak Orang Pribadi (Studi Empiris Pada KPP Pratama Jayapura)*, 14 AKUNTASI KEUANG. DRH. 69–86 (2019), ejournal.akuntansiuncen.ac.id/index.php/JurnalAkuntansiUncen/article/download/92/71; Tambun, *supra* note 8; Nurwati, *Kesadaran perpajakan, pelayanan fiskus, dan kepatuhan wajib pajak (Studi pada wajib pajak orang pribadi yang melakukan kegiatan usaha dan pekerjaan bebas)*, 5 J. LIQ. 27–34 (2016).

Constitution of the Republic of Indonesia; and 4) Unitary State of the Republic of Indonesia.⁵⁰

Law is abstract, cannot be seen and cannot be touched. What can be seen is the everyday human behavior and human's legal behavior. The law itself is the work of human beings in the form of norms that contain instructions for humans to behave. Humans are intelligent beings. Their behavior can be normatively regulated; norms that are determined as the values of his life. Through normalizing this behavior, law enters all aspects of human life, as Steven Vago illustrated "the normative life of the state and its citizens". In order for this behavior to be based on our philosophical foundation in the Pancasila values, the positive legal norms prevailing in Indonesia must reflect Pancasila.⁵¹

The legal construction as stated in the legal norms which are specifically stated explicitly in Article 2 of the Law of the Republic of Indonesia Number 12 of 2011 concerning Formation of Laws and Regulations which reads: "Pancasila is the source of all sources of state law". The construction of legal norms in Article 2 expressly states that in the context of carrying out the entire series of processes of forming laws and regulations, it must be based on the noble values of Pancasila as the basis of the state, the nation's views and the soul of the personality of the nation and the State of Indonesia. This postulate of legal norms which was clearly stated in Article 2 stated that Pancasila was the source of all sources of state law. Relevant to this, in a brief analysis of the existence of very basic legal norms as stated in Article 2 by taking into account the basic law and other laws and regulations, there are 3 main pillars as a fundamental anchor that must be guided in forming statutory regulations, that is:⁵²

1. construction of these norms in a paradigmatic perspective, commonly referred to as a philosophical foundation (*philosophy of paradigm*), meaning that the position of the Pancasila as the basis of the nation, especially in the context of implementing the process of establishing laws that all Pancasila values must be used as a source of resources main reference,

⁵⁰ IDHAM, PARADIGMA POLITIK HUKUM PEMBENTUKAN UNDANG-UNDANG GUNA MENEGUHKAN PRINSIP KEDAULATAN RAKYAT DAN INDONESIA SEBAGAI NEGARA HUKUM (2010).

⁵¹ Bahder Johan Nasution, *Kajian filosofis tentang keadilan dan hukum (Dari pemikiran klasik hingga modern)*, II AL-IHKAM J. HUK. PRANATA SOS. 247-274 (2016).

⁵² IDHAM, *supra* note 50; David Tan, *Transformasi Hukum di Bidang Kontrak Perdagangan Internasional ke dalam Hukum Positif Indonesia*, 2018.

henceforth derivate (derived) into the legal principles, norms and articles of a legislation that will be formed;

2. all provisions in the form of legal norms and articles must be mandated in the state constitution, namely the 1945 Constitution of the Republic of Indonesia (*constitutional of paradigm*);
3. must be based on Indonesia as a state of law (*juridical of paradigm*), in this context it must be noted that carrying out the process of forming a product of legislation must be based on the principles and characteristics of Indonesia as a state of law, the rule of law states that there are at least there are 3 fundamental aspects that must be considered, namely: 1) high regard for the law (supreme of law), 2) equality before the law, and 3) the law must be implemented based on legal provisions (due process of law), while the characteristics of the rule of law contain at least 3 important aspects, namely: 1) high regard for the implementation of human rights, 2) an independent court and judge, and 3) the implementation of the principle of legality.

