

# ACHIEVING THE LEGAL OBJECTIVE OF WITHHOLDING INCOME TAX ON FOREIGN YOUTUBE VIDEO CREATORS FOR VIDEO UTILIZATION INCOME SOURCED IN INDONESIA

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## Abstract

One of the digital economy transactions is the transaction on YouTube monetization received by video creators based on viewers in a source country. Overseas video creators do not pay Income Tax (PPh) in Indonesia on income from Youtube videos sourced in Indonesia because there is no physical presence of the video creator in Indonesia and no identified income as a tax object on which the Indonesian tax authorities impose PPh on the overseas video creator. This condition creates legal uncertainty, injustice, and loss of benefit for Indonesia as a source country due to the loss of potential PPh revenue from the digital market. Currently, Article 32A of the General Provisions and Tax Procedures (KUP) Law has provided a formal tax law to be able to appoint other parties as PPh withholders. However, the implementation is not yet possible because the material tax law is not yet sufficient to designate other parties, such as Google, which are not domiciled and have no permanent establishment in Indonesia as PPh withholders. To achieve legal objectives, the PPh Law as material tax law needs to be strengthened to provide legal certainty in the PPh withholding on foreign video creators and create justice and benefits for Indonesia as one of the source countries for video creators' income. Strengthening the PPh Law is conducted by amending the provisions of Article 26, Article 2 paragraph (4), and Article 4. The amendment to the PPh Law does not result in revisions of the P3B Indonesia and other countries since the allocation of taxation rights for royalty income from the source country has been regulated in the P3B. Furthermore, the government could make implementing regulations regarding the PPh withholding by other parties on income from the utilization of content copyrights received by YouTube video creators.

**Keywords:** *YouTube video creators; income tax withholding; legal purpose*

## 1. INTRODUCTION

Internet has has an impact on social media which turns out to erase borders and bring people together.<sup>1</sup> People can now interact with each other without the limits of space and time. The technological revolution is bringing phenomenal economic, social and cultural changes, including to the process of state administration.<sup>2</sup>

There are many internet and social media users in Indonesia. Statistical data compiled by Hootsuite (We are Social) shows that the population of internet users in Indonesia in 2023

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<sup>1</sup> Danrivanto Budhijanto, *Hukum Ekonomi Digital Di Indonesia* (Bandung: Logoz Publishing, 2019), 116–117.

<sup>2</sup> Klaus Schwab, *The Fourth Industrial Revolution* (Geneva: World Economic Forum, 2016), 31.

is 212.9 million (77.0% of the total population) and the population of active social media users in Indonesia is 167.0 million (60.4% of the total population).<sup>3</sup>

Social media can make people get various information and even entertainment from all over the world. The most used social media in the world as of January 2023 include Facebook, YouTube, Whatsapp, Instagram, Wechat, and Tiktok.<sup>4</sup>

Most social media enthusiasts have utilized YouTube as a means to gain economic benefits through their profession as content creators. Content creators create everything in visual and/or audio form with broadcast media that is transmitted to other parties through the internet.<sup>5</sup> This profession is aspired to be a future career.<sup>6</sup>

YouTube is an internet-based social media containing video content, which can provide various information by creating a channel.<sup>7</sup> Various types of video content can be found on YouTube, including tutorials, music videos, and Shorts videos.<sup>8</sup> The income earned by video creators comes from advertisements that appear on the video.

The internet has provided high earning potential for YouTube video creators. The seven Indonesian video creators with the highest earnings from Google AdSense are Frost Diamond, Jess No Limit, Deddy Corbuzier, Raffi Ahmad, Ria Ricis, Baim Wong, and Atta Halilintar.<sup>9</sup>

Video creators who earn YouTube-based income (based on viewers) in Indonesia can be grouped into two, namely Indonesian video creators and foreign video creators. Indonesian video creators fulfill their PPh obligations under the self-assessment system. Meanwhile, overseas video creators do not pay PPh in Indonesia on YouTube income earned based on viewers in Indonesia because there is no PPh withholding on YouTube income by Google and there is no physical presence of the video creator as an Indonesian tax subject. This results in a lack of fairness in the imposition of PPh on income sourced in Indonesia received by domestic video creators compared to foreign video creators.

From the perspective of the state, the element of cross-border justice also needs to be realized among the countries where video creators earn their income. For the object of YouTube video income earned by video creators in each source country, only the United States (US) has regulated income tax withholding on video creators sourced in the US.

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<sup>3</sup> Andi Dwi Riyanto, "Hootsuite (We are Social): Indonesian Digital Report 2022," accessed December 4, 2023, <https://andi.link/hootsuite-we-are-social-indonesian-digital-report-2022/>.

<sup>4</sup> We Are Social and Meltwater, "Digital 2023 Global Overview Report" (We Are Social - Meltwater), accessed June 25, 2023, 182, <https://www.meltwater.com/en/global-digital-trends>.

<sup>5</sup> Puji Astuti Rahayu, Sylvia Fettry Elvira M, and Monica Paramita Putri Dewanti, "Analisis Kebijakan Dan Implementasi Perpajakan Wajib Pajak Orang Pribadi Pembuat Konten Online Di Negara Amerika Serikat, Korea Selatan, Filipina, Dan Indonesia," *Jurnal Riset Akuntansi & Perpajakan (JRAP)* 8, no. 01 (June 2021): 53–65, <https://doi.org/10.35838/jrap.2021.008.01.05>.

<sup>6</sup> "Konten Kreator Cita-Cita Generasi Kekinian," *Info Bisnis Id* (blog), last modified August 13, 2021, <https://infobisnis.id/2021/08/13/konten-kreator-cita-cita-generasi-kekinian/>.

<sup>7</sup> Rulli Nasrullah, *Media Sosial: Perspektif Komunikasi, Budaya, Dan Sosioteknologi* (Bandung: Simbiosis Rekatama Media, 2015).

<sup>8</sup> "Jenis Konten Apa Yang Dapat Saya Monetisasi?," Google, accessed April 11, 2024, <https://support.google.com/youtube/answer/2490020?hl=id>.

<sup>9</sup> Ignacio Geordi Oswaldo, "Raup Miliaran Rupiah, Ini 7 Youtuber Berpenghasilan Tertinggi di RI," *Detikfinance*, June 13, 2023, <https://finance.detik.com/berita-ekonomi-bisnis/d-6770879/raup-miliaran-rupiah-ini-7-youtuber-berpenghasilan-tertinggi-di-ri>.

Meanwhile, other countries, including Indonesia, do not receive tax revenue on AdSense income sourced in Indonesia.

From the aspect of legal jurisdiction, in the digital economy there has been a paradigm shift from physical jurisdiction to virtual jurisdiction. The change can be seen from the paradigm of the existence of legal subjects and objects in the era of virtual jurisdiction compared to the previous physical jurisdiction. In physical jurisdiction, the existence of legal subjects and objects (both tangible and intangible goods) can be determined easily. Meanwhile, in virtual jurisdiction, the existence of legal subjects and objects is very difficult to determine, especially if it is related to the domicile principle, source principle, or nationality principle.

