



INCOME TAX LAW RECONSTRUCTION IN ADDRESSING E-COMMERCE ABUSE AS THE TRANSACTION PROCEEDS OF CRIME

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Abstrak

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The exponential growth of Indonesia's e-commerce sector—projected to reach US\$95 billion by 2025—presents both economic opportunities and regulatory challenges. This study explores the legal nexus between digital income generation and tax compliance, emphasizing the vulnerabilities of e-commerce platforms to various forms of financial fraud and income tax avoidance. Utilizing a normative juridical method under an interpretive paradigm, the research analyzes prevailing income tax laws and their limitations in addressing digital-era fraud, including identity theft, phishing, cybercrime, and misuse of digital financial services. The study identifies the insufficiency of existing legal instruments—particularly secondary rules—in fully capturing the scope of digital transactions and proposes a legal reconstruction of income tax laws. Drawing on H.L.A. Hart's theory of law as a system of primary and secondary rules, the analysis highlights critical gaps in rule of recognition, rule of change, and rule of adjudication within current Indonesian tax law frameworks. The study concludes by recommending doctrinal reform to reinforce legal clarity, regulatory enforcement, and transnational coordination in the taxation of digital economic activities.

A. INTRODUCTION

The growth of e-commerce and the use of digital platforms has increased significantly in recent years. According to research by Google, Temasek, and Bain & Company, the economic value of Indonesia's e-commerce sector reached US\$59 billion in 2022, accounting for 76.62% of the country's total digital economy value of US\$77 billion.¹ Furthermore, the same research projects that Indonesia's e-commerce market will grow to US\$95 billion by 2025.²

However, the rapid development of digitalization which has offered cost-effective technology and tools to prevent, detect and suppress irregularities, such as fraud in e-

¹ Cindy Mutia Annur, 2022, "Google Prediksi E-commerce Indonesia Terus Menguat sampai 2025", accessed March 3, 2023, <https://databoks.katadata.co.id/datapublish/2022/10/28/google-prediksi-e-commerce-indonesia-terus-menguat-sampai-2025>.

² *Loc.cit.*

commerce, still require anticipating various types of fraud.³ Some of the fraud that occurs can be in the form of criminal acts of theft, fraud that aims to gain advantage from other people in the financial sector, for example account theft, ATM skimming, credit card fraud, fake lotteries, to the financing of terrorism and criminal acts of corruption by using digital payments to hide proceeds of crime.⁴ The fraud that occurs in e-commerce basically boils down to income, as stated in Article 4 paragraph (1) of the Income Tax Law which regulates⁵ that the object of income tax is income "that is, any additional economic capacity received or acquired by the Taxpayer, whether originating from Indonesia or outside Indonesia, which can be used for consumption or to increase the wealth of the Taxpayer concerned, in whatever name and form". Of course, fraud in e-commerce transactions carried out by identical perpetrators is an attempt to carry out income tax avoidance. Tax avoidance is an attempt to reduce tax obligations by hiding information or providing reports that do not correspond to the actual situation to the tax authorities, thereby harming state revenues in the tax sector.⁶ So it can be said that the challenge of handling e-commerce fraud is handling the challenge of compliance for taxpayers who carry out e-commerce transactions considering that the perpetrators of violations consider that there is an incentive in the form of reducing or avoiding tax obligations rather than having to comply with existing tax laws.⁷

The large economic value of the e-commerce sector and the large potential for abuse in Indonesia, where the end of all e-commerce transactions is income, means this study needs to answer two existing problems. **First**, how are the prevailing income tax laws and regulations in the digital era in Indonesia. **Second**, how to reconstruct income tax law and regulations in dealing with the misuse of e-commerce transactions as a means of obtaining economic crime in Indonesia.

B. LEGAL MATERIALS AND METHODS

In answering the existing problem formulation, this study is sufficient to use a normative juridical method with an interpretive paradigm study. In a more practical context related to legal science seeking the truth but not the truth, legal studies in finding its authenticity or purity need to be guided by the paradigm.⁸ Paradigms present certain 'basic' sets of beliefs, which relate to the main principles, and which always guide this study in terms of what must be studied, what problems must be answered, how to answer them, and

³ Benny R.P. Sinaga, "Customs Law Certainty in Tackling E-Commerce Fraud in Indonesia, *Scientia Business Law Review* 1 no. 3 (2022).