The legislative system in Indonesia positions Pancasila as the source of all sources of state law. In the framework of Hans Nawiasky's thought, Pancasila occupies the highest position in the level of legal norms as a *staatsfundamentalnorn* while in the theory of *stufenbau des recht* from Hans Kelsen as a *groundnorm*. The 1945 Constitution of the Republic of Indonesia is the basic law in the legislation in *theorie van stufenbau der rechtsordnung* from Nawiasky. In accordance with Article 7 paragraph (1) of the Law of the Republic of Indonesia Number 12 of 2011 concerning Formation of Regulations of Legislation, the types and composition of the hierarchy of laws and regulations are: a) The 1945 Constitution of the Republic of Indonesia; b) Decree of the People's Consultative Assembly; c) Government Act/Regulation in Lieu of Law; d) Government Regulations; e) Provincial Regulations; and f) Regency/City Regional Regulations.⁵³

Legal politics according to Bellefroid is a part of legal science that examines changes in applicable law that must be made to meet the new demands of community life (legal politics investigates what changes must be made to the current law, in order to meet the new conditions of life social). The development in question is trying to make the *ius constitutum* developed

⁵³ Adrian Joshua Lumban Tobing, *Hak Uji Materiil Peraturan Daerah Pajak dan Retribusi Daerah*, 49 J. HUK. PEMBANG. 224–240 (2019).

from old legal systems, become *ius constituendum*s or laws for the future.⁵⁴ According to Utrecht, legal politics determines the proper rules. Legal politics seeks to make rules that will determine how people should act. Legal politics investigates what changes must be made in the current law to be compatible with social reality (*sociale werkelijkheid*).⁵⁵ Legal politics is closely related to the reconstruction of laws and regulations because the effort to reconstruct legislation is actually an effort to identify and investigate the symptoms of changes that occur in the current law in society. The purpose of the amendment is to form a new law in accordance with the current times and the people who are the subject of the law.

B. Contemporary Concept of Reconstruction of the Regulations relating to Income Tax of Legal Professions' Honorarium

As mandated by the constitution that matters relating to taxes and other levies that are coercive in nature are regulated in the law, then the actual material law contained in the law only further regulate the provisions of the Constitution of the Republic of Indonesia Year 1945 which includes: human rights; citizens' rights and obligations; state implementation; state territory and regional division; citizenship and population; and state finances. In addition, the material contained in the law can contain things that are ordered by a law to be regulated by law.⁵⁶

In answering this problem, researcher chose to use the Legal Systems Theory by Lawrence M. Friedman as a basis for analyzing the instruments that play a role in creating a good and effective legal construction. However the imposition of income tax on honorariums received by legal profession is actually a regulation that is part of the taxation legal system in Indonesia. Lawrence M. Friedman said that the legal system consists of 3 elements/instruments, namely the legal substance (legislation), legal structure and legal culture. These three components support the operation of the legal system in a country. In social reality, the existence of the legal system contained in society experiences changes as a result of influence,

⁵⁴ ABDUL LATIF & HASBI ALI, POLITIK HUKUM (2010).

⁵⁵ UTRECHT, PENGANTAR DALAM HUKUM INDONESIA (1961).

⁵⁶ AHMAD YANI, PEMBENTUKAN UNDANG-UNDANG & PERDA (2011).

what is called modernization or globalization either in evolution or revolution⁵⁷. The elements according to Lawrence M. Friedman as a determining factor whether the legal system can work well or not. Soerjono Soekanto said, these three components are part of law enforcement factors which cannot be ignored because if ignored will result in not achieving the expected law enforcement.⁵⁸

The substance of the law (legal substance) relates to the process of making a legal product carried out by lawmakers. Values that have the potential to cause legal phenomena in society are formulated in a statutory regulation, whereas the making of a product of the legislation is influenced by the political atmosphere in a country.⁵⁹ Legal structure is the framework or framework, the part that persists, the part that gives a kind of shape and boundaries as a whole. The legal structure is the institutionalization of the existence of law. The legal structure here includes state law enforcement agencies, such as courts, prosecutors, the police, lawyers and law enforcement agencies specifically regulated in the law. Legal culture is a human attitude toward law and the legal system-beliefs, values, thoughts, and expectations. Legal culture is an atmosphere of social thought and social power that determines how law is used, avoided or abused⁶⁰. Legal culture is an element of social attitudes and values. Legal culture refers to the parts that exist in legal culture that direct social forces towards or away from the law and certain ways.⁶¹

According to Fuad Bawazier (Former Minister of Finance of the Republic of Indonesia in the Development Cabinet VII of 1998), the 1994 tax reform was intended to maintain the effectiveness of the implementation of the self-assessment principle, namely by minimizing the interaction of the tax apparatus with the taxpayer. In addition, the 1994 tax reform was intended to implement as far as possible the final income tax (Final Income Tax) as long as the conditions could be met, able to increase tax revenue and be able to cover leaks (corruption, collusion and nepotism) that occurred. The application of Final PPh has proven to be effective and attractive to

⁵⁷ SAIFULLAH, SOSIOLOGI HUKUM (2007).