Currently, Article 32A of Law Number 6 of 1983 on General Provisions and Tax Procedures and its amendments (KUP Law) has provided space for the government to be able to appoint other parties, in this case Google, as PPh withholders on payment of Youtube video income received by video creators. However, the implementation of PPh withholding on YouTube video income has not yet been conducted because there is no adequate material tax law for PPh withholding in the virtual jurisdiction paradigm.

Based on the matters as described, the problems to be discussed are (1) how is the positive law of PPh for foreign YouTube video creators on income from videos sourced in Indonesia; (2) how is the implementation of the legal provisions of PPh for overseas YouTube video creators on income from videos sourced in Indonesia; and (3) how is the regulation of PPh for overseas YouTube video creators on income from videos sourced in Indonesia in accordance with legal objectives.

## 2. RESEARCH METHODS

This research is normative juridical research. Normative juridical research is research through literature study by examining especially secondary data in the form of primary legal materials, secondary legal materials, and tertiary legal materials.<sup>10</sup> Normative legal research is identical to library research because it is conducted through research on materials from literature studies.<sup>11</sup> Normative juridical research is carried out by means of literature studies or library research and document searches.<sup>12</sup>

The approaches in this research are statute approach, comparative approach, and conceptual approach. The statute approach is used in analyzing primary legal materials such as laws and regulations that are considered relevant to the legal problems or issues being studied.<sup>13</sup> The comparative approach is used in analyzing secondary data in the form of legal data related to regulations on the income tax withholding abroad. A conceptual approach is used to analyze the concept of economic presence in guaranteeing taxation rights and a fairer tax base in the context of the digital economy.

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<sup>10</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2006), 93.

<sup>11</sup> Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Rajawali Pers, 2022), 13.

<sup>12</sup> Tommy Hendra Purwaka, *Metodologi Penelitian Hukum*, cetakan pertama (Jakarta: Penerbit Universitas Atma Jaya, 2011), 34.

<sup>13</sup> Hartiwiningsih, Lego Karjoko, and Soehartono, *Metode Penelitian Hukum* (Tangerang Selatan: Penerbit Universitas Terbuka, 2019), 315.

### 3. ANALYSIS AND DISCUSSION

#### 3.1. Positive Law on PPh for Foreign YouTube Video Creators on Video Income Sourced in Indonesia

Tax collection conducted by the Indonesian government must be regulated by law based on the philosophy of Pancasila and the 1945 Constitution of the Republic of Indonesia. One form of government authority in collecting taxes is the imposition of PPh as regulated by Law Number 7 of 1983 on Income Tax and its amendments (PPh Law).

##### 3.1.1. Overseas YouTube Video Creators as Tax Subjects

Article 1 of the PPh Law states that "Income Tax is imposed on the Tax Subject on the income received or earned in the tax year". Accordingly, the Tax Subject is the party that will be subject to PPh. In the event that the income is received or obtained by a non-tax subject, it will not be subject to PPh.<sup>14</sup>

Mansury stated that the tax subject is the person intended by the Law to be taxed. The intended persons are individuals and entities.<sup>15</sup> The tax subject is a person or entity, which has fulfilled the subjective requirements.<sup>16</sup> Subjective conditions are conditions attached to the subject. The tax subject is considered potentially taxable, but there is no obligation to pay tax.<sup>17</sup>

In accordance with Article 2 of the PPh Law, tax subjects are divided into domestic and foreign tax subjects. Domestic tax subjects are taxed on income received or earned from Indonesia and outside Indonesia while foreign tax subjects are only taxed on income sourced from Indonesia.<sup>18</sup>

Foreign tax subjects are subject to PPh based on the source principle. The imposition of PPh is due to the existence of an objective engagement between the government and income sourced from Indonesia and in this case, taxation on foreign tax subjects is limited to income sourced from Indonesia.<sup>19</sup> In the event that overseas YouTube video creators earn income from Indonesia, taxation is done by the income provider through withholding PPh Article 26 at the time of payment of income to overseas YouTube video creators.

##### 3.1.2. Royalty Income on YouTube Video Copyright as a Taxable Object

The notion of "income" plays an important role in the implementation of PPh. Mansury states that a well-defined concept of income is important because it serves as the basis for overcoming problems in the implementation of PPh,

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<sup>14</sup> Wirawan B Ilyas and Rudi Suhartono, *Hukum Pajak Material 1: Seri Pajak Penghasilan* (Jakarta: Salemba Humanika, 2011), 11.

<sup>15</sup> R. Mansury, *Pajak Penghasilan Lanjutan* (Jakarta: Ind-Hill Co, 1996), 33–34.

<sup>16</sup> Y. Sri Pudyatmoko, *Pengantar Hukum Pajak (Edisi Revisi)* (Yogyakarta: Penerbit ANDI, 2009), 20.

<sup>17</sup> Pudyatmoko, *Pengantar Hukum Pajak*, 21.

<sup>18</sup> Ilyas and Suhartono, *Hukum Pajak Material*, 5.

<sup>19</sup> Ilyas and Suhartono, *Hukum Pajak Material*, 20.

including providing legal certainty as to whether income should be included or excluded from the tax base.<sup>20</sup>

In accordance with Article 4 paragraph (1) of the PPh Law, the tax object is income, which is any additional economic capacity received or obtained by the taxpayer, whether originating from Indonesia or from outside Indonesia, which can be used for consumption or to increase the wealth of the taxpayer concerned, by name and in any form, including royalties.

Video is one of the intangible goods because it has no physical form and can only be seen through a computer screen or other devices. By definition according to KBBI, video is a recording of live images for broadcast.<sup>21</sup>

Based on the definition of intangible goods as referred to in the explanation of Article 4 paragraph (1) letter g item 1 and item 5 of Law Number 8 of 1983 on Value Added Tax on Goods and Services and Sales Tax on Luxury Goods and its amendments (VAT Law), it can be understood that video is an intangible good, which is related to the use or right to use copyright or motion picture films. Intangible good can be called an intellectual property right, such as copyright.<sup>22</sup> Copyright protection is obtained after a creation has been realized.<sup>23</sup>

As intangible goods, the rewards for videos uploaded by YouTube video creators and watched by viewers are royalties. Based on the definition of royalty as explained in Article 4 paragraph (1) letter h of the PPh Law and the definition of intangible goods as mentioned in the explanation of Article 4 paragraph (1) letter g of the VAT Law, it can be said that royalty is an amount paid or payable in any manner or calculation, whether periodically or not, in exchange for intangible goods.

PPh on royalties on YouTube videos is a tax imposed on income obtained from copyrights on videos uploaded on the YouTube platform. In accordance with the concept of additional flow of economic capacity to the taxpayer as referred to in Article 4 paragraph (1) of the PPh Law, royalty income is an object of PPh. The royalty income is categorized as income from capital. This is in accordance with the Elucidation of Article 4 paragraph (1) point iii of the PPh Law which states that income can be categorized as income from capital, in the form of movable or immovable assets, such as interest, dividends, royalties, rents and profits from the sale of assets or rights that are not used for business.

