RESEARCH THESIS

ANALYSIS ON TAXING THE DIGITAL COMPANY THAT HAVE NO PERMANENT ENTITY IN INDONESIA

IZHAK ADE ARIDZA SAMPETODING

DEPARTMENT OF ACCOUNTING
FACULTY OF ECONOMICS AND BUSINESS
UNIVERSITAS HASANUDDIN
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As one of the requirements to obtain
Bachelor of Economics degree

complied and submitted by

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to

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is the result of my own scientific work and to the best of my knowledge in this thesis there is no scientific work that has ever been submitted by another person to obtain an academic degree at a tertiary institution, and no work or opinion has ever been written or published by someone else, except written in this text and mentioned in citation sources and references.

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Makassar, 17 December 2020

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PREFACE

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Finally, the author hope this thesis will provide benefits to the readers.The author presume that the thesis is the best work presented, however the author is fully aware that this thesis is far from perfect. Therefore, the author expect for critics and suggestions from the readers.

Makassar, 17 December 2020

Izhak Ade Aridza Sampetoding

ABSTRACT

Analysis On Taxing The Digital Company That Have No Permanent Entity In Indonesia

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This study aims to do analysis on taxing the digital company that have no permanent entity in Indonesia. The study is conducted in the Directorate of Taxation – Ministry of Finance for tax regulation and challenges on taxing the digital company that have no permanent entity in Indonesia. One digital company that meet criteria is selected to analyze the tax revenue potentialities. Source of data in this study are secondary data in the form of report and publications. The data analysis method used in this study is descriptive analysis. The study concludes that one of the challenges to implement the digital corporate income tax is related to the definition of a permanent establishment (BUT), have been solved by establishing provisions for applying income tax to digital companies that meet the provisions of significant economic presence in Indonesian territory, it does not have to be based on their physical presence in Indonesia. Regulation for value added tax for digital business just implemented for approximately 5 (six) months, in the first two months the state treasury received nearly 100 billion rupiahs from the first 6 (six) companies appointed as VAT collectors.

Keyword: *Digital Company, Taxation Digital Company*

Penelitian ini bertujuan untuk melakukan analisis perpajakan pada perusahaan digital yang tidak memiliki badan usaha tetap di Indonesia. Kajian dilakukan di Direktorat Perpajakan - Kementerian Keuangan terkait regulasi perpajakan dan tantangan perpajakan terhadap perusahaan digital yang tidak memiliki entitas tetap di Indonesia. Salah satu perusahaan digital yang memenuhi kriteria dipilih untuk menganalisis potensi penerimaan perpajakan. Sumber data dalam penelitian ini adalah data sekunder berupa laporan dan publikasi. Metode analisis data yang digunakan dalam penelitian ini adalah analisis deskriptif. Studi tersebut menyimpulkan bahwa salah satu tantangan penerapan pajak penghasilan badan digital terkait definisi bentuk usaha tetap (BUT), diselesaikan dengan menetapkan ketentuan penerapan pajak penghasilan pada perusahaan digital yang memenuhi ketentuan keberadaan ekonomi yang signifikan di Wilayah Indonesia memang tidak harus berdasarkan keberadaan fisiknya di Indonesia. Ketentuan pajak pertambahan nilai untuk bisnis digital baru diterapkan kurang lebih selama kurang lebih 5 (enam) bulan, dalam dua bulan pertama kas negara menerima hampir Rp 100 miliar dari 6 (enam) perusahaan pertama yang ditunjuk sebagai pemungut PPN.

Kata Kunci: *Perusahaan Digital, Perusahaan Digital Perpajakan*

TABLE OF CONTENTS

LIST OF TABLES

LIST OF FIGURES

LIST OF APPENDIX

Appendix
Page

CHAPTER I

INTRODUCTION

1.1. Background

Since 2011, the world has entered the era of industry 4.0, which is remarked with increasing the connectivity, interaction, and the boundary between human, machine and other resource are more converge throughout the communication and information technology. Industry 4.0 is a new trend of sophisticated technology that influenced significantly the production process in manufacture sector. The sophisticated technologies that are the main pillar of developing the industry 4.0 revolution includes, Internet of Things (IoT), Big Data, Argumented Reality, Cyber Security, Artificial Intelligence, Addictive Manufacturing or teknologi 3D Printing, Simulation, System Integration and Cloud Computing. Industry 4.0 revolution become a big step in industrial sector, in which information and communication technology being consumed completely, not only in production process, but in all industrial value chains, that generates new business model digital-based in order to attain high efficiency and good product quality. As such other new and developing things, the digital business still bring up hesitation of the effectiveness in the future. However on thing is certain that the industry 4.0 include the digital business has coming and it is impossible to be rejected or to be avoided.

The Government of Indonesia (GoI) have done early anticipation by establishing the road map strategy entering the digital era, through a program of Making Indonesia 4.0, that have been launched by the Government of Republic of Indonesia, Joko Widodo on April 2018. The digital online business development in Indonesia has been developing rapidly since period of 2000, due to increasing number of internet user in Indonesia. The survey in 2016 by Association of Internet Network Operator in Indonesia has shown that more than half of Indonesian population is connected with internet. This condition has significantly influenced the tax of digital business in Indonesia. This phenomenon is not surprisingly because the easiness and efficiency online business process have offered to their consumer. Moreover, according to data from Communication and Information Ministry, during 2016 the online transaction values in Indonesia have reached USD 4,89 billion or around IDR 68 trillion. The tax potential of the value is large, it is estimated around IDR 20 trillion. That amount is a significant large fund that can be used for the need of nation and country development. Therefore, it is the reason why government is formulating the tax collection regulation for online digital business.

Taxing the digital business becoming an interesting topic, due to the system implementation of taxation the digital business still a challenge, not only in Indonesia, but also for other countries. The taxation of digital business was an important subject in G20 Annual Conference in Japan on 2019. The conference, that was attended by some countries, member of Organisation for Economic Co-operation and Development (OECD), has discussed the challenges on taxing the digital company. Based on the data, that have gathered and shared during the conference, it is shown that around 260 million people as the internet user, however the realization of tax revenue was not reflected yet.

The difficulty on tax levy for the digital business in Indonesia, particularly for the digital business that has business in Indonesia but have no permanent entity in Indonesia. GoI through Ministry of Finance is establishing the draft bill for taxing the revenue of digital business, which has no branch office in Indonesia. One of it is by expanding the definition of permanent business entity (in Bahasa

Indonesia : Badan Usaha Tetap – BUT). The definition of BUT will be modified because the current definition of BUT still focus on the physical presence of the international company branch office in Indonesia. In general, the giant digital company, that have large number of user in Indonesia, they have no office (physical presence) in Indonesia.