⁴ Fatimah Zahratul Jannah, 31 Maret 2023, "KEJAHATAN KEUANGAN DALAM PEMBAYARAN DIGITAL", accessed May 5, 2023, <https://www.bi.go.id/id/bi-institute/BI-Epsilon/Pages/Kejahatan-Kuangan-Dalam-Pembayaran-Digital.aspx>.

⁵ Indonesia, Undang-Undang Nomor 7 Tahun 1983 tentang Pajak Penghasilan sebagaimana diubah beberapa kali terakhir dengan Undang-Undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 Tentang Cipta Kerja Menjadi Undang-Undang.

⁶ Susilo Haryanto, "Analysis of Tax Avoidance and Tax Evasion Forms (Study on Taxpayers in the Trade Sector in Makassar City)", *Journal of Entrepreneurship and Financial Technology* 2 no. 1 (2023): 37-43, DOI: <https://doi.org/10.56282/jeft.v2i1.407>.

⁷ Yudha Pramana and Leo B. Barus, "Tackling The Non-Compliance of Taxpayers on Digital Economy in Indonesia: A Rational Choice Literature", *Digital Economy and Digital Transformation Review* 1 no. 2 (2022): 29-33, DOI: <https://doi.org/10.56282/deditr.v1i2.320>.

⁸ Rintis Nanda Pramugar and Maria Silvya E. Wangga, "Bedah Buku "Hukum Kata Kerja : Diskursus Filsafat tentang Hukum Progresif oleh Nobertus Jegalus": Suatu Kajian Paradigmatik", *Philosophy and Paradigm Review* 1 no. 2 (2022): 29-35, p. 30, DOI: <https://doi.org/10.56282/ppr.v1i2.271>.

what patterns or rules must be followed in order to answer the existing problems.⁹ Meanwhile, according to Sarantakos, the interpretive paradigm study refers to the purpose of developing science to understand life, where the emphasis is on meaning and understanding.¹⁰

This study adopts a normative juridical approach, which centers on the interpretation of authoritative legal materials to uncover and analyze existing regulations through the lens of general legal principles. Within this framework, the research encompasses an examination of legal doctrines, the vertical and horizontal harmonization of laws, legal history, and comparative legal analysis.¹¹ Given its doctrinal nature, this study relies exclusively on secondary data—namely, legal materials systematically categorized into three types: primary, secondary, and tertiary. Primary legal materials refer to binding sources of law that possess normative authority. These include the 1945 Constitution of the Republic of Indonesia, Law on Income Tax (Undang-Undang Pajak Penghasilan), the General Taxation Provisions and Procedures Law (Undang-Undang Ketentuan Umum dan Tata Cara Perpajakan or KUP),¹² and other statutory instruments and implementing regulations currently in force. Secondary legal materials are those that interpret, elaborate upon, or analyze primary legal sources. These include academic textbooks, scholarly commentaries, expert legal opinions, peer-reviewed journal articles, proceedings from legal seminars, prior research findings, financial statements, and audit reports issued by recognized institutions. Tertiary legal materials, on the other hand, serve as supportive references that assist in understanding and navigating primary and secondary sources. These include legal dictionaries, legal encyclopedias, and curated online resources from credible and academically appropriate platforms. This structured classification of legal materials ensures the methodological rigor necessary for addressing the research problems with analytical precision and doctrinal clarity.¹³

C. RESULT AND DISCUSSION

Overview of Fraud in the E-Commerce Sector

Fraud in e-commerce can be divided into buyer fraud (false claims, refusal to pay, fake accounts, misuse of coupons/promotions), merchant fraud (selling counterfeit goods, not fulfilling obligations, and cyber security fraud (account takeover, identity theft, card theft, etc.) Fraud in e-Commerce is motivated by several things, including the fairly rapid growth of the market, namely US\$ 50 billion in 2018 and is expected to reach US\$ 200

⁹ Erlyn Indarti, "Diskresi & Paradigma: Sebuah Telaah Filsafat Hukum", Pidato Pengukuhan Guru Besar dalam Filsafat Hukum pada Fakultas Hukum Universitas Diponegoro, Semarang 4 November 2010.