Mansury states that income from capital is defined as income received in return for capital in the form of money, capital goods, or intellectual property. Examples include interest in return for borrowing money, dividends in return for equity participation, and royalties in return for the use of copyrights, patents, or

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<sup>20</sup> R. Mansury, *The Indonesian Income Tax: Case Study in Tax Reform of a Developing Country* (Singapore: Asian-Pacific Tax and Investment Research Centre, 1992), 49.

<sup>21</sup> "Video," Kamus Besar Bahasa Indonesia, accessed April 15, 2024, <https://kbbi.kemdikbud.go.id/entri/video>.

<sup>22</sup> A. Anshari Ritonga, *Tantangan Dan Kendala Menghadapi Era Industri 4.0* (Makalah FGD - A. Anshari Ritonga, 2020), 8.

<sup>23</sup> Henry Soelistyo Budi, *Hak Cipta Tanpa Hak Moral* (Depok: Rajawali Pers, 2017), 54.

know how as well as for the lease of land, buildings and equipment.<sup>24</sup> Similarly, Broadway states that capital income includes all income derived from assets, including dividends, interest, royalties, and rent.<sup>25</sup>

In general, capital income is passive income. This is because this income is obtained by not involving the use of physical activity to obtain the income, but rather sourced from capital or assets, and is not primarily oriented towards business profits. The main distinction between active and passive sources of income streams lies in whether or not there is any effort or activity to earn the income.<sup>26</sup> For capital or assets in the form of videos produced and uploaded on YouTube, foreign YouTube video creators can earn passive income in the form of royalties on the utilization of videos sourced in Indonesia.

### **3.1.3. PPh Withholding on Foreign YouTube Video Creators**

For some countries, the withholding tax system is designed for passive income, especially for interest, dividend and royalty income.<sup>27</sup> The rationale behind the implementation of this withholding tax system is administrative convenience.

PPh withholding on royalties received by foreign taxpayers is regulated in Article 26 paragraph (1) letter c of the PPh Law, which stipulates, among others, that royalties, rents, and other income in connection with the use of assets, by whatever name and in whatever form, paid, provided for payment, or due for payment by government agencies, domestic tax subjects, activity organizers, permanent establishments, or representatives of other foreign companies to foreign taxpayers other than permanent establishments in Indonesia shall be taxed at 20% of the gross amount by the party obliged to pay. It can be seen that the tax withholder is the party making the payment of royalty income. The party whose PPh is withheld is a foreign taxpayer that receives payment of royalty income. Meanwhile, the object of PPh withholding is royalty income received by foreign taxpayers.

### **3.1.4. P3B on YouTube Video Royalties**

The application of PPh to foreign tax subjects based on the source principle has the potential to cause double taxation because foreign tax subjects located in Indonesia will have two tax subject statuses, namely tax subjects in the country of domicile and tax subjects in the source country (Indonesia). This can be avoided by a Tax Treaty or Double Taxation Avoidance Agreement (P3B) that regulates the determination of tax subjects between the domicile country and the source country.

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<sup>24</sup> Mansury, *The Indonesian Income Tax: Case Study in Tax Reform of a Developing Country*, 119.

<sup>25</sup> Robin Broadway, "The Dual Income Tax System - An Overview," *CESifo DICE Report* 02, no. 3 (2004): 7.

<sup>26</sup> Darussalam, Danny Septriadi, and B. Bawono Kristiaji, *Desain Sistem Perpajakan Indonesia: Tinjauan Atas Konsep Dasar Dan Pengalaman Internasional* (Jakarta: DDTC, 2022).

<sup>27</sup> Victor Thuronyi, *Comparative Tax Law* (Kluwer Law International, 2003), <https://ssrn.com/abstract=520622>, 210.

In the framework of international law, as cited by Gunadi,<sup>28</sup> Vogel (1991) said that P3B is an international agreement with the power of law-making treaties because its creation and consequences are subject to The Vienna Convention on The Law of Treaties dated May 23, 1969. As written in Article 6 of the 1969 Vienna Convention, the authority to form international treaties is the authority possessed by every sovereign state.<sup>29</sup> The provisions of P3B are *lex specialis* compared to the provisions of a country's domestic law.<sup>30</sup>

In accordance with the explanation of Article 32A of the PPh Law, in applying P3B, the first step is to apply the provisions of the PPh Law and then need to pay attention in the event that there are:<sup>31</sup>

- a. limitations stipulated in the P3B, the PPh Law shall be applied by taking into account the limitations in the P3B; or
- b. no restrictions in the P3B, the PPh Law is fully applied.

Payment transactions from YouTube to YouTube video creators are categorized as royalty payments.<sup>32</sup> In general, royalties are defined as payments for the use of intangible property, such as copyrights on videos. In digital era, royalties are defined as payments for the use of intellectual property.<sup>33</sup>

To avoid double taxation, the right to tax royalties is regulated in a P3B. There are two P3B models, namely the OECD Model Tax Convention and the UN Model. Although there are two models, each State Party to the Agreement can also agree to establish arrangements that are different from the arrangements in the two main P3B models in accordance with the basic negotiating position and national interests of each State Party to the Agreement.<sup>34</sup>

Based on the OECD Model Tax Convention, the right to tax royalties is fully granted to the domicile country and does not allow the source country to impose withholding tax on royalties.<sup>35</sup> However, most of the treaties in the world do not follow the division of taxation rights on royalties as suggested by the OECD.<sup>36</sup> In fact, most of the treaties in the world allow source countries to tax royalty income with certain percentage restrictions.<sup>37</sup>

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<sup>28</sup> Gunadi, *Pajak Internasional*, Edisi Revisi (Jakarta: Lembaga Penerbit Fakultas Ekonomi Universitas Indonesia, 2007), 184.

<sup>29</sup> United Nations, "Vienna Convention on the Law of Treaties (1969)," in *Treaty Series*, vol. 1155, 1969, 331.

<sup>30</sup> Ilyas and Suhartono, *Hukum Pajak Material 1: Seri Pajak Penghasilan*, 22.

<sup>31</sup> Butir E angka 3 huruf a *Surat Edaran Direktur Jenderal Pajak Nomor SE-52/PJ/2021 Tentang Petunjuk Umum Interpretasi Dan Penerapan Ketentuan Dalam Persetujuan Penghindaran Pajak Berganda*.

<sup>32</sup> "Persyaratan Layanan YouTube," Google, accessed June 12, 2023, <https://www.youtube.com/t/terms>.

<sup>33</sup> Kevin Holmes, *International Tax Policy and Double Tax Treaties: An Introduction to Principles and Application* (IBFD, 2007), 257.