1.2. Research Question

The above explanation indicates the current condition in Indonesia as well as in other countries that there is a lot of number of internet population that can bring through the utilization and consumption of digital company product happens every day in large scale. However this online transaction that happens every day in large scale become a challenge for taxation in Indonesia and some other countries, whereas taxation to the transaction and consumption of this digital company's product can not be applied yet due to several constraints and challenges, both due to the regulation availability and it's implementation.

Based on the introduction that has been explained above, therefore the research questions for this research are:

1. What is the challenge on tax regulation for the digital company, which has no permanent business entity in Indonesia?
2. What is the potentiality of tax revenue from taxing the digital company, which has no permanent business entity in Indonesia?

1.3. Research Objective

Based on the research question that have formulated above, the purpose of this study is to answer those question by descriptively analysis the followings:

1. To explore the challenges on regulation of taxation the digital company particularly that has no permanent business entity (BUT) in Indonesia.
2. To estimate the potentialities of tax revenue from taxing the digital company that has no permanent business entity (BUT) in Indonesia.

1.4. Benefits of The Research

1.4.1 Theoretical use

The theoretical use of this research is to contribute thoughts to support the development of existing theories and be able to broaden the scope of knowledge related to accounting and taxation disciplines, specifically regarding the effect of profitability, leverage and firm's size on tax avoidance and specifically can be reference for further research.

1.4.2 Practical use

Empirically, this research will provide descriptive analysis and information that can be taken into consideration for regulator, businessman, investors, creditors and the government when making the rules for taxing the digital economy. In addition, those who can benefit directly or indirectly for various parties such as,

1. The results of this study can be used as input material and can provide information about the taxation for digital business. This research is also expected to provide information for the

companies in carrying out its operations, in order to improve their behaviour to be more tax-compliant.

2. This research is expected to be able to add the oversight contribution to improve the government monitoring performance to digital companies, which have no business entity presence yet in Indonesia, as well as to realize the huge potentiality of tax revenue from those digital companies.

1.5. Writing Systematics

The thesis writing is referred to the Guidance of Thesis Writing Faculty of Economy and Business University of Hasanuddin Makassar year 2012. To get a brief description of this research, it is divided into chapters which are arranged sequentially that is described as follows.

Chapter 1 Introduction consists of background, problem formulation, research objectives, research benefits, research boundaries, and writing systematic. This chapter discusses the background that is the reason the author raised this topic as a study. From this background, the author is able to formulate problems in the form of questions that will be examined. In addition, the author also provides the objectives and benefits of the research written and there is systematic research writing.

Chapter 2 Literature Review explains the basic theories and basic concepts that are used as a reference in discussing problems that have been previously formulated and conduct this research. The basic concepts that will be used as references include profitability, leverage, and firm's size and tax avoidance. In this chapter the researcher also explains some references from previous research as the basis of the research carried out and in the final section the researcher will explain the conceptual framework as the basis of the research hypothesis.

Chapter 3 Research Methods describes a series of research methods and data that will be used by researchers including, research approaches, independent variables, dependent variables, amount of data, types of data, populations, samples, data collection methods and technical data analysis.

Chapter 4 Results and Discussion explains the general description of the subject and object of research, then continues with a discussion of the results of data analysis that has been done, then described to answer the problem formulation in this study whether it is in accordance with the hypothesis.

Chapter 5 Conclusions and Suggestions explains all the analyses and discussions that have been put forward, the limitations of the study, and suggestions for further researchers, as well as conclusions from the results of research that have been done that might be beneficial for those who have an interest.

CHAPTER II

LITERATURE REVIEW

2.1. Grand Theory

This section explains the theory, consitiution act as well as the regulation that is related to tax levy, permanent establishment or permanent business entity, value added tax and income tax of electronic transaction (e-commerce) or digital business.

2.1.1 Tax

According to Indonesian Regulation, UU No 28 Year 2007, article 1, point 1, Tax is an obligatory contribution of citizen to the country, which is owed by an individual or an institution or agency that is coercive according to the constitution, with no getting direct rewards and used for country requirement for as much as possible of nation's prosperity. Based on the content of the constitution, it is seen clearly that the tax is a country' revenue source, while for the company, tax become a burden that will reduce their net profit. The interest difference between country and company is, the country want to have the big and sustain tax revenue, while the company want the tax payment as minimum as possible.

Tax is an obligatory government levy for government and nation need. Tax plays important role in country life because it is the main revenue source to fund all of the necessity spending, include for development expenses.

2.1.2 Income Tax

Income tax (Bahasa Indonesia: Pajak Penghasilan (PPh)) is a state tax that is subjected to every additional economic capabilities that a tax payer got, either from domestic or overseas, which can add to the tax payer wealth. Income tax is applied not only for individual it is also applied for company for its management of goods and services. Tax levy is applied for the goods and service that is managed within the company. All tax collection include the income tax have similar management purpose, which is for fulfil the nation and country necessity. The income tax (PPh) is imposed on personal and company' income that is received every month in one tax year. The PPh payment is by instalments in order to ease the tax payer, due to the tax that has to be paid off is within one year. The payment should be done by the tax-payer itself and cannot be represented.

2.1.3 PPh Pasal 26

According to the Constitution No. 36 year 2008, The PPh Article 26 is an income tax that is imposed to the income of the overseas taxpayer. Requirements for an individual or a company as the overseas taxpayer are, an individual who is not the citizen of Indonesia, who is staying in Indonesia for not more than 183 days within a year or 12 months, and a company that is not established nor presence its permanent business entity in Indonesia, and an individual who is not the citizen of Indonesia, who is staying in Indonesia for not more than 183 days within a year or 12 months, and a company that is not established nor presence its permanent business entity in Indonesia, that can get or received income from Indonesia' citizen by running the business without the physical presence in Indonesia.

The expatriate of a company will be subjected to income tax of PPh 26, because they get salary as the reward of their work. Therefore, the company is obligated to cut the PPh 26 income tax of the salary. The tax is collected by government institution, domestic taxpayer, activity or event organizer, permanent business entity (BUT) and other foreign representatives that give salary or do transaction to foreign taxpayer other than BUT. The foreigner is categorized as foreign taxpayer and is subjected to the PPh 26 if the expatriate is not domicile in Indonesia, or stay in Indonesia not more than 183 days in a year. However, if the expatriate stays and works in Indonesia more than 183 days then is subjected to income tax PPh 21.