¹⁰ Reny Y. Sinaga, "An Interpretive and Critical Paradigm Study of the "Gerakan Ekonomi Benteng" in Indonesia", *The Scientia Journal of Economics Issues* 1 no. 1 (2022): 1-5, p. 3, DOI: <https://doi.org/10.56282/sjei.v1i1.201>.

¹¹ Peter M. Marzuki, *Penelitian Hukum* (Jakarta : Prenada Media Group, 2008).

¹² Indonesia, Undang-Undang Nomor 6 Tahun 1983 tentang Ketentuan Umum dan Tata Cara Perpajakan sebagaimana diubah beberapa kali terakhir dengan Undang-Undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 Tentang Cipta Kerja Menjadi Undang-Undang.

¹³ Soerjono Soekanto and S. Mamudji, *Penelitian Hukum Normatif* (Jakarta: PT. Rajagrafindo Persada, 2010).

billion in 2026 as well as the growth of internet users from 560 million in 2018. will increase to 835 million in 2023.¹⁴

The rapid growth of e-commerce is behind the emergence of fraud in e-commerce, such as phishing/pharming/whaling, card testing, identity theft and first-party misuse. Phishing is a fraudulent activity carried out to steal confidential user information such as credit card numbers, login credentials and passwords. It is usually done using email or other forms of electronic communication by pretending to come from a trusted business entity. Card testing is a type of fraudulent activity in which someone tries to determine whether stolen card information is valid, so they can use it to make a purchase. Fraudsters can do this by purchasing stolen credit card information, then trying to validate or make purchases with those cards to determine which cards are still valid. Identity theft is a crime committed by obtaining another person's personal or financial information to use their identity to commit fraud, such as making unauthorized transactions or purchases. Identity theft is carried out in various ways and victims usually experience losses both financially and to their reputation. First-party misuse is when individuals or organizations intentionally misrepresent their identity or provide misinformation to gain an unfair or unlawful advantage.¹⁵

In fact, the Indonesian Financial Transaction Reports and Analysis Center (INTRAC) identified several forms of threats that could give rise to money laundering in e-commerce transactions, including the practice of buying and selling and using accounts in the name of other parties carried out in syndicates, misuse of e-commerce in transactions proceeds of crime, and unlicensed peer to peer lending financial technology practices.¹⁶ The practice of buying and selling and using accounts in the names of other parties can take the form of syndicates working to find other people's accounts and then selling them to criminals who need them, selling accounts independently for economic reasons, criminals carrying out social engineering activities and utilizing money mule networks.¹⁷ Potential forms of money laundering activities through e-commerce can occur in conditions in the form of using the e-commerce platform as a medium for bribery through the purchase of luxury goods or luxurious goods, the purchase of goods or services (travel or lodging) of large value to traders but there is no delivery of the goods only for fund transfers, limitations of e-commerce platforms in identifying trade transactions in goods and services (such as the name of the e-commerce platform account owner), illegal cross border e-commerce practices or illegal imports on e-commerce platforms which pose a threat of crime and potential state losses and threats to business continuity of entrepreneurs holding official import rights and Micro, Small and Medium Enterprises, and cross-border prohibited goods (lartas) such as Chemicals, Medicines, Cosmetics, etc.¹⁸ Unlicensed financial technology (fintech) practices include the credibility of the source of funds from creditors, unclear or closed office locations to avoid regulators and law enforcement, imposition of very large and non-transparent fees and fines, not subject to statutory regulations or other laws and regulations, billing is carried out not in accordance with ethical billing procedures and tends to cause threats, is inhumane and violates the law, requests access to all personal data

¹⁴ Binus University, 2022, "Fraud in E-Commerce", accessed March 3, 2023, <https://maks1.binus.ac.id/2022/11/15/fraud-in-e-commerce/>.

¹⁵ *Loc.cit.*

¹⁶ Indonesian Financial Transaction Reports and Analysis Center (INTRAC), 2021, Indonesia Risk Assessment on Money Laundering 2021, p. , accessed January 25, 2023, <https://www.ppatk.go.id/backend/assets/uploads/20220412135927.pdf>, pp. 336-337.

¹⁷ *Ibid.*, p. 36.