<sup>34</sup> Butir 2 huruf b *Surat Edaran Direktur Jenderal Pajak Nomor SE-52/PJ/2021 tentang Petunjuk Umum Interpretasi dan Penerapan Ketentuan Dalam Persetujuan Penghindaran Pajak Berganda*.

<sup>35</sup> OECD, *Articles of the Model Convention with Respect to Taxes on Income and on Capital [as They Read on 21 November 2017]* (OECD, 2017).

<sup>36</sup> Catherine Bobbett and John Avery Jones, "The Treaty Definition of Royalties," *Bulletin for International Taxation* 60, no. 1 (2006): 23.

<sup>37</sup> Darussalam and Danny Septriadi, *Perjanjian Penghindaran Pajak Berganda: Panduan, Interpretasi, dan Aplikasi* (Jakarta: Penerbit DDTC (PT Dimensi Internasional Tax), 2017), 250.

Under the UN Model, limited taxation rights on royalty income are granted to the source country. However, the amount of the percentage limitation is left to the agreement between the countries that make the treaty.<sup>38</sup>

Based on the Indonesia-US P3B, the source country is allowed to tax royalty income with certain percentage restrictions. The provisions of Article 13 of the Indonesia-US P3B stipulate that the source country has the right to tax royalty payments sourced from its country at a tax rate of no more than 10%.

### **3.2. Implementation of Regulations Regarding PPh for Foreign YouTube Video Creators on Video Income Sourced in Indonesia**

#### **3.2.1. Issues in the Imposition of PPh on Foreign YouTube Video Creators**

Overseas YouTube video creators are only taxed on income sourced from Indonesia. The tax collection is done through withholding of PPh Article 26 by the income provider at the time of payment of income to the overseas YouTube video creator.

Video creators can earn income from videos uploaded on YouTube channels through the monetization process by entering into a cooperation agreement with the YouTube Partner Program. Once the agreement is made, video creators can earn income from the content produced through the monetization process. The monetization process involves serving ads on a YouTube channel and YouTube video creators get a share of the revenue generated from the ads. The amount of money earned from monetization varies depending on factors such as the number of views, number of subscribers, and type of content generated.

Monetization on YouTube is carried out through Google AdSense, which is a Google product application that functions as an intermediary between advertisers and online publication media owners, in this case video creators. Google will share profits with video creators. To display ads with AdSense, video creators will receive 55% of the revenue Google recognizes in connection with the advertising service, while Google will share 45% of the revenue.

Apart from advertising, video creators can also earn income from YouTube Premium, a monthly subscription service that allows users to enjoy ad-free videos and supports creators. YouTube divides revenue from YouTube Premium subscriptions among creators based on the portion of content watched by subscribers.

Videos uploaded by foreign video creators can be watched by viewers in their home country and in various countries, including viewers in Indonesia, so they have the potential to earn YouTube income sourced from Indonesia. Video creators can check YouTube revenue estimates based on viewer geography from different countries using YouTube Analytics.

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<sup>38</sup> Department of Economic and Social Affairs, *United Nations Model Double Taxation Convention between Developed and Developing Countries*, 2017 Update (New York: United Nations, 2017).



Social Blade is one of parties which collects data from YouTube and uses that data to create statistical data showing progress, including information such as estimated earnings.<sup>39</sup> Using Social Blade data as of April 12, 2024, there are 17 YouTube video creators in Indonesia based on the most subscribers.<sup>40</sup> Of the 17 video creators, there are 2 video creator accounts that are not owned by Indonesian individuals or entities, namely BabyBus – Children's Stories & Songs (Babybus) and Like Nastya IDN.

BabyBus created an Indonesian YouTube account in 2019 and has uploaded 1,116 videos. To calculate the estimated income in 2023, the calculation is done by using the highest estimated income data of \$8,700,000,<sup>41</sup> using the exchange rate of IDR15,830.00 per USD,<sup>42</sup> considering the overestimate income factor of 33%,<sup>43</sup> and taking into account the profit sharing percentage of 55% so that the estimated income of BabyBus is IDR24,996,361,500.00. Moreover, the potential PPh for BabyBus in 2023 is IDR4,999,272,300.00.<sup>44</sup> However, although the account was created as an Indonesian YouTube video creator account, the owner of the BabyBus account, namely Babybus Co., Ltd. does not exist or have no representation in Indonesia.<sup>45</sup>

Like Nastya IDN has created an Indonesian YouTube channel since 2019 and has uploaded 570 videos.<sup>46</sup> In calculating the estimated income in 2023, the calculation is done by using the highest estimated income data of \$4,900,000.<sup>47</sup> By using the same calculation method as described previously, the estimated income of Like Nastya IDN in 2023 is IDR14,078,410,500.00 and the potential PPh in 2023 is IDR2,815,682,100.00.<sup>48</sup> However, although the account was created as an Indonesian YouTube video creator account, the owner of the Like Nastya IDN account is Anastasia Sergeyevna Radzinskaya who is a Russian national and domiciled in the US. To get more viewers, her content is translated into various languages, such as German, Arabic, Indonesian.<sup>49</sup> The Indonesian content is on the Like Nastya IDN YouTube channel.

Social Blade data and calculations of estimated income and potential PPh of the two video creators show that there are overseas video creators who earn

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<sup>39</sup> "All About Social Blade," Social Blade, accessed September 22, 2023, <https://socialblade.com/info>.

<sup>40</sup> "Top 100 Youtubers in Indonesia Sorted by Subscribers," Social Blade, accessed April 12, 2024, <https://socialblade.com/youtube/top/country/id/mostsubscribed>.

<sup>41</sup> "BabyBus - Cerita & Lagu Anak-Anak - Estimated Yearly Earnings," Social Blade, accessed April 13, 2024, <https://socialblade.com/youtube/channel/UC5v3gjCOLFeg8eBXO7ShdpQ>.

<sup>42</sup> *Keputusan Menteri Keuangan No. 14/KM.10/KF.4/2024 Tentang Nilai Kurs Sebagai Dasar Pelunasan Bea Masuk, Pajak Pertambahan Nilai Barang Dan Jasa Dan Pajak Penjualan Atas Barang Mewah, Bea Keluar, Dan Pajak Penghasilan Yang Berlaku Untuk Tanggal 3 April 2024 Sampai Dengan 16 April 2024*.

<sup>43</sup> Correction for use of highest income estimate.

<sup>44</sup> PPh Rate of Article 26 of the PPh Law on royalty and no application of P3B.

<sup>45</sup> "User Agreement," BabyBus, accessed March 26, 2024, <https://www.babybus.com/global/en/agreement>.

<sup>46</sup> "Tentang Like Nastya IDN," Youtube, accessed March 25, 2024, [http://www.youtube.com/@LikeNastya\\_IDN](http://www.youtube.com/@LikeNastya_IDN).

<sup>47</sup> "Like Nastya IDN - Estimated Yearly Earnings," Social Blade, accessed April 13, 2024, [https://socialblade.com/youtube/channel/UCui\\_SuV6CzSgB1bdwL5utzg](https://socialblade.com/youtube/channel/UCui_SuV6CzSgB1bdwL5utzg).

