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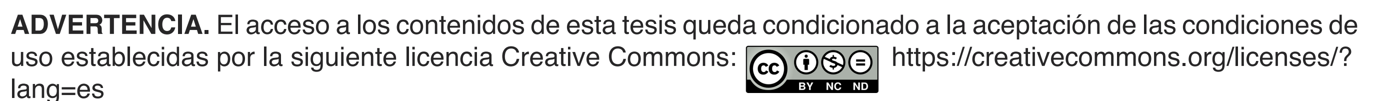
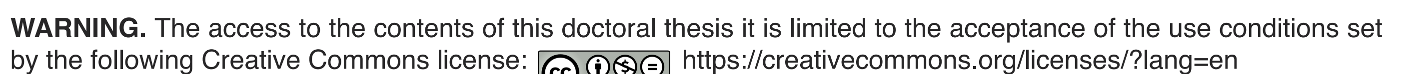
ADVERTENCIA. El acceso a los contenidos de esta tesis queda condicionado a la aceptación de las condiciones de uso establecidas por la siguiente licencia Creative Commons:  https://creativecommons.org/licenses/?lang=es

WARNING. The access to the contents of this doctoral thesis it is limited to the acceptance of the use conditions set by the following Creative Commons license:  https://creativecommons.org/licenses/?lang=en

Approaches and Analyses of Secrecy in Banking and Cryptocurrency from an International Tax Justice Principle

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ABBREVIATIONS

4 Rs	: Revenue, Redistribution, Repricing, Representation
ADR	: Alternative Dispute Resolution
AEOI	: Automatic Exchange of Financial Account Information
AEPD	: Agencia Española de Protección de Datos
AI	: Artificial Intelligence
AML	: Anti Money Laundering
APEC	: Asian Pacific Economic Cooperation
Art.	: Article
ASEAN	: Association of Southeast Asia Nations
ATM	: Automated Teller Machine
AU	: African Union
BBC	: British Broadcasting Corporation
BEPS	: Base Erosion and Profit Shifting
BS	: Bank Secrecy
BSA	: Bank Secrecy Act
CARF	: Crypto Asset Reporting Framework
CBDC	: Central Bank Digital Currency
CD	: Compact Disc
CFT	: Countering Financing of Terrorism
CMAA	: Convention on Mutual Administrative Assistance
COVID-19	: Corona Virus Disease 2019
CRS	: Common Reporting Standard
DAC	: Development Assistance Committee
DAC	: Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC
DGT	: Directorat General of Tax
DJB	: De Javasche Bankwet
DPA	: Data Protection Authority
EBA	: European Banking Authority

EC : European Commission

ECCHR : European Center for Constitutional and Human Rights

EEA : European Economic Area

EIOPA : European Insurance and Occupational Pensions Authority

ESMA : European Securities and Markets Authority

EU : European Union

FATCA : Foreign Account Tax Compliance Act

FATF : Financial Action Task Force

FATF ML : Financial Action Task Force on Money Laundering

FDAP : Fixed-Determinable-Annual-Periodic

FFI : Foreign Financial Institution

FHTP : Forum on Harmful Tax Practices

FOMO : Fear of Missing Out

FSA : Financial Services Authority (OJK = Otoritas Jasa Keuangan)