¹⁸ *Loc.cit.*

contained on the device including contact numbers, photos, storage which can then be misused during billing, lenders have the risk of losing or misuse of funds, improper loan repayment and/or potential shadow banking practices and Ponzi schemes. Illegal peer to peer lending providers do not comply with user data center placement regulations and do not have a disaster recovery center in Indonesia, and falsify or imitate platform names and/or company logos that are already registered or have received permission from the authorized agency.¹⁹

Prevailing Income Tax Laws and Regulations in Indonesia

In eradicating cross-border crime, it is not just about exchanging information considering that there is potentially a huge problem from cross-border e-commerce crime²⁰ which is basically detrimental to Indonesia. One of the means to overcome the crime of e-commerce abuses is to involve tax laws and regulations in handling it, especially the use of income tax laws and regulations.

In terms of income tax law, there are Article 4 paragraph (1), Article 6 paragraph (1) and Article 9 paragraph (1) of Income Tax Law. These articles are strengthened by Article 12 paragraph (3) of KUP Law. Juridically, income received by providers of goods and/or services in e-commerce transactions is an income tax object as long as it meets the provisions of the Income Tax Law.²¹ Article 4 paragraph (1) and paragraph (2) of the Income Tax Law defines the types of income in the form of non-final income and income subject to final income. Article 4 paragraph (1) of Income Tax Law affirms that the object of income tax is any additional economic capability received or obtained by a taxpayer, whether originating from Indonesia or outside Indonesia, which can be used for consumption or to increase the wealth of the taxpayer in whatever name and in whatever form.²² Then, Article 4 paragraph (2) of the Income Tax Law regulates income that can be subject to Final Income Tax. Furthermore, in the case of income from e-commerce transactions that are not subject to Final Income Tax, the imposition of the income tax rate is differentiated between domestic Individual Taxpayers and domestic Corporate Taxpayers and BUT as regulated in Article 17 paragraph (1) of the Income Tax Law.²³

Article 6 paragraph (1) of Income Tax Law regulates the calculation of net profit which is the basis of Taxable Income for domestic and permanent establishment Taxpayers, namely that it must be based on "gross income minus costs for obtaining, collecting and maintaining income".²⁴ The costs that may not be allowed in calculating a Taxpayer's net profit are as regulated in Article 9 paragraph (1) of the Income Tax Law. Then, the Director General of Taxes determines the amount of tax payable as appropriate in accordance with

¹⁹ *Ibid.*, pp. 337-338.

²⁰ Priyambudi and Henry Dianto Pardamean Sinaga, "Prosecutorial Discretion in Tackling the Cryptocurrency Crime in Indonesia", *Webology* 18 no. 2 (2021): 68-87.

²¹ Henry Dianto P. Sinaga, "Rekonstruksi Hukum dalam Penanganan Tantangan Pajak E-Commerce di Indonesia", Suatu Disertasi Program Doktor Hukum Universitas Diponegoro, Semarang, 2023.

²² Henry Dianto P. Sinaga, Yudha Pramana, and Anis W. Hermawan, "Income Tax Reconstruction on Construction Services to Support Development in Indonesia", *World Journal of Entrepreneurship, Management and Sustainable Development* 19 no. 1/2 (2023): 125-136, doi: 10.47556/J.WJEMSD.19.1-2.2023.10.

²³ Henry Dianto P. Sinaga, *Loc.cit.*

²⁴ Yudha Pramana, Anis W. Hermawan and Leo B. Barus, "The Access to Justice in Synergizing Payment Obligations of Special Mining Business License Holders with Tax Compliance in Indonesia", *Jurnal Pembaharuan Hukum* 9 no. 3 (2022): 453-455, DOI: <http://dx.doi.org/10.26532/jph.v9i3.20549>.

the provisions of tax laws and regulations if the Tax Return (*Surat Pemberitahuan* or SPT) calculated and reported by a taxpayer is incorrect, as regulated in Article 12 paragraph (3) of KUP Law.²⁵