<sup>48</sup> PPh Rate of Article 26 of the PPh Law on royalty and no application of P3B.

<sup>49</sup> "Like Nastya," Dailysia, accessed April 14, 2024, <https://www.dailysia.com/biodata-profil-dan-fakta-like-nastya/>.

income (royalties) on Youtube videos sourced in Indonesia but do not pay PPh in Indonesia. It is because they do not reside, have a presence, are located or domiciled in Indonesia, nor do they have representatives in Indonesia. In addition, the overseas video creators are also not subject to withholding of PPh Article 26 by Google as the income provider because Google is not an PPh withholder.

### 3.2.2. Issues in PPh Withholding for Overseas YouTube Video Creators

Income from YouTube monetization sourced in Indonesia (based on viewers in Indonesia) has not been subject to PPh withholding by Google. Google can not be designated as an PPh withholder in Indonesia because it is not domiciled and also does not have a permanent establishment in Indonesia so that there is no physical presence in Indonesia.

Google is owned by Alphabet Inc. and specializes in internet-related services and products including YouTube and AdSense. Alphabet is domiciled and headquartered in Mountain View, California, US.<sup>50</sup>

One of Google's sources of income in Indonesia is advertising on YouTube. Invoices for advertising costs are issued by Google's overseas affiliate companies. One of them, Google issues invoices on behalf of Google Asia Pacific, Pte. Ltd. which is domiciled in Singapore.<sup>51</sup>

For Trading through Electronic Systems (PMSE) activities in Indonesia, since July 1, 2020 until now, the Minister of Finance through the Directorate General of Taxes has appointed three Google subsidiaries, namely Google LLC, Google Asia Pacific Pte. Ltd. and Google Ireland Ltd. as Value Added Tax (VAT) collectors.<sup>52</sup> They are neither tax subjects nor taxpayers in Indonesia and therefore do not have a Tax Identification Number. It is because they are not domiciled and do not have a permanent establishment in Indonesia. In carrying out their obligations as PMSE VAT Collectors, they are only given an identity number as a means of tax administration in collecting, depositing, and reporting PMSE VAT.

So far, Google does not recognize having a permanent establishment in Indonesia.<sup>53</sup> To be designated as a permanent establishment, a business entity domiciled abroad must fulfill the requirement of physical presence. In the explanation of Article 2 paragraph (5) of the PPh Law, it is stated that a permanent establishment implies the existence of a place of business.

Thus, Google does not have a physical presence in Indonesia because Google is not domiciled nor does it have a permanent establishment in Indonesia.

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<sup>50</sup> "Alphabet Inc Company Profile - Alphabet Inc Overview," LinkedIn, accessed October 6, 2023, <https://www.linkedin.com/company/globaldataplc/>.

<sup>51</sup> Suhut Tumpal Sinaga, "Google dan Pajak Media Digital Asing," *Detiknews*, September 10, 2019, <https://news.detik.com/kolom/d-4700370/google-dan-pajak-media-digital-asing>.

<sup>52</sup> Direktorat Jenderal Pajak, "Siaran Pers Nomor SP-29/2020 tentang Gelombang Pertama, Enam Perusahaan Ditunjuk Sebagai Pemungut PPN Produk Digital Luar Negeri," *Direktorat Jenderal Pajak*, July 7, 2020, <http://pajak.go.id/id/siaran-pers/gelombang-pertama-enam-perusahaan-ditunjuk-sebagai-pemungut-ppn-produk-digital-luar>.

<sup>53</sup> Sinaga, "Google dan Pajak Media Digital Asing."

Therefore, Google cannot be designated as an PPh withholder in Indonesia for the payment of income sourced in Indonesia to YouTube video creators.

### **3.2.3. Income Tax Withholding for YouTube Video Creators in the United States**

As a comparison, research was conducted on the US' income tax withholding arrangements on YouTube video creators' income sourced in the US. Since June 1, 2021, the US has implemented income tax withholding on the income of YouTube video creators sourced in the US. The US requires Google to make income tax withholdings on payments of income sourced in the US, namely payments of income of non-resident US YouTube video creators for YouTube videos watched by US viewers.

Income tax withholding in the US for foreigners and foreign entities is governed by Chapter 3 Section 1441 and Section 1442 of the US Internal Revenue Code. Under these provisions, foreign persons and corporations are generally subject to withholding tax in the US on US-sourced income. Most types of US-sourced income received by foreign persons and entities are subject to US tax at a rate of 30%. Reduced rates, including exemptions, may apply if there is a P3B between the foreign person's country of residence and the US.

Under the US tax law, Google is required to collect tax information, withhold income tax, and report it to the US Internal Revenue Service (IRS). In the event that a video creator domiciled outside the US receives royalty income based on a certain number of YouTube video views (sourced) in the US, YouTube is required to withhold tax on the YouTube video income earned by the video creator. Any payments that a video creator is entitled to receive from YouTube under any other agreement between the video creator and YouTube will be considered royalties.<sup>54</sup>

These withholding tax requirements may vary. The differences in tax provisions are as follows.<sup>55</sup>

- a. Non-US video creators: If the video creator submits tax information, withholding tax rates range from 0–30% on income earned from viewers in the US and depend on whether there is a tax treaty between the video creator's country of residence and the US.
- b. US video creators: Google will not withhold tax on earnings if the video creator has submitted valid tax information.

If the creator does not submit US tax information, Google is required to withhold tax based on the maximum tax rate, which is 24% of the total revenue earned from all over the world, not just revenue from US viewers.<sup>56</sup>

In the digital era, the income tax system in the US applies a withholding system on income transactions paid to overseas YouTube video creators. The imposition of income tax on overseas video creators for income sourced in the US

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<sup>54</sup> Google, "Persyaratan Layanan YouTube."

<sup>55</sup> "Persyaratan Pajak Amerika Serikat untuk Penghasilan YouTube," Google, accessed June 13, 2023, <https://support.google.com/youtube/answer/10391362?hl=id&sjid=17175676659491830305-AP#zippy=>.

<sup>56</sup> Google, "Persyaratan Layanan YouTube."

is done through income tax withholding by Google as the income provider even without the physical presence of overseas YouTube video creators.

### **3.2.4. Income Tax Withholding on Digital Economy Transactions in Malaysia**

The provisions for tax collection in Malaysia are regulated in Article 96 of the Malaysian Constitution which states that no tax or rate shall be levied by or for the purposes of the Federation except by or under the authority of federal law.<sup>57</sup> The Malaysian tax authority has created Income Tax Guide on E-Commerce which was published in 2013. It provides guidance on income tax treatment related to e-commerce transactions and is continually updated as changes occur in e-commerce transactions or recent changes in current business models.<sup>58</sup> Malaysia applies the principle of neutrality in imposing taxes, both on e-commerce transactions and conventional transactions. The guidelines state that these guidelines must be read in conjunction with the Income Tax Act 1967 (ITA 1967) as well as other relevant and applicable statutory provisions. There are no special provisions governing e-commerce transactions in ITA 1967.