FSI ; Financial Secrecy Index

FSI : Financial Services Institution

FTA : Fair Trade Agreement

FTA : Federal Tax Administration

G-20 : Group of twenty

GCR : Global Competitiveness Report

GDP : Gross Domestic Product

GDPR : The General Data Protection Regulation

GPT : General Provisions of Taxation

HIRE Act 2010: Hiring Incentives to Restore Employments

ICJ : International Court Justice

ICT : Information and Communication Technology

IDR : Indonesia Dollar Rupiah

IGA : Inter Governmental Agreement

IMF : International Monetary Fund

IRC : Internal Revenue Code

IRS	: Internal Revenue Service
ISM	: Information Security Management System
JRC	: Joint Research Centre
KPK	: Komisi Pemberantasan Korupsi (Corruption Eradication Commission)
AML	: Anti Money Laundering
KPP	: Kantor Pelayanan Pajak (tax office service)
LGT	: Ley 58/2003, de 17 de diciembre, General Tributaria (LGT/ Spanish General Tax Law number 58/2003). Spanish General Tax Law number 58/2003
LJK	: Lembaga Jasa Keuangan (FSI/ Financial Services Institution)
LOPD	: Ley Orgánica 3/2018, de 5 de diciembre, de Protección de Datos Personales y garantía de los derechos digitales and
MAP	: Mutual Agreement Procedure
MCAA	: Multilateral Competent Authority Agreement
MiCA	: Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (Text with EEA relevance)
MOU	: Memorandum of Understanding
MTC	: Model Tax Convention
NFFEs	: Non-Financial Foreign Entities
NPWP	: Nomor Pokok Wajib Pajak (Tax Identification Number)
OECD	: Organization of Economic and Cooperation Development
OHCHR	: Office of the United Nations High Commissioner for Human Rights
P2P	: peer-to-peer
P3B	: Perjanjian Penghindaran Pajak Berganda (agreement of double taxation avoidance)
PAD	: Payment Account Directive
PC	: Personal Computer
PDP	: Personal Data Protection

PDPA : Personal Data Protection Act

PDPC : Personal Data Protection Commission

PDPR : Personal Data Protection Regulations

PDRD : Pajak Daerah dan Retribusi Daerah (Local Taxes and Local Retribution)

PERC's : Political Economic Risk Consultancy's

PT : Perseroan Terbatas (Limited Liability Company/LLC)

QI : Qualified Intermediary

RFPA : Right to Financial Privacy Act

SARs : Suspicious Activity Reports

SEPBLAC : Servicio Ejecutivo de la Comisión de Prevención del Blanqueo de Capitales e Infracciones Monetarias (Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences)

SPPT : Surat Pemberitahuan Pajak Tahunan (Tax Payable Statement)

SPT : Surat Pemberitahuan Tahunan (Annual Tax Return)

SSP : Surat Setoran Pajak (Tax payment letter)

TIEA : Tax Information Exchange Agreement

TIN : taxpayer identification number

TJN : Tax Justice Network

TSO : Tax Service Office

UBS : Union Bank of Switzerland

UDHR : Universal Declaration of Human Rights

UK : United Kingdom

UN : United Nations

US : United States

USA : United States of America

USB : Universal Serial Bus

UUD 1945 : Undang-undang Dasar Tahun 1945 (Indonesia Constitution)

VASPs : Virtual Asset Service Providers

VAT	: Value Added Tax
WIPO	: World Intellectual Property Organization
WWW	: World Wide Web

INTRODUCTION

During the Middle Ages, global trade and cross-border exchanges began to thrive, presenting merchants engaged in multiple countries with challenges related to divergence and wealth management across various locations. Subsequently, in colonial times, individuals and companies participating in colonial trade and expansion opted to store their wealth in European banks. This practice aimed to secure assets in a safe environment and laid the groundwork for the emergence of the international banking system. The evolution continued during the periods of World War I[1] and II[2], during which many nations experienced economic downturns due to war-related losses. In response, these countries sought to enhance their financial situations through investments and financial aid. This transformative process brought about significant shifts in the international financial landscape, paving the way for a more sophisticated international banking system.

Following World War II, there was a surge in economic globalization that prompted both companies and individuals to explore storing their wealth abroad, driven by the objectives of risk reduction and broader investment utilization. Additionally, this trend was fuelled by the desire to shield funds from high taxes in their home countries, with certain jurisdictions offering favourable tax conditions and enhanced privacy. This appeal attracted banking customers seeking optimal financial strategies. While these offshore facilities presented opportunities for asset owners to store their capital globally, there were associated risks, such as the potential for crimes like money laundering, terrorism financing, and tax evasion. In response, many countries have intensified regulatory measures and engaged in international cooperation to combat such illicit practices.

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[1] World War I occurred from 1914 to 1918, involving the Allied Group (comprising England, Italy, France, and Russia) and the Central Group (consisting of Germany, Austria-Hungary, and Turkey). During this period, Indonesia was under Dutch colonial rule, which lasted for over three centuries. Although the Republic of Indonesia had not yet been established, the seeds of independence and the concept of women's emancipation had started to emerge amidst the ongoing struggle against colonialism.