Both PPh 26 and PPh 21 are income tax, however PPh 21 and PPh 26 is applied for different taxpayer. PPh 21 is income tax for domestic individual taxpayer, while PPh 26 is tax for foreign taxpayer who earn revenue from Indonesia. All business companies that are making the payment transaction such as salary, interest, dividend, royalty and others to the overseas taxpayers, are obligated to cut the PPh article 26 for those transactions. Based on the Finance Ministry Decree No. 9/PMK.03/2018 about Annual Tax Report (SPT), the PPh article 26 annual report methods is required by e-filing since 1 April 2018. The general rate for PPh article 26 is 20%. However, if according to tax treaty (Bahasa Indonesia: Perjanjian Penghindaran Pajak Berganda (P3B)), then the rate can be adjusted. The 20% rate (final rate) is for the gross amount that is imposed to:

1. Dividen
2. Interest, include the premium, discount, incentive which is related to the loan repayment guarantee

3. Royalty, rent payment, leasing and other revenue that is related to asset usage.
4. Incentive that is related to service, work and activity.
5. Gift and reward
6. Pension and frequent payment
7. Swap premium and other safety transaction
8. Profit from debt cancellation

The 20% final rate of the net profit is expected from:

1. Revenue of selling the asset in Indonesia.
2. Insurance premium, reinsurance premium that is paid either directly and or through the brokerage to the overseas insurance company.

The 20% final rate from net profit is expected during the expenses or transfer shares between the media company and particular destination company that is established or located in the country whose provide tax protection for those that have special relation onto an entity or a permanent business entity that is present in Indonesia. The 20% final price is collected from the taxable income after deduct it with the tax of permanent business entity in Indonesia, except if the income is reinvested in Indonesia.

Tax treaty ia a bilateral tax agreement to avoid double taxation that hinder the economy, with mutual benefit principles between the two countries involved in the agreement. The rate level of tax treaty between Indonesia and several other countries are different each other. Usually the rate is lower than normal rate 20%, some of it might have rate of 0%. The summary of PPh 26 tariff between countries that have tax treaty agreement with Indonesia is enclosed in Appendix 1.

2.1.4 Value Added Tax of Electronic System Trade (E-commerce).

The Decree of Finance Ministry of Republic Indonesia No. 48/PMK.03/2020 that is approved on 5 May 2020 explains the collector, collection and reporting the value added tax of utilization of intangible taxable goods and/or taxable services from outside custom are through electronic system of trading (e-commerce). This regulation explains that the VAT (PPN) for e-commerce (PMSE). The PMSE definition itself have explained in Constitution No. 42 year 2009 as income tax and/or output tax.

Income tax is VAT that have to paid by taxpayer due to acquisition of taxable goods and/or acquisition of taxable service and/or utilization of intangible taxable goods out of custom area and/or utilization of taxable service out of custom area and/or importing taxable goods. Output tax is payable VAT (PPN) that have to collect by taxpayer who deliver the taxable goods, taxable service, exporting taxable goods. exporting intangible taxable goods, and/or exporting taxable service.

The Decree no. 48 year 2020 also explain regarding taxable goods, which is goods that is imposed tax based on VAT constitution, and regarding taxable services, which is services that is imposed tax based on VAT constitution. In other hadn, the digital goods is defined as every intangible goods in form of electronic or digital information include the goods that is resulted from conversion or transformation from electronic information into goods, this also include but not limit to software, multimedia, and/or electronic data. Further, digtal service is service that is delivered through internet or electronic server, automatic or involves little human invervention, and is impossible to ensure it without information technology, which includes but not limit to the softawer-based services.

VAT is imposed for utilization of intangible taxable goods and/or taxable service from overseas. Payable VAT for utilization of intangible taxable goods and/or taxable service from overseas that is occurred from digital or electronic transaction between foreign digital company with goods consumer an/or service recipient, it is collected, deposited, and reported by foreign digital company who is appointed by Finance Ministry as the e-commerce VAT collector. The category of utilization of intangible taxable goods or taxable service also include the utilization of digital and/or service goods are explained in the decree as follows:

a. utilization or the rights to use the copyright in literature, art or scientific work, patents, design or model, plan, formula or secret process, trademark, or intellectual property rights or other similar rights;
b. utilization or the rights to use the industry, commercial or scientific tools / instrument;
c. utilization of knowledge or information of science, technical, industry or commercial.;
d. utilization of additional support or complementary that is related to utilization or the rights to use those rights that is mentioned in point (a), (b) and (c) such as:
   1. receiving or the rights to receive recorded image or recorded voice or both, which is streaming to public using satellite, optic fibre or other similar technology;

2. utilization or the rights to use recorded image or recorded voice or both, for television broadcast or radio broadcast through satellite, cable, optic fibre, or other similar technology; and
3. utilization or the rights to use halp or all of radio communication spectrum;

e. utilization or the rights to use the motion picture films, film or video tape for television broadcast, or audio tape for radio broadcast; and
f. acquisition of all or part of the rights relating to utilization or granting the intellectual / industrial property rights or other above-mentioned rights.

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2.1.5 Permanent Business Entity

The permanent business entity (Bahasa Indonesia - Bentuk / Badan Usaha Tetap (BUT)) is a business form that is used by overseas taxpayer (non-resident taxpayer*)* both personal and a body (legal person) to run their business or conduct the activity in Indonesia. Refers to article 2 point 5 of Constitution No. 36 Year 2009 regarding Income Tax, the permanent business entity is a business form that is used by personal who is not live in Indonesia, who stays in Indonesia more than 183 days within 12 months, and by a body which is not established and domicile in Indonesia to run their business or conduct their activity in Indonesia. The limit of 183 days in a year is applied if there is no tax treaty between Indonesia and the country origin of the related company or personal. However, if there is tax treaty between Indonesia and the country origin of the company or personal, then the limit time as the applicable permanent business entity will follows the treaty. The BUT is include in the category of overseas tax subject and is a corporate taxpayer, beside other tax subject of taxpayer of income tax, such as personal, incorporated company (Bahasa Indonesia: Perseroan Terbatas (PT)), foundation and state-owned enterprises (Bahasa Indonesia: Badan Usaha Milik Negara (BUMN) and (BUMD)). The principal understanding of BUT is constitute in Income Tax Constitution and in Tax Treaty (P3B) between Indonesia and several countries.

Why Need To Rule The Permanent Business Entity?

Permanent business entity (BUT) is made for foreign investment company, which becomes a domestic taxpayer (resident taxpayer). This condition is happened as the foreign investment company grows in number in Indonesia, that entering Indonesia using a joint venture pattern by cooperates either with other foreign company or local company. In order to avoid the imposition of double taxation for the income which is received by corporate or individual from country that have tax treaty with Indonesia (treaty partner), the government perform presence assessment of a BUT of the company from the treaty partner country as the criteria to determine whether or not Indonesia have the rights to do taxation to the income of that particular company.