Specifically in terms of income tax related to e-commerce transactions, there are several new regulations, namely the Minister of Finance Regulation (*Peraturan Menteri Keuangan* or PMK) No.68/PMK.03/2022,²⁶ PMK No. 69/PMK.03/2022,²⁷ dan PMK No. 199/PMK/010/2019²⁸. In the term of the income tax, Article 19 of PMK No. 68/PMK.03/2022 regulates that regarding income received or obtained by Crypto Asset Sellers, Trading Organizers via Electronic Systems (*Perdagangan Melalui Sistem Elektronik* or PMSE), or Crypto Asset Miners, in respect of which Crypto Assets are subject to Income Tax. Income received or earned by Crypto Asset Sellers in connection with Crypto Asset transactions is subject to final of Article 22 of Income Tax Law at 0.1% of the Crypto Asset transaction value, excluding Value Added Tax (VAT) and Sales Tax on Luxury Goods (*Pajak Penjualan atas Barang Mewah* or PPnBM).²⁹ Article 22 of the Income Tax Law which is final is collected, paid and reported by the PMSE Operator. However, in the event that the PMSE Operator is not a Physical Crypto Asset Trader, the Article 22 Income Tax rate is subject to 0.2% which is final on the Crypto Asset transaction value. Meanwhile, income received or obtained by PMSE Operators from providing Electronic Facilities used for Crypto Asset transactions is subject to Income Tax based on general rates in accordance with income tax law provisions. Meanwhile, income received or obtained by Crypto Asset Miners in connection with Crypto Assets, which includes income in the form of fees for services received or obtained by Crypto Asset Miners, is subject to Income Tax Article 22 in the amount of 0.1% of the income received or obtained by Crypto Asset Miners (excluding VAT and PPnBM). This income tax is final and must be paid by Crypto Asset Miners themselves.³⁰

Then, PMK No. 69/PMK.03/2022 regulates that interest income received or obtained by lenders which is paid by loan recipients through Lending and Borrowing Service Providers, is subject to withholding Article 23 of Income Tax Law at the rate of 15% of the gross amount of interest (in the case of income recipients is a domestic taxpayer and permanent establishment) or Income Tax Article 26 with a rate of 20% of the gross amount of interest or in accordance with the provisions in the tax treaty (in the case that the recipient of the income is a foreign taxpayer other than the permanent establishment).³¹ However, loan interest received by the Lending and Borrowing Service Provider from the loan recipient is not income for the Lending and Borrowing Service Provider and/or loan interest paid by the Lending and Borrowing Service Provider to the lender is not an expense and cannot be as the deduction from gross income in determining the amount of taxable income for Lending

²⁵ *Loc.cit.*

²⁶ Kementerian Keuangan Republik Indonesia, Peraturan Menteri Keuangan Nomor 68/PMK.03/2022 tentang Pajak Pertambahan Nilai dan Pajak Penghasilan atas Transaksi Perdagangan Aset Kripto.

²⁷ Kementerian Keuangan Republik Indonesia, Peraturan Menteri Keuangan Nomor 69/PMK.03/2022 tentang Pajak Penghasilan dan Pajak Pertambahan Nilai atas Penyelenggaraan Teknologi Finansial.

²⁸ Kementerian Keuangan Republik Indonesia, Peraturan Menteri Keuangan Nomor 199/PMK/010/2019 tentang Ketentuan Kepabeanan, Cukai, dan Perpajakan atas Kiriman Impor.

²⁹ Anis W. Hermawan, Yudha Pramana, Leo B. Barus, "Analisis Yuridis terhadap Pajak atas Transaksi Perdagangan Aset Kripto di Indonesia", *The Scientia Journal of Financial Issues* 1 no. 2 (2022).

³⁰ *Loc.cit.*

³¹ Yudha Pramana, Leo B. Barus and Anis W. Hermawan, "Analisis Yuridis terhadap Pajak atas Penyelenggara Teknologi Finansial di Indonesia", *Journal of Entrepreneurship and Financial Technology* 1 no. 2 (2022).

and Borrowing Service Providers. Lending and Borrowing Service Providers means an Indonesian legal entity that provides, manages and operates Lending and Borrowing Services. Lending and Borrowing Service Providers who have a permit and/or are registered with the Financial Services Authority (*otoritas jasa keuangan* or OJK), are appointed to carry out income tax deductions. But in the case of interest income paid other than through Lending and Borrowing Service Providers who have a permit and/or are registered with the OJK, withholding of Income Tax on interest income is carried out by the loan recipient in accordance with the provisions of laws and regulations in the field of Income Tax. Fintech Service Providers who do not carry out their obligations to withhold, deposit and report Income Tax as regulated will be subject to sanctions in accordance with statutory provisions.³²

Furthermore, PMK No. 199/PMK/010/2019 regulates that consignments imported for use with a maximum customs value of Free on Board (FOB) USD 3.00 per Consignee per consignment are given exemption from import duty, or VAT/Sales Tax is levied on Luxury Goods at rates according to VAT Law and exempt from Income Tax collection.