[2] World War II took place from 1939 to 1945 and was primarily conducted by Germany, Italy, and Japan. In the last three and a half years of World War II, Japan occupied Indonesia after the Dutch. Japan's defeat in World War II significantly contributed to Indonesia's proclamation of independence on August 17, 1945. Internationally, this period marked the establishment of the United Nations to replace the position of the League of Nations.

These processes, initially confined to neighbouring countries due to their geographical proximity, have now expanded globally, driven by technological advancements and globalization. This expansion not only influences human lives but also reshapes the existing global order. Even countries that resist these changes risk isolation from international social interactions, impacting the well-being and economy of their citizens. The technological advancements in the internet sphere have led to the emergence of cyber commerce, commonly known as e-commerce. Money transactions across borders have become increasingly effortless, facilitating world-class criminal activities and giving rise to cryptocurrency. Cryptocurrency is an intriguing topic, especially when considering it within the context of analysing tax justice. Cryptocurrencies emerge as a product of this technological evolution. Similar to traditional currencies, overcoming challenges involving multiple jurisdictions necessitates collaboration and collective thinking among countries. While past experiences offer valuable lessons. embracing the latest ideas is crucial due to the evolving nature of technology and information management practices. Effective information management can yield benefits, while violations of privacy rights can be detrimental. Therefore, agreements and policies must be formulated among relevant jurisdictions to comprehensively address these challenges.

This virtual currency possesses distinct characteristics, differing from fiat currency. While both can be utilized and recognized as a medium of exchange and used for investment value, each currency carries distinct legal consequences. Specifically, when engaging in transactions with different fiat currencies, the process differs from that involving cryptocurrency. This is grounded in the variations in their respective characteristics. Thereby exerting a substantial influence on the global economic and legal landscape. Particularly, it challenges established principles predating the advent of virtual currency, warranting an in-depth analysis of secrecy and tax justice principles.

Furthermore, the practice of storing both fiat and cryptocurrency abroad involves implications for four key parties. The first party involves the customer or cryptocurrency user, who concurrently serves as a taxpayer. The second party encompasses the bank acting as a depository or platform. The third party represents the home jurisdiction of the first party, while the fourth party pertains to the jurisdiction of the second party.

The interactions among these four parties, driven by the activity of safeguarding funds overseas, wield significant influence on longstanding principles, necessitating profound consideration for resolution. The objective of this thesis is to scrutinize the principle of secrecy in the era of cross-border information exchange for tax purposes, prompting reflections on the rationale of international tax justice. The central theme involves elucidating global tax justice in the context of information exchange for tax purposes. Initially, concerns arose regarding fairness when the principle of secrecy was compromised to facilitate information exchange for tax purposes. However, evolving perspectives have shifted the focus to fairness in taxation for the broader population. The inevitability of cross-border information exchange policies among countries places an obligation on each nation to implement them. This overarching policy, operating at an international scale, significantly impacts the rights of taxpayers. Privacy rights initially safeguarded for taxpayers are gradually yielding to transparency in the interest of the public. As tax justice represents one of the public interests that must be achieved, its attainment encounters several challenges. These challenges arise from both conflicts between nations, stemming from the differing interests of each country, and the disparities in laws among the respective countries. This is despite the current era where the interconnection between one nation and another is unavoidable.

The hypothesis is necessary for building a comprehensive understanding of the principles of tax justice, providing a framework for exploring how equitable taxation can be achieved. The hypothesis is to define the principle of tax justice by examining the differences in international regulations. The intention is to identify the foundation of international tax justice based on the principle of a fair tax burden. The principle of tax justice is present in international tax law, where the aim of the law is justice, and taxes cannot be implemented without being based on justice. Meanwhile, the context of international legal justice is between countries. Activities carried out by a country, or a citizen must involve other individuals (foreigners) or countries, most definitely the activity of storing assets abroad. As is known, transactions regarding the storage of assets certainly involve information data that cannot be disclosed openly or carelessly. This kind of situation is based on secrecy. However, this secrecy is fundamentally detrimental in terms of tax collection, leading to tax injustice because taxpayers have many opportunities not to pay their taxes. The way out to uphold the principle of tax justice is to fight against this secrecy. In the end, resistance to secrecy internationally

is a form of international tax justice because the scope of this transaction is in an international environment. Resistance to secrecy is a manifestation of international tax justice, so the disclosure of information data by the tax authority restores the taxpayer's obligation to pay taxes.