According to article 2 point 6 of Regulation No 36 Year 2008, the residence or domicile of an individual or a corporation is defined by General Director of Tax according to the real situation. In the article 2 point 5 of Regulation No 36 Year 2008, the government has declared that the permanent business entity which is the income tax subject consists of 16 business form, namely:

1. Place of management.
2. Branch company.
3. Representative office.
4. Office building.
5. Factory.
6. Workshop.
7. Warehouse.
8. Room for promotion and sales.
9. Mining and excavation of natural resource.
10. Working area of oil and gas mining.
11. Fisheries, animal husbandry, agriculture, plantation of forestry
12. Construction project, installation or assembling.
13. Any kind of service provision by an employee or other person, as long as it is conducted within 60 days in 12 months.
14. Personal or corporate that is acting as an agent who does not have free position.
15. An agent or employee from insurance company, which is not established and do not have residence in Indonesia, in where the insurance premium is consumed or there is risk responsibility in Indonesia.
16. Computer, electronic or automatic agent that is owned, rent or being used by the electronic transaction operator to run their business throughout internet service.

The new revision of regulation about the PPh has confirmed that the BUT is a tax subject that the taxation is similar to the corporate tax subject. This condition is mentioned in article 2 point 1a, which is just added to article 2 between point 1 and point 2. The difference of this taxation compared to other domestic tax is. The BUT cannot benefit from the tax treaty between Indonesia and its treaty partner country due to it is not the citizen of Indonesia. The net profit after tax received by a BUT, will be imposed the branch profit tax.

The amount of taxable income for domestic taxpayer and for BUT is determined based on the gross income minus the cost for getting, collecting and maintaining the income. According to article 6 point 1 of Regulation No 36 year 2008, cost deduction from gross income includes; Direct or indirect cost that is related to business such as material expenses, cost related to works or service including wage, salary, and travel cost as well as insurance premium. Expenditure arrangement to get the tangible property and amortization of the expenditure to get the right and other cost to have the benefit period more than one year. Premium to pension fund, which is declared by Ministry of Finance. Loss due to the sale or transfer of property which is owned, being used in the company or which is owned to get, charge and maintaining the income. Loss due to difference of foreign currency. Company research and development cost that is performed in Indonesia. Cost of scholarship, internship and training. Account receivable that is totally can’t be billed and collected. Donation for national disaster respond, which is regulated under government regulation. Donation for research and development that is performed in Indonesia, which is regulated under government regulation. Fund for social infrastructure development, which is regulated under government regulation. Donation for education facility, which is regulated under government regulation. Donation for sport development, which is regulated under government regulation.

<u>How to Calculate the Taxable Income of BUT</u>.

Taxable income for overseas taxpayer who runs their business or performing activity through a BUT – permanent business entity – in Indonesia within a year is calculated by deduct the income with cost related to income, profit and the gross income which have deducted with non-taxable income. According to Constitution No. 36 year 2008, tariff of income tax PPh 26 is 20%, both for gross income and estimated net income. But tax tariff for the expatriate from countries that have tax treaty with Indonesia is special PPh 26 tariff, usually lower than the normal tariff. Therefore the formula to calculate the PPh 26 of expatriate is:

Gross Income x 20%

or

Gross Income x Tax Treaty Tariff

Calculation of PPh 26 based on the time period of the expatriate work or earn money in Indonesia:

1. Foreigner who have no ID Card / Tax ID (KITAS/NPWP) and work as well as earning money and stay in Indonesia less than 183 days is subjectetd to PPh Article 26.

   Example:

   Mr X is an expatriate and originally from country that have no tax treaty with Indonesia, work less than 183 days and in September 2019 got salary in amount of US$ 2,200. Finance Ministry exchange rate in the time of tax collection is Rp.14.072,00 for US$ 1.00.

The calculation for PPh 26 of Mr X salary is,

Monthly gross income: US$ 2,200 x Rp 14.072,00 = Rp 30.958.400

Payable tax PPh 26 terutang is:

20% x Rp 30.958.400 = Rp 6.191.680

2. Expatriate who have no ID Card / Tax ID (KITAS/NPWP) and work as well as earning money and stay in Indonesia more than 183 days is subjectetd to PPh Article 21.
3. Expatriate who have ID Card / Tax ID (KITAS/NPWP) and work as well as earning money and stay in Indonesia is categorized as domestic taxpayer, hence is subjected to PPH Article 21.

Tax Rate of BUT

Government have applied the tax rate of 25% for taxable income of BUT, this rate is applied since year 2010. Not only for the overseas taxpayer, this rate is applied for domestic taxpayer. This condition is confirmed by government in the revision of the Regulation No. 36 year 2008 in article 17 point 2a.

Previously the tax rate for BUT and domestic taxpayer was applied progressively based on the amount of taxable income of the company. Tax rate that have been applied based on PPh Regulation No. 17 year 2000 was 10 – 30%.

2.1.6 Digital Company

Digital Company is a company that almost its important organization business relation with its customer, distributor and staff is possible to be performed digitally. The core business of digital company is fulfilled through digital server that runs the overall organization relation to various other organizations. In the constitution no. 2 year 2020 and Finance Ministry Decreee no. 48 year 2020, the business if digital company is defined as electronic system based transaction (Bahasa Indonesia : Perdagangan Melalui Sistem Elektronik,(PMSE)). PMSE is a trade in which the transaction is conducted throughout a series of electrornic devices and procedures. The difference of digital company and traditional company is based on the management approach, which is mainstreaming the information technology. However, in order to establish a digital company, not only by performing the computerization in sale, purchase, provision of goods or service or finance, because those things are only a small part of the digital company development plan. According to Kenneth Laudon, there is 4 indicators that is must fulfilled by digital company namely, supply chain management system, customer relation management system, corporate system and knowledge management system, in which all of it have to be technology basis.

<u>Common Elements of a Digital Business</u>

There are several views on the exact definition of digital business from industry experts. Gartner says that digital business is the creation of new value chains and business opportunities that traditional businesses cannot offer. McKinsey emphasizes that “digital should be seen less as a thing and more a way of doing things." Most digital businesses fit one or both of these points; they focus on creating value at new frontiers for their core business, or they use digital technology to drive growth, revenue and performance in ways that were impossible with traditional models. It may be helpful for companies to review common elements of digital business and compare them against their own business models. These are some of the trends that differentiate digital from traditional processes. **Use existing technologies** to cut costs, accumulate information and give a superior client experience. Digital businesses focus on the competitive advantages that technology gains them, whether that's reducing overhead or providing new value to their customers. **Embrace the concept** of digital transformation and the cultural shifts that requires. The implementation and management of digital services can necessitate organizational restructuring, especially as new roles are created and IT is given greater input into strategic decisions. **Explore new business models** that put customer experience at the center of digital strategy. People are regularly ready to spend more for an excellent customer experience, making it a key differentiator in the digital economy. Business models that align with this hyper focus on customer satisfaction will eventually center on digital services, since digital is increasingly the experience that people prefer.