In general, according to the tax provisions in Malaysia, income tax is imposed on a person's income originating from Malaysia while still taking into account P3B. Any income in connection with e-commerce transactions is deemed to originate in Malaysia if it is related to any activity in Malaysia regardless of whether such income is received in Malaysia or elsewhere.<sup>59</sup> However, until now, Malaysia has not specifically regulated the income tax withholding for creators of YouTube videos for income from using videos uploaded on YouTube.

## **3.3. PPh Regulations for Overseas YouTube Video Creators that Fit the Purpose of the Law**

### **3.3.1. Analysis of Regulations Regarding PPh Withholding on Youtube Video Income**

There are three main characteristics of the digital economy, namely (1) cross-jurisdictional scale without mass; (2) reliance on intangible assets; and (3) data, user participation and network effects.<sup>60</sup> User participation, provision of personal data, or user-generated content are believed to contribute to the value creation of digital businesses. However, this taxation base is considered not well mapped in the international taxation framework because the existence of a permanent establishment requires a physical presence, which is no longer an attribute of the digital economy.

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<sup>57</sup> The Commissioner of Law Revision, Malaysia, "Federal Constitution - Laws of Malaysia - Incorporating All Amendments up to P.U.(A) 164/2009", Article 96.

<sup>58</sup> Inland Revenue Board of Malaysia, *Guideline on Taxation of Electronic Commerce Transactions* (Selangor: LHDN Malaysia, 2019).

<sup>59</sup> "Taxation of the Digitalized Economy: Developments Summary," KPMG, accessed November 11, 2023, 15, <https://kpmg.com/us/en/articles/2023/tracking-digital-services-taxes-developments.html>.

<sup>60</sup> OECD, *Tax Challenges Arising from Digitalisation – Interim Report 2018: Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project* (Paris: OECD Publishing, 2018), 24–25.

Based on the main characteristics of the digital economy, there are broadly 3 basic principles that need to be considered in the regulation of PPh withholding for overseas YouTube video creators, as follows.

1) Digital/virtual/economic presence regulation

In the digital economy, the principle of physical presence is no longer relevant in dividing taxation rights between the domicile country and the source country.<sup>61</sup> In this case, foreign YouTube video creators have the potential to earn YouTube monetization income sourced from other countries. This depends on the location of the video viewers that have been uploaded to YouTube. Videos uploaded to YouTube by a video creator can be watched by viewers in any country (across jurisdictions). Therefore, in order for each country to obtain a fair share or right to tax revenue from cross-jurisdictional transactions of video creators through YouTube and for efficiency in tax withholding, Google should ideally withhold PPh on monetization payments of YouTube video income to YouTube video creators. To be subject to and withhold PPh, overseas YouTube video creators do not have to fulfill physical presence, but can fulfill digital/virtual/economic presence. In line with this, globally, the OECD Pillar One/Base Erosion and Profit Shifting (BEPS) has emerged which seeks to guarantee taxation rights and a fairer tax base in the context of the digital economy, which is no longer based on physical presence, but based on the principle of real-time location jurisdiction of viewers.<sup>62</sup>

2) Classification of income from intangible assets

In the digital economy, transactions generally occur regarding goods or intangible assets. In this case, AdSense income received by YouTube video creators is grouped as income from intangible assets, namely in the form of videos. Payment transactions for AdSense income from Google to YouTube video creators are in principle categorized as royalty payments for videos.

3) Strengthening the source principle

In international taxation, income arising from the digital economy makes it increasingly limited to be taxed and even untaxed in the source country. The impact of the digitalization of the economy makes the source country disadvantaged because it is not in accordance with the principle of fairness. As mentioned earlier, the principle of physical presence is no longer relevant in dividing taxation rights between the country of domicile and the source country. In this case, the source country also has the right to tax income sourced in its country even though there is no physical presence of the party paying the income or the party obtaining the income. Therefore, it is

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<sup>61</sup> Kementerian Keuangan Republik Indonesia, *Naskah Akademik Rancangan Undang-Undang Tentang Perubahan Kelima Atas Undang-Undang Nomor 6 Tahun 1983 Tentang Ketentuan Umum Dan Tata Cara Perpajakan* (Jakarta: Kementerian Keuangan Republik Indonesia, 2021), 224.

<sup>62</sup> "Action 1 - OECD BEPS," OECD, accessed December 4, 2023, <https://www.oecd.org/tax/beps/beps-actions/action1/>.

necessary to strengthen the scope of the source principle in the regulation regarding the imposition and withholding of PPh.

Currently, Google only withholds US income tax on YouTube monetization income payments sourced in the US. Google is also not domiciled and has no permanent establishment in Indonesia. To provide an element of fairness, Google should be designated as an PPh withholder even though there is no physical presence and make Indonesian PPh withholdings on payments of YouTube monetization income sourced in Indonesia obtained by video creators. In addition to providing an element of fairness between countries, the PPh withholding will provide efficiency to the Indonesian government in collecting tax revenue.

### **3.3.2. Legal Certainty of PPh for Overseas YouTube Video Creators**

Certainty principle is one of the fundamental taxation principles in tax collection. What is meant by the principle of certainty is that the tax to be paid by a person must be certain and uncompromising (not arbitrary).<sup>63</sup> In the principle of certainty (legal certainty), aspects of taxation must be determined through tax law which includes the time, method, and amount of tax payment. This principle is realized in legislation authorized by the state.

In the imposition and withholding of PPh on YouTube video creators, one of the legal objectives is legal certainty in the imposition and withholding of PPh. However, in the applicable provisions, there is still legal uncertainty so that the applicable tax provisions cannot be applied. First, Google is not an PPh withholder on income payments to video creators because it has no physical presence in Indonesia (not domiciled and also does not have a permanent establishment in Indonesia). Second, there needs to be certainty in the classification of adsense income received by YouTube video creators as income from intangible assets, namely royalty income from video copyrights. As in the digital economy, transactions generally occur on intangible goods or assets. Third, foreign YouTube video creators who earn YouTube video income sourced in Indonesia cannot be subject to and withheld from PPh because they are not physically present in Indonesia.

Thus, to provide legal certainty in the imposition and withholding of PPh on income received by foreign video creators, it is necessary to improve the PPh Law. The improvement is carried out by adding arrangements for third parties (other parties) as PPh withholders and setting the source of income rule as well as income from assets in the form of intangible goods as PPh objects obtained due to digital, virtual, or economic transactions in Indonesia. In addition, it is necessary to add a definition of foreign tax subject to the PPh Law, namely regarding digital, virtual, or economic presence in Indonesia so that there does not have to be physical presence.

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<sup>63</sup> R. Santoso Brotodihardjo, *Pengantar Ilmu Hukum Pajak* (Bandung: Refika Aditama, 2013), 27.