⁵⁸ Nainggolan et al., *supra* note 23.

⁵⁹ ARFIN & LEONARDA SAMBAS KUSUMANINGSIH, TEORI-TEORI HUKUM: KLASIK DAN KONTEMPORER (2016).

⁶⁰ *Id.*

⁶¹ LAWRENCE M. FRIEDMAN, THE LEGAL SYSTEM: A SOCIAL SCIENCE PERSPECTIVE (M. Khozim ed., 2017).

taxpayers because in addition to being simple and the mechanism that is easy, it also provides legal certainty and a sense of justice for taxpayers with similar income. As for the Directorate General of Taxes, the application of final Income tax is not only easier in planning the amount of tax revenue, but also because the cost of collecting it is very cheap, but it gives a significant increase in tax revenue. Final income tax is like taking public money (tax) without sweat and those whose monies are being taken also do not complain.⁶²

Therefore, the researcher has the idea that the income tax on the honorarium received by the legal profession in connection with the legal services provided can be given alternatives to be paid in the form of final income tax. This model can be added to the tax payment model from the two previous regulatory models, namely: the model where legal professionals and organizes maintains bookkeeping and the legal professional model that organizes records the norms of calculation based on the Regulation of the Director General of Tax Number: PER-17/PJ/2015 concerning Net Income Calculation Norms.

The intended alternative nature is that giving the freedom to each legal professional to choose to use one of the three models mentioned above. This alternative nature is permitted in the taxation law world because the current tax regulations relating to income tax on honorarium received by legal professions in connection with the legal services they provide also adhere to alternative properties, one and the other with reference to the Regulation of the Director General of Tax Number: PER-17/PJ/2015 concerning Norms of Net Income Calculation.

The main obstacle in the implementation of the final tax on honorarium received by legal profession in connection with the legal services they provide is the Income Tax Law itself. In the provisions of Article 4 paragraph (1) it has been defined that a legal professional's income in the form of an honorarium which is a taxable income that falls into the category of free employment. The categorization directly also means that the income received by the legal professionals does not include the final tax. On the one hand, the regulation regarding the final tax in the Income Tax Law is also regulated in the provisions of Article 4 paragraph (2) of the Income Tax Law. The provisions of Article 4 paragraph (2) detailing any income that may be

⁶² Bawazier, *supra* note 31.

subject to final tax, one of which is opening up the opportunity of the Income Tax Law itself which gives freedom to the government, especially in letter e the paragraph which reads: certain income others are regulated by or based on Government Regulations (Indonesian: *Peraturan Pemerintah* or abbreviated PP).

Therefore, the researcher recommends making changes related to the legal substance (legal substance) of the Income Tax Law, especially the provisions of Article 4 paragraph (1) of the Income Tax Law in order to provide an opportunity for the honorarium which legal profession receives as final income tax. Legal professional is given the freedom to choose whether he will organizes a bookkeeping model, the implementation of records with the calculation norms based on Regulation of the Director General of Tax Number: PER-17/PJ/2015 concerning Norms of Net Income Calculation Norms, or the operation of recording/bookkeeping with the honorarium received is taxable in nature of final income law. In addition the government must also enact separate government regulations governing the granting of opportunities to legal professionals to choose the nature of the final income tax on the honorarium it receives, because in the provisions of the Income Tax Law itself which mandates that certain other income subject to tax be final for governed by or based on Government Regulations (PP).

The final income tax imposition is also an effort to encourage the fulfilment of voluntary tax compliance obligations and to encourage the contribution towards state revenue. A real example of what the government has done is to issue Government Regulation Number 46 of 2013 concerning Income Taxes on Income from Businesses Received or Obtained by Taxpayers who have a Specific Gross Distribution. In this government regulation it is stipulated that the imposition of income tax (PPh) which is final for the income received or obtained by taxpayers with certain gross circulation restrictions. This government regulation is the application of a presumptive regime model in taxation. The Presumptive regime itself is a form of taxation approach applied in an economy where the perpetrators still have limited administrative and bookkeeping capabilities. For this reason, a special taxation design is needed with the aim of minimizing the cost of compliance (researchers also add potential loss due to lack of compliance). Meanwhile, the income tax presumptive regime (PPh) model is usually used especially in countries where the majority of taxpayers are hard-to-tax groups and inadequate administrative resources. In these

countries most taxpayers do not have financial transparency which allows for effective taxation. The action was taken by the government because of an indication of a mismatch between the contribution of Gross Domestic Product (GDP) and tax contributions from MSMEs (Micro, Small and Medium Enterprises).⁶³