Growth of the Digital Economy

Today, individuals are going through more cash on the web, which has moved business accentuation to computerized wellsprings of income and advanced channels. The development of the computerized economy has made individuals increasingly acquainted with advanced items and administrations, which has driven organizations to look for new upper hands in the computerized space. However, digital business has developed into more than selling online; according to Accenture (https://www.accenture.com/), "digital businesses make serious edges based on unique combinations of digital and physical resources ; they do things that others cannot and in ways that build comparative advantage." The fast growing of digital economy able to penetrates the world economy in sector of retail, online transportation, education (online course), health, social interaction until individual relation (social media). The United Nations in Handbook of Protecting the Tax base of Developing Countries explains that the communication and information technology development have increase the problems related to base erosion and profit shifting (BEPS). Several developed and developing countries forms in Organization for Economic Cooperation and Development (OECD), which is a unique forum where the governments of 36 member states with market economies work with each other, as well as with more than 70 non-member economies to promote economic growth, prosperity, and sustainable development

The OECD G20 have developed Base Erosion and Profit Shifting Project (or BEPS Project) to set up an international framework to combat tax avoidance by multinational enterprises ("MNEs") using base erosion and profit shifting tools. The project, led by the OECD's Committee on Fiscal Affairs, began in 2013 with OECD and G20 countries, in a context of financial crisis and tax affairs (e.g. Offshore Leaks). After the BEPS report has been conveyed in 2015, the venture is presently in its execution stage, 116 nations are included, including a dominant part of creating nations. During two years, the bundle was created by taking an interest individuals on an equivalent balance, just as across the board discussions with locales and partners, including business, scholastics and common society. Also, since 2016, the OECD/G20 Comprehensive System on BEPS accommodates its 116 individuals a stage to take a shot at an equivalent balance to handle BEPS, including through friend survey of the BEPS least norms, and observing of usage of the BEPS bundle in general. The BEPS venture hopes to create multilateral exchange and could be accomplished gratitude to a fruitful global collaboration, unavoidable with regards to such a residential and sovereign subject. It is one of the occasions of the OECD that includes creating nations in its procedure. The European Commission and the US have singularly taken activities in 2017-2018 that actualize a few key proportions of the BEPS venture, in any event, going past now and again.

In OECD BEPS Addressing the Tax Challenges of the Digital Economy, Action 1 : 2015 Final Report have defined the digital economy as “the result of a transformative process brought by information and communication technology (ICT), which has made technologies cheaper, more powerful, and widely standardised, improving business processes and bolstering innovation across all sectors of the economy". According to United Nation handbook, the digital economy is characterized as “an unparalleled reliance on intangible assets, massive use of data (notably personal data), and widespread adoption of multisided business models capturing value from externalities generated by free products, and the difficulty of determining the jurisdiction in which value-creation activity occurs". This is indicate the great threat of digital economy to country taxation, government preparedness in responding this development is indeed required to minimize the risk of losing tax base.

Challenges to Digital Company.

Indeed it is not easy to establish the digital company, some challenges head off the company when transforming their operation from manual to digital system. Producing the business strategy is the first challenge that has to encounter, in order to use the technology as the competitive advantage, not in the way around, and become a heavy investment burden. Meanwhile, the globalization wave triggers the birth of standardization demands either for corporate system as well as for products and services that are provided. Some hotels, companies and universities, has attempted to achieve the standardization certificate in order to have their products and services can be distributed expand worldwide. By using the E-business, E-commerce systems a particular company can be accessed all corners of the world. Without global standardization, the company will having difficulties to market the product. Design the information infrastructure and architecture in the company also become a challenge that have to be dealt with by company computer expert. The design has to answer all conditions, particularly the fast changing in information technology. Other emerging challenge is the company have to be able determine the business value of the company information system development, do not let the system development won't give any benefit to the company. Other challenge is the controlling and responds to the system, both of these challenges always being ignored by the digital company, though these are very important on determining the company success. For example, the control on the obedience and compliant to the country' communication and information technology regulation, and or the compliant to the regional regulation or common agreement between some countries such as taxation to digital company. Some of digital company have not imposed the tax yet in some countries, such as Netflix, Amazone, Google, etc. Although those companies that are categorized as Over The-air Top (OTT) companies have claimed to be ready for tax payment, however taxation cannot be applied yet due to lack of regulation that arranges the tax collection from digital company still in common agreement and is not poured in yet in an affirmative regulation.

Indonesia with population almost 250 million and the biggest gross domestic income in South East Asia, have potentiality to attract the investor to expand their business in Indonesia, particularly for start-up digital based company. It is proven with the phenomenon that there are 4 start-up companies with status of "Unicorn" (valued more than US$ 1 billion), present in Indonesia, in which those companies are not even 10 year old. The fast development of those start-up companies are supported by demography bonus and adequate communication infrastructure that is available in Indonesia.

2.1.7 Taxation to Digital Economy

In online business, there are two types of applied tax, namely value-added tax (Bahasa Indonesia – PPN) and income tax (Bahasa Indonesia – PPh). PPh is a tax that is imposed to personal or corporate' income that is received or obtained in one year tax. The income can be in form of profit, salary, wage, gift, etc. While the PPN is a tax that is imposed for consumption of goods or services that are taxable in Indonesia. The PPN is single i.e 10% rate that is imposed to the consumer. Tax collection system in country requires tax ID number (Bahasa Indonesia – NPWP) for every individual or group to be imposed the tax. This condition becomes a constraint for regulator to perform tax collection to the digital company who have no permanent business entity in Indonesia.

Google, Facebook, Amazon and numerous other computerized organizations turned into a fixed component of our regular daily existence and now drive the economy. These digital business models must, however, deal with national and international tax law systems that face significant challenges. As such, policy makers are trying to find solutions that will achieve fair and effective taxation. The new action plans of the "computerized economy" recently is depend on data and innovations, correspondence, the misuse of a lot of information can obscuring the line among products and enterprises, generally each of company is differing in their methodology, structure, effectivity and adaptation (for instance, online retailers, web-based social networking stages).