Income Tax Law Reconstruction in Addressing E-Commerce Abuse

State responsiveness in dealing with the challenge of e-commerce abuse must refer to the capacity to adapt the law responsibly, selectively and not haphazardly.³³ It means that in the organizational structure of law enforcement, including law enforcement in the field of taxation, law enforcement institutions must assume that there are social pressures or obstacles³⁴ in dealing with e-commerce abuse is part of a source of knowledge and opportunities for self-improvement, which can present itself as a facilitator of various responses to social needs and aspirations.³⁵

The state's response through income tax law to social needs and aspirations in e-commerce transactions is in line with the theory "law is a regulatory system" put forward by H.L.A Hart. Hart strongly opposed the command of sovereign theory put forward by Austin, because law must have continuity, law must apply to all levels of society and the authorities, as well as Austin's failure to properly differentiate the concepts of under a duty and being obliged in law.³⁶ According to Hart, law can be understood through the unity of two rules. **First**, primary rules which are the basis for the continuity of community life which are written in nature.³⁷ Primary rules are standards in the life of a society, which impose obligations on people who live within a legal system in that society, such as laws, government regulations, and presidential decrees.³⁸ **Second**, secondary rules, which are the basis of primary rules, because without secondary rules there would be no legal system as found in modern life.³⁹ Secondary regulations consist of three types, namely rule of recognition, rule of change and rule of adjudication which are requirements for the existence

³² *Loc.cit.*

³³ Elvrida N. Sinaga and Leo B. Barus, "Strengthening School Committees in Digital Era: A Responsive Law Initiative in Indonesia", *Scientium Educational Review* 1 no. 2 (2022).

³⁴ Leo B. Barus and Muh. Bukhari, "Administrative Tax Enforcement in Local Taxes: A Study of the Model of Law Enforcement in a Society", *The Scientia Journal of Social and Legal Studies* 1 no. 2 (2022).

³⁵ P. Nonet and P. Selznick, *Hukum Responsif*, Bandung: Nusa Media, 2010.

³⁶ Suteki and Galang Taufani, *Metodologi Penelitian Hukum (Filsafat, Teori dan Praktik)* (Depok: PT RajaGrafindo Persada, 2020), pp. 91-92.

³⁷ *Ibid.*, pp. 92-93.

³⁸ Bello, Petrus CKL, "Hubungan Hukum dan Moralitas Menurut HLA Hart", *Jurnal Hukum & Pembangunan* 43 no. 3 (2017): 348-361.

³⁹ *Loc.cit.*

of a legal system.⁴⁰ The rule of recognition is not a means of granting authority but rather a source from which the law originates which is a means of determining the legality or validity of the law.⁴¹ Hart explains this concept by using three themes, namely: 1) as linguistic entities which determine primary rules with criteria for legal validity, where the source of legal validity is written legal documents, 2) as specific linguistic entities, for example those expressed in constitutional articles, and 3) as social rule, which is intended to differentiate it from rules made by community groups who have the authority to do so.⁴² Then, the rule of change is a rule to control and regulate changes in a legal system in response to the weaknesses of primary rules which tend to be static, while the rule of adjudication is a rule that gives authority to judicial institutions or other decision makers to resolve a dispute and provide further authority. to impose sanctions on law violators.⁴³ Secondary regulations are tasked with detailing the regulations in the primary, considering that a community that is only governed by primary rules has three weaknesses, namely uncertainty, static and inefficiency. The most important thing in secondary regulations is the rule of recognition, in the form of social practices that are considered authoritative and which provide validity to the law in the form of legal documents, or provide legal legitimacy to the courts.⁴⁴

The implementation of primary regulations regarding income tax regulation in Indonesia in the e-commerce sector can be seen from Article 32A and Article 12 paragraph (3) of the KUP Law and several provisions regulated in the Income Tax Law and Government Regulation Number 55 of 2022 concerning Adjustments to Regulations in the Tax Sector Income. Even though primary regulations already exist and there are several secondary regulations, such as PMK No. 68/PMK.03/2022, PMK No. 69/PMK.03/2022, and PMK No. 199/PMK/010/2019, however these primary and secondary regulations are still unable to address the challenge of misuse of e-commerce transactions in certain economic crimes. This is based on the lack of strengthening the rule of recognition, rule of change and rule of adjudication in secondary regulations regarding e-commerce tax.