Likewise, to provide legal certainty, the formation of laws must pay attention to three things, namely (1) laws must not conflict with generally accepted legal principles; (2) semantic clarity; and (3) coherence between one law and other laws.<sup>64</sup> Thus, regulatory improvements to the material tax provisions, namely the PPh Law, need to be carried out: (1) by adding the regulation of other parties as PPh withholders in Article 26 of the PPh Law so that there is coherence with the formal tax provisions, namely the KUP Law, especially Article 32A of the KUP Law which regulates the appointment of other parties as tax withholders; (2) by expanding the definition of foreign tax subject in Article 2 paragraph (4), which can also be a digital, virtual, or economic presence; (3) by adding regulatory substance regarding the source principle on the object of Income Tax in Article 4, which includes income due to digital, virtual, or economic transactions in Indonesia.

### 3.3.3. Legal Justice of PPh for Overseas YouTube Video Creators

A fair regulation is one that balances the interests being protected. Everyone gets as much as possible that is his share.<sup>65</sup> According to Adam Smith in *The Four Canons Maxim's Taxation*, in accordance with the principle of justice (equality), it is stated that among taxpayers, for the same object must pay the same tax or in balance with their abilities.<sup>66</sup> The state must not discriminate against taxpayers and must be impartial, in accordance with the provisions.<sup>67</sup>

The tax system must prioritize the goal of promoting sustainable economic growth, namely by applying the principles of efficiency, fairness/equity, and resilience in the tax system in the face of economic, social and technological challenges.<sup>68</sup> Taxes have a function as a tool to provide benefits to society through the fulfillment of government goods and services and redistribution, but taxes also provide additional economic costs. Economists refer to an efficient tax system as one that meets revenue needs, but at the same time, minimizes distortionary effects.<sup>69</sup> Nevertheless, the distortionary effects of taxes can be used by the government to achieve certain objectives, namely to correct market distortions or regulate behavior.<sup>70</sup>

In the context of the digital economy, the OECD states that the expansion of the internet has been the main driver of e-commerce development.<sup>71</sup> The shift to the digital world has caused impacts on society that go far beyond the context of

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<sup>64</sup> Peter Mahmud Marzuki, *Teori Hukum* (Jakarta: Kencana Prenada Media Group, 2020), 124.

<sup>65</sup> L. J. Van Apeldoorn, *Pengantar Ilmu Hukum (Inleiding Tot de Studie van Het Nederlandse Recht)* (Jakarta: Pradnya Paramita, 2005), 10–11.

<sup>66</sup> Brotodihardjo, *Pengantar Ilmu Hukum Pajak*, 27.

<sup>67</sup> A. Anshari Ritonga, *Pengantar Ilmu Hukum Pajak & Perpajakan Indonesia* (Jakarta: Pustaka El Manar, 2017), 52.

<sup>68</sup> Miranda Stewart, Andre Moore, Peter Whiteford, and Quentin Grafton, *A Stocktake of the Tax System and Directions for Reform: Five Years after the Henry Review* (Canberra: Tax and Transfer Policy Institute, 2015), 1.

<sup>69</sup> Stewart, *Stocktake of the Tax System*, 4.

<sup>70</sup> Stewart, *Stocktake of the Tax System*, 4.

<sup>71</sup> OECD, *Online Payment Systems for E-Commerce* (Paris: OECD Publishing, 2006), 6.

digital technology. The role of the digital economy is very large as the key to economic growth today, so the formulation of tax imposition on the digital economy should ideally pay attention to the principle of efficient tax imposition.

For taxes to be efficient, they should be imposed on a broad tax base and treated in a nondiscriminatory manner.<sup>72</sup> The criterion of nondiscrimination includes inter-jurisdictional fairness. This means that it is necessary to allocate tax revenues in an international perspective to ensure that each country gets its fair share of tax revenues from cross-border transactions.

In addition, one of the objectives of tax law is to create justice in tax collection that is carried out in general and evenly and also taxes are imposed on taxpayers in proportion to their ability to pay taxes and in accordance with the benefits received from the government. This principle of justice is the basis in every process of drafting tax legislation.

From the perspective of the state, the element of cross-border fairness is also not realized between the US and the countries where YouTube video creators earn their income. For YouTube video royalty income earned by foreign video creators sourced in source countries, only the US earns tax revenue on withholding income tax sourced in the US. Meanwhile, other countries, including Indonesia, do not receive tax revenue on adsense income earned by foreign video creators sourced in Indonesia.

There should be equal treatment among source countries, where each country receives tax revenue through withholding tax on income sourced in each country. The development of the internet as a means to access YouTube in each source country is inseparable from government support. In Indonesia, the government has consistently built digital infrastructure and expanded internet coverage throughout Indonesia. The government has allocated a large budget for various information and communication technology infrastructure development programs. From 2019 to 2022, the total budget has reached IDR 75 trillion.<sup>73</sup>

Thus, improvements to the PPh Law are also needed to realize justice in the imposition and withholding of PPh on income sourced in Indonesia received by foreign video creators. The improvement of the PPh Law as described in the previous section can not only provide legal certainty but also realize the intended justice.

#### **3.3.4. Legal Benefit of PPh for Overseas YouTube Video Creators**

To fulfill various development budget needs including digital infrastructure and expanding internet coverage throughout Indonesia, the government requires funding sources that predominantly come from tax revenues. Based on the 2024

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<sup>72</sup> Kementerian Keuangan Republik Indonesia, *Naskah Akademik Rancangan Undang-Undang Tentang Perubahan Kelima Atas Undang-Undang Nomor 6 Tahun 1983 Tentang Ketentuan Umum Dan Tata Cara Perpajakan*, 53.

<sup>73</sup> KOMINFO, "Dorong Transformasi Digital, Pemerintah Tingkatkan Alokasi Pendanaan Infrastruktur Digital," *Kominfo*, January 24, 2022, <https://www.kominfo.go.id/content/detail/39596/dorong-transformasi-digital-pemerintah-tingkatkan-alokasi-pendanaan-infrastruktur-digital/0/berita>.



State Budget, tax revenue in 2024 is targeted at IDR 1,988.9 trillion or 70.97% of the 2024 state revenue target.<sup>74</sup>

The digital world has become a key driver of economic growth today. Thus, the formulation of tax imposition on the digital economy should ideally pay attention to the principle of efficient taxation where to encourage the creation of efficient taxes, taxes should be imposed on a broad tax base and nondiscriminatory treatment.<sup>75</sup> One of them is to regulate PPh withholding on foreign video creators who earn source income in Indonesia. This regulation has a public benefit value in fulfilling state revenues so that the state can allocate these revenues to finance development, one of which is to build and develop ICT infrastructure for equal access and broadband connectivity throughout Indonesia.<sup>76</sup>

### 3.3.5. Ideal PPh Withholding Regulations for Overseas Video Creators on YouTube Video Income in Indonesia

To create a taxation system that is more legally certain, fair and beneficial, it is necessary to improve the legal basis for material provisions regarding PPh withholding in the digital economy era. Improvements to the material tax legal basis for withholding PPh are carried out through amendments to the PPh Law. There are several provisions that need to be refined in order to create an ideal regulation which are described as follows.