Policymakers have been trying to find solutions which would ensure fair and effective taxation as the digital transformation of the economy accelerates. They argue that nothing less than “economic efficiency is at stake, as well as tax fairness and sovereignty”. Debates regarding the “fitness” or the “outdatedness” of the international tax system for the digital age also overlap with discussions of the tax avoidance and tax planning practices of well-known IT corporations. Impressively in 2017, for instance, 9 out of the main 20 organizations as far as market capitalization were innovation organizations, with Apple, Letters in order, Microsoft and Amazon taking the initial four spots (contrasted and just a single innovation organization, i.e. Microsoft, in the main 20 out of 2006), and somewhere in the range of 2008 and 2016 income of the best five e-commerece retailers are the highest.

The authority regulator is preparing the regulation to change the tax system in order to be able to scoop up the tax from technology / digital company that is operated in Indonesia. The Government of Indonesia (GoI) is not able yet to impose the PPN to digital company. GoI haven't found yet the right scheme to do tax collection for the digital companies that are in general based overseas. One out of several reasons is due to there is still debate on whether or not Indonesia has the right to collect the tax or the origin country where the company domiciled. Other than Indonesia, some other countries have also difficulties to apply the tax for digital due to various reasons, either because of the regulation challenge or other challenges, such as challenges that are encountered by European Union countries. Hence, some European countries release a common agreement in form of political statement from their joint initiative to prepare the taxation for digital company.

The European Political Statement Joint Initiative On The Taxation Of Companies Operating In The Digital Economy Year 2018; 1) Being able to appropriately tax the 0companies operating in the digital economy is a major challenge for the European Union. We should no longer accept that these companies do business in Europe while paying minimal amounts of tax to our treasuries ; 2) Economic efficiency is at stake, as well as tax fairness and sovereignty We support the ongoing work on those questions at the G20/OECD level and are looking forward to the progress report in spring 2018 ; 3) The European Commission has also taken important initiatives with the proposals for directives on a Common Consolidated Corporate Tax Base (CCTB and CCCTB). These proposals are useful, and we must continue to work actively on them. These initiatives must nevertheless be complemented ; 4) We would like to move ahead quickly at EU level. Therefore we ask the EU Commission to explore EU law compatible options and propose any effective solutions based on the concept of establishing a so-called “equalisation tax” on the turnover generated in Europe by the digital companies ; 5) The amounts raised would aim to reflect some of what these companies should be paying in terms of corporate tax ; 6) This proposal is practical. It does not call into question the essential work on CCTB and CCCTB ; 7) The Commission could decide to propose a legislative initiative accordingly. It will demonstrate our commitment to appropriately tax the companies of the digital economy in a way that reflects their genuine activity in the EU.

Meanwhile GoI still waiting for the review from OECD meeting related to the digital company tax scheme. Some countries in G20 are performing the joint cooperation to develop the adequate tax system for digital company. The current international tax framework – even following the modifications contained in OECD BEPS Action 7 – still uses physical presence, in the form of a permanent establishment (PE) in the source country, as a next-us-defining criterion (for example, article 5 or the OECD Model (2014)). While this concept has generally proven successful in the past, the prevalence of the digital economy has certainly raised the question of whether or not an expansion or reconsideration of this traditional concept or some other form of source taxation is warranted. There is also a broader policy debate: there is a visible and increasing trend in political and technical discussions to operationalize the utility theory or to view income taxation is being connected more with the demand-component of the market jurisdiction and less with the supply-component of the residence jurisdiction.

Taxation of the digital economy is also on the agenda of the United Nations as developing countries have the most of gain from the introduction of policies to address the digital economy. At the European Union (EU) level, the 2014 report of the Commission Expert Group on Taxation of the Digital Economy advocated improving the tax environment for young innovative companies, especially digital companies, while speaking out against a new concept of a digital taxable presence, noting that it had extensively considered this question an has come to the conclusion that there is currently no valid justification for such a fundamental change specifically for digital activities. While the OECD and the EU – together with the G20 strive for a multilateral solution, preferably a global one (perhaps using the Multilateral Instrument (MLI)) as a tool for implementation of the treaty level with a harmonized EU position, a number of states have already taken unilateral action.

2.2 Preliminary Study

Preliminary study become one of references for researcher run the research in order to develop the mindset. Followings are some of the preliminary study that is related to digital business (e-commerce) and one of the digital company is decribed. Anggia Yustika Sari et al (2018) study the influence factor of taxing the e-commerce ini Indonesia, supporting factor of taxation on e-commerce transaction in area of Indonesia, as well as the constraints that have to dealt with on taxing the e-commerce transaction. The data is collected using semi-structured interview method, observation and documentation, and analyzed descriptively. The study result have confirmed that the taxing of e-commerce is an obligatory and have to imposed to digital company referring the government regulation that is available, and also referring the fact that the highest country revenue is coming from taxation. However the taxation of e-commerce business is not maximum yet, one of the reason is due to the socialization of the taxation haven't done thoroughly and the e-commerce transaction is very difficult to be detected its business form, which result in the difficulties of regulator i.e government to impose the tax clearly and in fair

Similar to the study of Anggia et al, there was previous research by Anita Aprilia et al (2014) to study the handling and supervision of taxing in order to intensivy the e-commerce tax, in tax office in south Malang. In Anita Aprilia et al study, have described how tax office has categorized the e-commerce model, which helps the tax office staff to manage the domestic e-commerce tax. This study also explores the opinion of taxpayer regarding taxpayer compliance to taxation of their e-commerce transaction. The study found some low compliance level of the taxpayer as well as their difficulties in report and pay their taxes, also there are lack of supporting system in taxing the e-commerce.

Furthermore, in Leonard Makalalag research study (2016) with the title of Taxation to the income tax of online business transaction (e- commerce), have discussed the taxation to online transaction in legal perspective. According to Makalalag study, tThe online trade is subjected to income tax because based on the subjective requirement (the businessman) and objective requirement (income) it have fulfil the requirement for imposing the income tax. However if the current income tax will be used for taxing the online business, the result will not maximum. Because in principal, the online transaction is a little bit different with the conventional transaction. Therefore it is needed to have new regulation that will be legal foundation of taxing the income in online transaction business (e-commerce).

In the same year of Anggia et al study in year 2018, Irena Savika Terate et al have studied specifically for Netflix International, one of company that conduct its business online. The study of Irena et al have explored the revenue model of Netflix. Tyepe of revenue model of Netflix is subscription revenue model, which is a website that requires subscription payment to have access the their service and index, hence the main revenue of Netflix is customer subscription.