The interest lies in presenting to the readers with new ideas and it is currently exploring novel concepts. The particular focus is on examining how Indonesia shares the tax burden with Singapore, with the goal of delving into the principles of tax justice on an international scale. The interest lies in exploring how international tax justice serves as the foundation for countries, such as Indonesia in its relationship with Singapore to contribute to a more equitable distribution of the tax burden. It aims to elucidate the exchange of information from an international perspective, tracing the origins and significance of global international tax justice in the contemporary world. To delve deeper into the formulation of global tax justice, a comprehensive study of confidentiality principles, tax justice, and the tax information exchange system is crucial.

The structure of this study follows a logical sequence of questions. Firstly, it explores the fundamental concepts related to the thesis's scope, examining the principle of secrecy in banking and the nature of secrecy in cryptocurrency. Secondly, the analysis efforts necessitate an understanding of the principles of justice, narrowing down to the concept of tax justice. However, it is considered more broadly, namely the principles of international tax justice due to its mandatory application. This is because of the relationship between one country and another. So, international cooperation is something that cannot be avoided. Thirdly, it explains the exchange of financial information for tax purposes conducted by international organizations and organizing countries. Based on the interest to fulfill state revenue from the tax sector, any country that feels disrupted in principle will seek a way out. Thus, this form of exchange, before being initiated by international organizations on a global scale, is initially driven by interests within regional or bilateral environments.

Chapter 1 aims to conduct a comprehensive analysis of secrecy in general, specifically focusing on bank secrecy and secrecy on the internet. These include the longstanding practice of bank secrecy and its modern iteration, internet-based secrecy. Bank secrecy is examined in terms of how different countries implement its

principles, which can vary depending on national policies. The countries under scrutiny for their bank secrecy principles are Indonesia, Singapore, Spain, Switzerland, and the USA. Additionally, the chapter delves into the contemporary concept of secrecy within the realm of cryptocurrency. This analyse entails an exploration of secrecy principles within the cryptocurrency system. The overarching goal is to analyze both traditional bank secrecy and cryptocurrency secrecy as they serve as the foundation for global financial information exchange for tax purposes. At the core of this analysis lies the fundamental principle of safeguarding the privacy rights of both bank customers and cryptocurrency users.

Chapter 2 delves into the concept of domestic tax fairness principles within specific countries like Indonesia, Singapore, and Spain, and subsequently extends this analysis to an international context. International tax justice, initially rooted in addressing double taxation, has evolved into a framework for global tax cooperation. The concept of tax justice law principle originates from general international law principles, which stem from domestic legal frameworks of sovereign states, all striving to attain tax justice. This chapter presents significant challenges as tax justice principles are more readily observable at the national level compared to the complex dynamics of international taxation. However, the solution lies in tax cooperation, information exchange, and tax transparency at an international level. Conflicts surrounding the principle of secrecy often impede the pursuit of justice, undermining the core objectives of law and sensitive tax-related issues. The research in this thesis underscores the need for a new global tax justice formula adaptable to evolving interpretations of the secrecy principle. The discourse on tax justice begins with an exploration of the concept of legal justice, serving as the foundational basis for justice itself. On the other hand, the state strives to achieve good governance. One of the objectives of good governance is the realization of fair taxation. Conversely, good governance can be achieved through tax financing by the state. Moreover, This chapter examines the principle of tax justice across various scopes, incorporating perspectives from global experts applied by different nations, aligning with the objectives of international organizations.

Chapter 3, in response to the global evolution of transactions becoming increasingly advanced, fast, and sophisticated, there is an impact on the principle of secrecy. On the flip side, the principle of tax fairness faces contradictions as many

taxpayers can discreetly store their assets without detection or access by the authorized government. Consequently, international organizations and interested countries seek solutions to safeguard their unrecovered revenues. Various policies are proposed, turning them into transnational işsues. Analysed policies include those from OECD, UN, EU, Rubik Agreement initiated by Switzerland and FATCA initiated by USA. This chapter scrutinizes the conflicts against the principle of bank secrecy and endeavours to attain tax justice. Cryptocurrencies, circulating as a source of concern, have become a prominent international topic due to their potential detriments, such as tax evasion and money laundering, necessitating government intervention. Chapter 3 analyses how governments should address the existence of cryptocurrencies, focusing on their impact on the principle of tax fairness. Furthermore, securing justice by states in the international arena has implications for the justice experienced by individual citizens. The efficacy of international justice principles is also evident in their legal enforcement, primarily through the role of courts. Therefore, the analyse of international tax courts is inevitable.