Previous experiences shows that implementation of final income tax is really feasible and suitable. In addition, the final income tax can also solve the problems faced by a legal profession in connection with the honorarium it receives, namely for example the problem of double taxation due to unclear tax deduction by the service user. In the case of the final income tax, the legal professional himself must pay his tax each time he receives an honorarium. The calculation of the amount of tax that must be paid from the honorarium he received was also more certain because the imposition of final income tax rates which generally remained based on a certain percentage, not levied progressively. The legal professional also pays taxes according to the amount of the honorarium he received, regardless of whether the service user is a business entity or an individual person (*naturalijk persoon*). This means that tax imposition can be maximized because it is driven by ease and certainty in paying taxes, characterizing the realization of voluntary tax compliance. Legal profession also does not need to provide funds to pay tax instalments Article 25 of the Income Tax Law because he/she is not classified as a recipient of income for free employment if he/she chooses the alternative taxation is final income tax. Surely this condition is very beneficial for legal profession where the number of deeds he makes from time to time is always uncertain (inconsistent).

In the context of taxation especially those related to honorariums received by legal professions whose nature is final income tax, the legal structure focuses on facilities and infrastructure. For this reason, the legal structure reconstruction model that must be carried out is to adjust relevant agencies, especially the Directorate General of Taxes, to be able to serve the legal professionals as applicant who in his position submits the third tax payment model, namely the honorarium paid is final income tax. Because it

⁶³ Pusat Kebijakan Pendapatan Negara-Badan Kebijakan Fiskal, *Pengenaan PPh Final untuk Wajib Pajak dengan Peredaran Bruto Tertentu, Sebuah Konsep Kesederhanaan Pengenaan PPh untuk Meningkatkan Voluntary Tax Compliance*, KEMENTERIAN KEUANGAN REPUBLIK INDONESIA 10, https://www.kemenkeu.go.id/sites/default/files/kajian_pph_final_umkm_pkpn.pdf (last visited Sep 13, 2019).

is an alternative, the legal professions must state his intention to choose the taxation of the final income tax towards honorarium by notifying the Directorate General of Taxes. Of course this is no longer difficult considering its nature is the notification and legal institutions in the form of the Directorate General of Taxes themselves have been reformed. The tax payment system and the tax reporting system are also very up to date with the presence of an online system developed by the Directorate General of Taxes, namely *Direktorat Jenderal Pajak Online* or DJP Online.

In relation to legal culture, in order to be able to direct social forces (the legal professionals) towards the way as intended by the law, certain methods can be pursued, one of which is to disseminate information to legal professionals so that they are more familiar with it. Concretely, this can be done with the help of a profession organization in Indonesia, such as the Indonesian Notary Association (Indonesian: *Ikatan Notaris Indonesia* or abbreviated INI), Indonesian Advocates Association (Indonesian: *Perhimpunan Advokat Indonesia* or abbreviated PERADI), etc. The Indonesian Notary Association (INI) and Indonesian Advocates Association (PERADI) itself extends to all parts of Indonesia. The Directorate General of Taxes can work together with the Indonesian Notary Association (INI) and Indonesian Advocates Association (PERADI), which is present in almost all districts and cities throughout Indonesia, to collect and disseminate information to legal professions throughout Indonesia. The researcher also recommends that in the curriculum of tertiary education in the field of law notary concentration, especially in tax law courses, it should also be taught about the tax obligation of the notary himself in connection with the honorarium he received. Whilst in the Advocate Profession Special Education (Indonesian: *Pendidikan Khusus Profesi Advokat* or abbreviated PKPA) can also be taught the same course regarding the tax obligation of advocate.

SUMMARY OF MAJOR FINDINGS

In the course of this research and study, a number of findings have been made. Prominent among these findings are summarized as follows:

1. Empirical data shows that the legal professionals' tax compliance rate in Indonesia is still low along with the year-to-year low tax ratio.