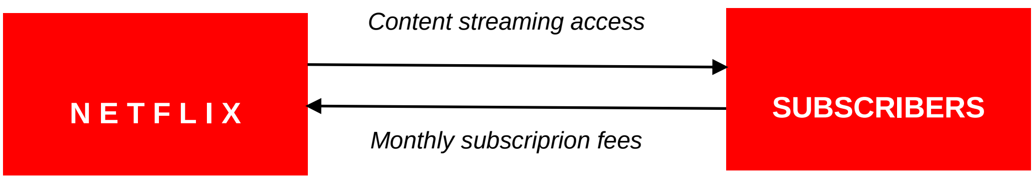

Figure 1
Netflix Revenue Model

Meaning, each customer pay the subscription cost to have access to the Netflix content and to receive the DVD that is sent to them, that is the way the company earn money. Irena Savika et al explain the business model stage runs by Neflix namely,

1. buy the commercial license to broadcast or streaming the content from a production house (which is a real owner of the content);
2. prepare and maintain the strong and reliable platform to broadcost this content;
3. attract the user / customer to view the content in free for a temporary period (free trial for a month or more);
4. converse the free trial to paid subscription and charge monthly fee to view the content;
5. maintaining this subscribe bases by always obtain the fresh and new content.

The only revenue source of Netflix is monthly membership fee. Netflix is succeded to have more than 7,4 million international subscriber, compare to the market consensus which is 6,5 million (year 2018). This achievement is a new record that has marked the 50% growth compared to last year (2017). The Netflix income is recorded US$3,7 billion (Rp 51 trillions) within first three month in year 2018 or growth 40% annually (*year-on-year*/yoy) which is the fastest growth in the company history. Meanwhile, the company net profit also increase to US$290,1 million in first quarter of US$178,2 million that have recorded in same period of last year. In Januari 2018, Netflix have estimated their income in 2018 is US$3,69 billion and earning per share (EPS) in amount of 63 cent dollar, and adding 6,35 million new subscriber.

In other hand, there is a lot of expenses that Netflix have to spend in order to get the profit. Following is the expenses that Netflix have to spend, **Licensing fees** to make the streaming of event and favourit moves, Netflix have to bear the different cost. **Production cost**, Netflix have introduced "*Netflix Originals*" in year 2013 to avoid the license fees and as part of their marketing strategy to produce Netflix exclusive content. The original serial will involve the excessively production cost. The huge amount for producing the new exclusive content made Netflix as one of the biggest spenders in media in that category. **Marketing cost**, Netflix is not the only website for content streaming in the internet. This cost have to be spent in order to compete with new and tough player such as Amazon Prime, Hulu, Hotstar etc, involving a lot of expenditure for marketing cost. The marketing include the advertising cost, payment to affiliation and device's partner, and for first month fee of each subscriber that recently join, (first month subscription of new subscriber is free). **Research and development cost**, Netflix is an investor who are very interested in their research and development department. Because this department that have made Netflix gain success so far and can lead the market in the subscription base business model. **Technology and development cost**, there are million subscriber who do streaming of Netflix content. In order to satisfy the subscriber, Netflix in partnership with hundreds of ISP. To localize this huge traffic, there is embedded application in Open Connect Appliance. This partnership cost a lot. The technology and development is include cost of streaming delivery technology, cost involved in designing a new device application, and other infrastructure cost. **Administration and generala affairs cost**, this cost include the payroll and other expenditure for human resource of the company, as well as professional and partnership cost that is related to administration. **Other cost**, some other expenditure that spend by company such as delivering process payment, postal fee and amortization from streaming content library, etc.

Further, the study from Achyan Fadhil Mahsyar et al (2020), , have reviewed one of the digital company i.e Netflix by identify the influences factors towards company business transformation, identify Netflix strategy stages in business transformation, also have analyse and evaluate the transformation application as well as the success impact of applying the transformation based on the target. The analyse result toward the business transformation of Netflix concludes that the company really aware to develop their innovation continuously. They have to be able to present the product based on the market request in order to become the best in the entertainment provider industry. Along with the fast and quick of technology advances, they are expected to always present the competitive product. When Youtube becomes popular in year 2006, Netflix cancel their planned product name Netflix Box to be launched, which they have designed and they focus on the new idea in order to be able to compete with their unstoppable present competitor. The study concludes that the external factor influences greatly and become the reason why Netflix have to transform their business.

The transformation process that Netflix have implemented and succeded, as well as put Netflix in their current position, very much possible due to they want to follow the 8 steps of Kotter transformation process (1995) e.g. establishing sense of urgency, forming a powerful guiding coalition, creating a vision, communicating the vision, empowering others to act on the vision, planning for and creating short-term wins, consolidating improvements and producing still more change, dan institutionalizing new approaches. Particularly for step of Establishing a Sense of Urgency, in which Netflix is really aware that they always dealth with new demand and urge in this digital era nowadays. This awareness made them realize that they have to always make new innovation in their industry segment. Netflix make new product i.e. online streaming, from before as the DVD rental company that is deliver to neighbourhood. In period of 2005 – 2006 Netflix have prepare the “Netflix Box”, an instrument that will help their customer to download a movie only in one night, that they can view in the next day. However their idea got competitor with the presence of Youtube streaming service in 2006. So as in year 2007, Netflix launch its movie streaming subscription service, by having the license of those movies, this make their customer can obtain any movie in anywhere and even can download the movie. Netflix is aware that they have a lot of new competitor that follows them. In order to deliver the best continuously to their customer, Netflix provide their own produce movie, and only can be accessed through Netflix portal, so made them having market differentiation. This study argumentation show that Netflix have commitment to follow the new market condition which is urgent for their business continuity.

Before Achyan research, on 2015 Netflix case analysis is studied by Causley et al (2015) in Florida. The purpose of the analysis is to provide a thorough evaluation of Netflix based on Netflix financial report of 2010 fiscal year, and to develop suggested strategies the company could conduct in order to ensure a successful future for the longevity of the company. Current day, Netflix, Inc. is the world’s largest and leading subscription service provider that offers the ability for its consumers to stream movies and TV episodes over the Internet. Within a decade of existence, Netflix began to soar above its competitors and eventually explored new markets. The market for streaming video, of which Netflix exists in, can be divided into three different segments: video-on-demand (VOD), ad supported, and subscription. The competitors that stand against Netflix within the VOD segment include Amazon, Apple, and Microsoft. Video-on-demand (VOD) is a service that customers pay for that allows them to select and watch clip and videocontent over a network as part of an interactive experience. The competitors that existed within the ad support segment included Hulu and YouTube. Unlike most of Netflix's rival companies, the firm offered many various subscription plans with no fees for late returns, no due dates, no shipping, or pay-per-view fees. Subscription plans, for the firm, started as low as $7.99 per month and by the summer of 2011 the firm possessed a database of over 25 million subscribers. Although Netflix sits on top of the mountain as the primary provider in the subscription segment, the company was still experiencing some hard pressure from outside competition to figure out how to stay innovative and maintain their competitive advantage as consumers shift to Internet delivery of videos. The "I want it now" mindset of consumers for instant-gratification video within on-demand streams is changing the media industry to gain a major concern over Netflix. Constantly trying to find new ways to improve their subscription experience, the competition within the industry is concerned that Netflix is removing the reason for consumers to pay for expensive cable TV. With the shift of industry's attention upon VOD, Netflix must figure out how its company will move from an online-subscription based DVD rental service to positioning itself in sustaining its current position as a monster within the media industry.