The prevailing secondary rules in income tax have not been able to handle the potential for misuse of e-commerce transaction proceeds in Indonesia. There are several disregards for the rule of recognition in secondary regulations regarding e-commerce tax. First, the definition of income tax object as intended in Article 4 paragraph (1) of the Income Tax Law only covers any additional economic capacity in whatever name and form received or obtained by the Taxpayer. Pay per click (PPC) system income received by site or blog owners who are foreign Corporate Taxpayers for every advertisement clicked by site visitors, the majority of whom apparently come from Indonesia, does not meet the qualifications of Article 4 paragraph (1) of the Income Tax Law. PPC is the income received by the site or blog owner which comes from sharing profits for each advertisement clicked by site visitors.⁴⁵ Second, the definition of income tax objects as intended in Article 4 paragraph (1) of the Income Tax Law does not yet cover the rise of illegal sites, such as online gambling sites. The formulation of income tax objects in Indonesia has not been able to track bookies and the whereabouts of players because most of them use virtual private networks (VPN) to

⁴⁰ *Loc.cit.*

⁴¹ A. Latipulhayat, "Hart", *Padjajaran Jurnal Ilmu Hukum* 3 no. 3 (2016): 662-663.

⁴² *Loc.cit.*

⁴³ A. Latipulhayat, *Ibid.*, pp. 661-663.

⁴⁴ Suteki and Galang Taufani, *Ibid.*, pp. 92-93.

⁴⁵ M.T. Budiarto, "Penggalian Potensi Pajak para Youtuber Menggunakan Metode Web Scrapping", *Simposium Nasional Keuangan Negara* 2020, pp. 545-1115.

deceive their true location.⁴⁶ Even though Kominfo has confirmed that until September 17 2023, banks and platforms have blocked 1,450 accounts and 1,005 e-wallets.⁴⁷

Then, there are several exceptions to the rule of change in secondary regulations regarding e-commerce tax. First, PPh has not been able to reach financial administrators abroad if many of its clients are Indonesian taxpayers. For example, PMK No. 69/PMK.03/2022,⁴⁸ which still regulates Indonesian legal entities that provide, manage and operate Lending and Borrowing Services, does not yet cover the Income Tax for Lending and Borrowing Service Providers in the form of foreign legal entities if the majority of lenders and loan recipients are Indonesian taxpayers. Permanent establishment (*Bentuk Usaha Tetap* or BUT) criteria should be set in the form of economic presence. Second, Indonesia has not yet covered income tax on certain applications that already have millions of customers from Indonesia. PMK Number 60/PMK.03/2022 only regulates VAT on the use of intangible taxable goods (*Barang Kena Pajak* or BKP) and/or taxable services (*Jasa Kena Pajak* or JKP) from outside the Customs Area within the Customs Area which must be collected, remitted and reported by Foreign PMSE appointed by the Minister of Finance. It means that PMSE business actors who have received income from Indonesia do not have the obligation to remit their income tax to Indonesia. In fact, in Article 7 of Government Regulation Number 80 of 2019 concerning Trading via Electronic Systems, it is regulated that foreign business actors who actively carry out e-commerce activities and/or offers to consumers in the Indonesian jurisdiction and as long as they meet certain criteria, such as the number of transactions, transaction value, number of sending packages, and/or number of traffic or accessors.

Furthermore, there are several disregards for the rule of adjudication in secondary regulations regarding e-commerce tax. Among other, Article 32A of the KUP Law regulates the responsibilities of parties directly involved in or facilitating transactions between transacting parties to carry out tax deductions, collections, deposits and/or reporting. PMSEs who do not carry out their obligations will be subject to sanctions as regulated in tax laws and regulations and may be subject to sanctions in the form of termination of access after being given a warning.⁴⁹ However, until now there has been no further regulation regarding the warning mechanism, the criteria for the violation in question, requests for termination of access to the relevant Ministry and normalization of access, and an objection mechanism that can be submitted by the foreign PMSE if they feel they have received injustice from the tax authorities.