2. Implementing the prevailing tax regulations on legal professionals' honorarium are still full of complications and constraints, thus ineffective either based on the juridical aspects or the theoretical aspects.
3. The final income tax can be the contemporary solution and its implementation is holistically legitimate according to: the legal theories, the legal political paradigm on the formations of law (philosophy, constitutional and juridical or paradigm) and the practical reasoning that this type of tax is suitable to reach the hard-to-reach tax payers, especially legal professionals.

CONCLUSION

The tax regulation in current positive law is not only to provide legitimacy in terms of collection and jurisdiction, but also to ensure that tax collection is carried out in accordance with the principles of good taxation. Positive law related to tax in Indonesia has undergone many changes. Legal changes with the terminology of tax reform in Indonesia increasingly reflect the reality that there is a holistic commitment to improvement in the taxation sector. Specifically, the regulations governing the taxation of honorariums received by legal profession in connection with the legal services they provide have been legally regulated in the provisions of Article 4 paragraph (1) of the Income Tax Law which classifies honorarium received by legal profession as income groups from free employment, so that by law honorarium received by a legal profession is subject to income tax under the Income Tax Law. The taxation model implemented now is a classic-contemporary view because in reality the implementation and imposition of tax regulations related to income tax that is paid in connection with the honorarium received refers to the concept of regulation in the Income Tax Law that has been in force since 1983. Therefore, in its implementation also faces some real practical obstacles. The complexity of tax calculation, deduction, payment and reporting has the potential to reduce legal profession compliance to tax regulations. The view of Utilitarianism Theory by Jeremy Bentham and Progressive Legal Theory by Satjipto Rahardjo is also appropriate in analysing whether the tax regulations are still relevant to be enacted or not. Law is a process that is actually always changing and

continues to be better. The law must be able to answer the problems that exist in society. Law is an instrument that can reflect people's lives that actually take place. Therefore, law exists for humans and not vice versa. Tax regulations, especially those related to the topics that researchers have adopted, namely: regulations related to income tax (PPh) on honorariums received by legal profession can still be adjusted according to contemporary conditions. The concept of reconstruction of tax regulations related to honorariums received by legal profession can also be done based on the Legal Systems Theory by Lawrence M. Friedman.

RECOMMENDATIONS

Researcher hereby recommend that the reconstruction of the Income Tax Law be carried out, one and the other because in its implementation, there are still facing obstacles and constraint in relation to the provisions of income tax (PPh) in connection with the honorarium received by the legal profession. Reconstruction is when referring to the Legal System Theory by Lawrence M. Friedman, including changes to the legal substance (*substansi hukum*), legal structure (*struktur hukum*) and legal culture (*budaya hukum*).

Suggestions for legal substance are to add alternatives to the tax payment model from the two previous regulatory models, namely: the model that organizes bookkeeping and the model that organizes records with calculation norm based on the Regulation of the Director General of Tax Number: PER-17/PJ/2015 concerning Norms of Calculation of Net Income. The intended alternative nature is that the legal profession is given the freedom to choose the final income taxation method in addition to the two previous models. The concept of final income tax imposition is the concept of contemporary tax imposition. For that in substance the legal (legal substance) needs to be changed related to the substance of the Income Tax Law, especially the provisions of Article 4 paragraph (1) of the Income Tax Law in order to provide opportunities to the honorarium to be imposed final income tax. Final income tax also encourages voluntary tax compliance and contributes to state revenue. This provision is the application of a presumptive regime model in taxation. Where the model of income tax presumptive regime (PPh) is usually used especially in countries where the majority of taxpayers are hard-to-tax groups and inadequate administrative

resources. In addition, the final income tax can resolve the constraints faced by the legal profession in connection with the honorarium it receives.

In the context of taxation especially those related to honorariums received by legal profession whose nature is final income tax, the legal structure focuses on facilities and infrastructure. For this reason, the legal structure reconstruction model that must be carried out is to adjust relevant agencies, particularly the Directorate General of Taxes. In relation to legal culture, in order to be able to direct social forces (legal professionals) towards the law, certain methods can be pursued, one of which is to disseminate information to legal professional so that they are more aware and familiar with this new contemporary concept. For this matter, the Directorate General of Taxes can cooperate with the Indonesian Notary Association (INI) and Indonesian Advocates Association (PERADI), which are present in almost all districts and cities throughout Indonesia for easy access.

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Quote

We contend that for a nation to try to tax itself into prosperity is like a man standing in a bucket and trying to lift himself up by the handle.”

Winston S. Churchill