Netflix access feasibility in terms of telecommunication regulation have been analyzed by Yogi Maulana Nugroho et al (2017). In Indonesia Netflix enter and legally open its service in 5 February 2016. In the beginning of their presence, PT Telekomunikasi Indonesia Tbk (Telkom) have bloced temporarily of Netflix access in order to protect consument and community of Indonesia, considering this video streaming service company from USA have not fulfil some stipulation and regulation in Indonesia. Analysis of Netflix access feasibility in Indonesia is reviewed from telecommunication regulation perspective and the efforts to improve the business and cooperation with between PT. Telkom Indonesia and Netflix. Some analysis is reviewed from several aspect, such as legal aspect, market and marketing aspect, finance aspect, technical / operational aspect, management and organization aspect, economy and social aspect as well as the environmental impact aspect. Based on the analysis, the study concludes that some aspect have not feasible yet with PT. Telkom Indonesia therefore need to develop the regulation that is feasible and accommodates both parties. The Netflix presence feasibility in Indonesia is reviewed from ; *aspect of legal*, based on the availability of regulation and/or constitution between government of Indonesia and Netflix; *aspect of marketing*; Netflix able to penetrate to almost every media type, start from subscription television until streaming; *aspect of technical / operational*, in running their business, Netflix uses modern technology that can enter and accepted in Indonesia' market;

aspect of finance; investation fund owned by Netflix is quite significant, and their income is significantly high, made them possible to increase their revenue in Indonesia; *aspect of social economy*, this company is feasible to improve Indonesian' economy *aspect of management and organization* human resource and management system owned by Netflix is sufficient; *aspect of environmental*, able to make demography changes due to impressions and content owned by Netflix.

Another case analysis study ofr digital company have been conducted by Ayu Dwi Gayatri, Ellyanova Afifah and Ivonne Listiani (2019), by exploring the business model and digital company evolution such Amazon.com. Nowadays Amazon, Google, Netflix become the biggest global digital company. In running their business, those digital company utilize the internet popularity. The chance to select the product, affordable price and customer easiness to get the product, are three things that made digital company getting bigger tremendously. The digital company strategy is based on the improvement of the technology ability for business profit and following the cost leadership strategy that aims to offer maximum value for customer with lowest price. The digital company business is focus on the cost, competitive excellence that is focused on technology, actualize the economy scale benefit, and utilize the efficiency between external and internal resource, not to mention running the big data analysis as the tools to do mapping of the consumer behavior.

Nevertheless, there are also challenges for these digital companies, and the biggest challenge is to maintain the cheap price along with the company growth. Other challenges is, dealt with pressure from the shareholders to increase profitability, threat from the price increases of the goods delivery operator, tax advantage that is so far enjoyed will most likely disappear with the issuance of the regulation for tax collection even for the business who has no offline shop. Those challenges influences the cost structure so there is possibility to increase the price which in consequences might losing the reputation as the low cost provider. Other challenge is those company is urged to keep their innovative and always provide different values to their customer compare to their competitor. Another example of potential external threats to a digital company future profitability of the global digital companies is the presence of Bipartisan Marketplace Fairness Act which have been approved by United States Senate, in which this Act made government have authority to collect the tax from online sales although the retailer internet is not domicile in US area. Some of issues or strategic effort that the digital company have to dealth with recently is the tax advantage that is so far enjoyed most likely to disappear in some countries that will enactment the regulation of payable taxes for digital company even they don’t have offline shop in those countries.

The studies that have been explained above, in general discussed the taxation to electronic commerce of digital companies, and review for the profile and performance of one of the digital company, which is categorized as one of the OTT companies. It is slightly different with those studies, this research study will analyze the taxation for electronic commerce particularly that runs by a digital company that have no permanent entity in Indonesia, both from the taxation regulation and also to review and analyze the potentiality of tax revenue from the digital company that have ho permanent entity in Indonesia.

2.3 Research Conceptual Framework

Based on the previous grand theory and study literature that have been explained, the research conceptual framework is arranged at once as the elements to do descriptive analysis on taxation for the digital company that have no permanent business entity (BUT) in Indonesia by exploring the regulation of taxation to digital company for income tax and value added tax, as well as to analyze the potential tax revenue from the selected digital company.

The imposition of taxes on digital companies needs to be seen from the application of tax regulations to business activities and digital companies in Indonesia, the challenges and problems that occur in the tax regulation. Furthermore, a review of the implementation of tax regulations for digital companies that generally do not have permanent establishments or entities in

Indonesia. And a study of the potential revenue from applying taxes to digital businesses and companies active in Indonesia.

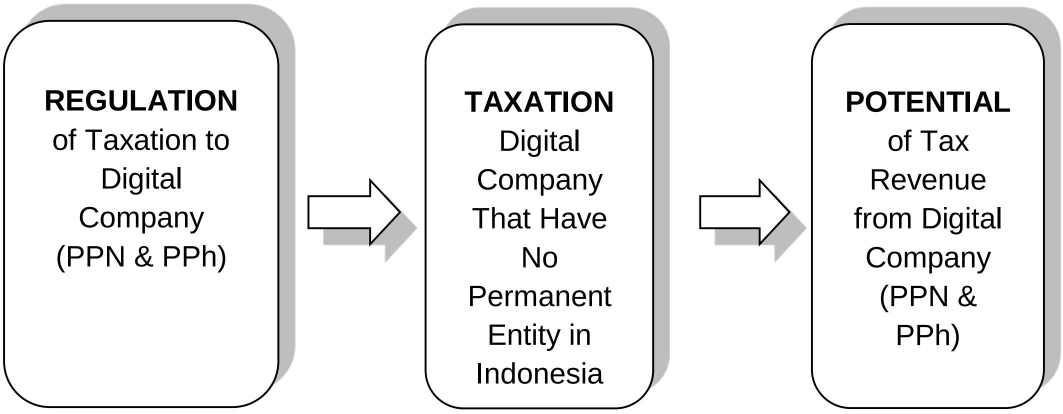

Figure 2.2.
Conceptual Framework