⁴⁶ M. Fahmi Nasution, "Mengapa Judi Online Sulit Diberantas? Simak Penjelasannya", available at <https://www.kompasiana.com/crmviral3036782/653b97a4ee794a45b2796352/mengapa-judi-online-sulit-diberantas-simak-penjasannya#:~:text=Pemerintah%20sendiri%20sulit%20memberantas%20secara,VPN%20untuk%20men%20gelabui%20lokasi%20sebenarnya> (accessed 27 October 2023).

⁴⁷ Kominfo (2023), "Batasi Ruang Gerak Pelaku, Kominfo Takedown Konten Judi Online: SIARAN PERS NO. 310/HM/KOMINFO/09/2023", available at https://www.kominfo.go.id/content/detail/51684/siaran-pers-no-310hmkominfo092023-tentang-batasi-ruang-gerak-pelaku-kominfo-takedown-konten-judi-online/0/siaran_pers (accessed 27 October 2023).

⁴⁸ Kementerian Keuangan Republik Indonesia, Peraturan Menteri Keuangan Nomor 60/PMK.03/2022 tentang Tata Cara Penunjukan Pemungut, Pemungutan, Penyetoran, dan Pelaporan Pajak Pertambahan Nilai Atas Pemanfaatan Barang Kena Pajak Tidak Berwujud dan/atau Jasa Kena Pajak dari Luar Daerah Pabean di Dalam Daerah Pabean Melalui PMSE.

⁴⁹ Anis W. Hermawan and Yudha Pramana, "Secondary Liability and Safe Harbors for Platform Providers in Indonesian E-Commerce Law", *Scientium Law Review* 1no. 3 (2022): 101-108, DOI: <https://doi.org/10.56282/slr.v1i3.335>.

Despite the existence of Government Regulation No. 80 of 2019, the Income Tax Law, and Minister of Finance Regulations (PMK) No. 68/PMK.03/2022, No. 60/PMK.03/2022, and No. 69/PMK.03/2022, there is still an urgent need for a more integrated and comprehensive set of primary and secondary tax regulations. These regulations should establish a solid legal foundation for the governance and oversight of Indonesia's growing e-commerce and financial technology (fintech) industries. Moreover, they must be capable of addressing a wide range of emerging risks, including system malfunctions, cyber-enabled financial crimes, dissemination of false or misleading information, transactional inaccuracies, vulnerabilities in data protection, inadequate enforcement of Know Your Customer (KYC) standards, ambiguous liability clauses (exoneration), and the lack of clear procedures for resolving disputes between digital service providers and their users.⁵⁰

D. CONCLUSION

Indonesia's e-commerce sector, as a dominant component of its digital economy, has generated significant economic value but remains vulnerable to systemic abuse through tax avoidance and financial fraud. The legal complexities surrounding the taxation of digital transactions are compounded by the inability of current income tax laws—especially secondary regulations—to effectively track, regulate, and adjudicate violations arising from cross-border e-commerce activities. This doctrinal research identifies three major weaknesses in Indonesia's income tax regime when applied to the digital economy: (1) Recognition gaps, such as the exclusion of certain digital revenue streams (e.g., PPC income, illegal gambling transactions); (2) Change inertia, with static laws that fail to address foreign entities or new digital business models operating within the Indonesian digital jurisdiction; and (3) Adjudicative ambiguity, including the absence of enforceable mechanisms for sanctioning non-compliant PMSEs and the lack of procedural clarity for dispute resolution.

Grounded in H.L.A. Hart's concept of law as a union of primary and secondary rules, this study underscores the urgent need to reconstruct the secondary rules governing e-commerce taxation in Indonesia. It advocates for a legal architecture that (a) broadens the definition of taxable digital income, (b) redefines the criteria for permanent establishment based on significant economic presence, and (c) empowers tax authorities with procedural enforcement tools supported by clear adjudicative rules.

In light of rapid digitalization, Indonesia must adopt a more dynamic, anticipatory, and globally harmonized tax framework. The integration of rule-based income tax governance with robust regulatory oversight mechanisms will be critical in ensuring not only revenue protection but also legal certainty and fairness within the digital economy.

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⁵⁰ Indonesian Financial Transaction Reports and Analysis Center (INTRAC), *Ibid*.

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