#### 1) Appointment of another party as PPh Withholder

Even though there are already regulations regarding the appointment of other parties as tax withholding agents as intended in Article 32A of the KUP Law, it is necessary to improve the legal basis for material tax provisions, namely the PPh Law, so that the appointment of other parties (intermediaries) as PPh withholders can be implemented. Based on the current material tax provisions, withholding of PPh Article 26 is carried out by parties directly involved in the transaction, namely parties who utilize intangible (digital/virtual) goods. Thus, the government needs to improve the regulations in Article 26 of the PPh Law, namely by adding other parties appointed as an PPh withholders.

#### 2) Subject of PPh Withholding

The substance of the regulation regarding foreign video creators as foreign tax subjects receiving income, needs to be refined by expanding the definition of foreign tax subjects in Article 2 paragraph (4) of the PPh Law, that including foreign tax subjects are tax subjects whose presence can be

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<sup>74</sup> Tim Kementerian Keuangan, *Informasi APBN 2024* (Jakarta: Direktorat Jenderal Anggaran, 2024), <https://media.kemenkeu.go.id/getmedia/a760f574-2f6a-4d7a-b811-5fe4e92ee38a/Informasi-APBN-Tahun-Anggaran-2024.pdf?ext=.pdf>

<sup>75</sup> Kementerian Keuangan Republik Indonesia, *Naskah Akademik Rancangan Undang-Undang Tentang Perubahan Kelima Atas Undang-Undang Nomor 6 Tahun 1983 Tentang Ketentuan Umum Dan Tata Cara Perpajakan*, 53.

<sup>76</sup> Rizki Fajar Pradipta, "Satu Data Indonesia Sebagai Entry Point Reformasi Struktural Di Bidang Teknologi Informasi Dan Komunikasi (TIK)," *Kementerian Keuangan Direktorat Jenderal Anggaran*, November 23, 2021, <https://anggaran.kemenkeu.go.id/in/post/satu-data-indonesia-sebagai-entry-point-reformasi-struktural-di-bidang-teknologi-informasi-dan-komunikasi-tik>.

digital, virtual, or economic in Indonesia so that there does not have to be a physical presence in Indonesia. YouTube video monetization income sourced in Indonesia received by foreign video creators will be subject to PPh withholding in accordance with the provisions of Article 26 of the PPh Law based on the source principle.

### 3) Object of PPh Withholding for YouTube Video Creators

The substance of the regulation regarding income sourced in Indonesia obtained by foreign tax subjects through digital/virtual presence of intangible goods (digital/virtual goods) owned, needs to be strengthened by adding the regulation of source of income rule on the object of PPh and also income obtained due to digital/virtual activities or transactions in Indonesia in Article 4 of the PPh Law. The foreign tax subject can obtain income from a third party (intermediary) caused by the utilization of intangible goods (digital/virtual goods) by utilizers in Indonesia.

Next, after the improvement of the PPh Law as a material tax law, the government can issue a regulation regarding the appointment of another party as an PPh withholder as well as withholding, depositing, and/or reporting the PPh of content creators on income from the utilization of content copyright. This is in accordance with Article 32A and Article 44E paragraph (2) letter f of the KUP Law as a formal tax law.

To avoid double taxation, in the event that there are limitations stipulated in the P3B, the PPh Law shall be applied by taking into account the limitations in the P3B.<sup>77</sup> As a fact, most of the treaties in the world allow source countries to tax royalty income with certain percentage restrictions.<sup>78</sup> For instance, Indonesia-US P3B stipulate that the source country has the right to tax royalty payments sourced from its country at a tax rate of no more than 10%. Thus, the amendment to the PPh Law does not require a revision to the P3B because the allocation of taxation rights on royalty income has been regulated in the P3B. This issue is similar with US which has imposed withholding tax on royalty payments for YouTube video originating from its country without revision to the P3B.

## 4. CONCLUSION

Income from monetization of YouTube videos based on a number of viewers in Indonesia (sourced in Indonesia) received by foreign video creators is an object of PPh in Indonesia. The income is royalty income for the utilization of YouTube video copyrights.

However, overseas video creators do not pay Indonesian PPh on Youtube income sourced in Indonesia. This is because there is no physical presence of the video creator in Indonesia as a tax subject, and no identified income as a tax object on which the Indonesian tax authorities impose PPh.

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<sup>77</sup> Butir E angka 3 huruf a *Surat Edaran Direktur Jenderal Pajak Nomor SE-52/PJ/2021 tentang Petunjuk Umum Interpretasi dan Penerapan Ketentuan Dalam Persetujuan Penghindaran Pajak Berganda*.

<sup>78</sup> Darussalam and Septriadi, *Perjanjian Penghindaran Pajak Berganda: Panduan, Interpretasi, dan Aplikasi*, 250.

YouTube video monetization income is also not subject to Indonesian PPh withholding by the income provider (Google). PPh withholding by Google is not made due to the absence of Google's physical presence in Indonesia. Google as the income provider does not have a physical presence in Indonesia so that it cannot be designated as an PPh withholder in Indonesia for the payment of income sourced in Indonesia to YouTube video creators.

Two YouTube channel accounts, namely BabyBus - Children's Stories & Songs (Babybus) and Like Nastya IDN, are facts of foreign video creators who earn monetization income from YouTube videos sourced in Indonesia but do not pay PPh in Indonesia and are also not subject to withholding PPh Article 26 by Google. This shows that cross-border justice is not realized for Indonesia as a source country for foreign YouTube video creators' income.

In comparison, YouTube video monetization income earned by overseas video creators sourced in the US is subject to US income tax withholding by Google. US income tax withholding on YouTube video royalty income is done by applying P3B.

As solutions, the Government needs to amend the PPh Law to improve the material tax legal basis for PPh withholding, in particular: 1) amend Article 26 of the PPh Law by adding other parties as PPh withholders so that YouTube and other online media can be designated as tax withholders even though they are not domiciled and have a permanent business establishment in Indonesia; 2) amend Article 2 paragraph (4) of the PPh Law by expanding the definition of foreign tax subject, which is not only in the form of physical presence but can also be digital/virtual/economic presence; 3) amend Article 4 of the PPh Law by adding the substance of the source of income rule on the object of PPh, which includes income earned due to digital/virtual/economic activities or transactions in Indonesia. The next step is for the government to made implementing regulations regarding the PPh withholding by other parties on income from the utilization of content copyrights received by YouTube video creators.

The allocation of taxation rights for royalty income from the source country (Indonesia) has been regulated in the P3B Indonesia and other countries. Thus, the amendment to the PPh Law does not result in revisions of the P3B between Indonesia and other countries.

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