The thesis methodology is employed to address research questions or hypotheses. The methodology, utilizing the 5W + 1H method (who, why, when, where, who, how) is complemented by an overall research approach, whether qualitative, quantitative, or a combination of both (mixed methods). Examples of these questions are: What is the essence of the principle of bank secrecy?; Why can the circulation of cryptocurrency be detrimental to state income in the tax sector?; Where can the secrecy characteristics of cryptocurrencies be found?; Who is the party that suffers when tax justice is not achieved?; When can a violation of a treaty be brought before an international court? How do international efforts achieve global tax justice?

Furthermore, the research design is legal science methodology based on systematization and interpretation of legal text through cases, doctrine and conventions. An analysis is conducted on the principle of secrecy as applied in banking, as well as the characteristics of secrecy in online environments, exchange of information, and the principle of tax justice. This analysis utilizes comparison and norm interpretation across various countries and cases as interpretive tools. Case analysis was also carried out on the decision. Doctrinal analysis involves examining doctrines related to justice, tax justice, and international tax justice as presented by experts in their respective eras. Comparative legal analysis employs the comparative method in

several analyses, such as comparing the application of bank secrecy principles between Indonesia, Singapore, and Spain.

The study also analyzes and synthesizes relevant laws, including banking laws and rights protection laws in various countries. It examines case law, including tax collection cases domestically, and analyses international conventions such as those addressing international double taxation avoidance and tax information exchange. The conclusion provides a summary that addresses the initial questions and hypotheses posed. As for principles, one area of focus is the principle of bank secrecy. The study collects legal literature related to the thesis's title and theme to identify gaps, debates, or areas requiring further exploration. It covers case laws, principles, legal theories, concepts, frameworks, statutes, and international conventions. Regarding legal theory, the focus is on the theory of justice, while concerning concepts, attention is given to the concept of international tax justice. This study examines the framework for tax information exchange.

CHAPTER 1: FEATURES OF THE SECRECY PRINCIPLE

SUMMARY: 1. Introduction; 2. Fundamental Principles of Confidentiality in Banking Operations: 2.1. The General Understanding of Bank: 2.1.1. The Function of the Bank; 2.1.2. The Money Venue; 2.2 Banking Law Principle: 2.2.1. The Fiduciary Principle; 2.2.2. The Prudential Principle; 2.2.3. The Confidentiality Principle; 2.2.4. The Bank Secrecy Principle; 3. Bank Secrecy in Compared Law: 3.1 Indonesia: 3.1.1 Definition of Privacy in Constitutional Law; 3.1.2. Legal Description of the Right to Privacy and Bank Secrecy; 3.1.3. Factors Contributing to the Non-Absoluteness of Bank Secrecy; 3.1.4. Correlation with International Requirements; 3.2.- Singapore: 3.2.1. Constitutional Definition of Privacy; 3.2.2. Legal Aspects of Privacy and Bank Secrecy; 3.2.3. Challenges to Absolute Bank Secrecy; 3.2.4. Harmonization with International Standards; 3.3.- Spain: 3.3.1. Privacy in Constitutional Law; 3.3.2. Legal Framework for Privacy and Bank Secrecy; 3.3.3. Limitations on Bank Secrecy; 3.3.4. Adherence to International Norms; 3.4.- United States of America: 3.4.1 Constitutional Perspective on Privacy; 3.4.2. Legal Description of Privacy Rights and Bank Secrecy; 3.4.3. Balancing Privacy and Investigative Interests; 3.4.4. Conformity with Global Standards 3.5. Switzerland: 3.5.1 Privacy in Swiss Constitutional Law; 3.5.2. Legal Provisions Regarding Privacy and Bank Secrecy; 3.5.3. Factors Impacting Absolute Bank Secrecy; 3.5.4. Correlation with International Expectations; 4.- Theoretical frame and definition of bank secrecy: 4.1.- Nature of bank secrecy; 4.2.- Key sources of norms about bank secrecy: 4.2.1.- Custom; 4.2.2.- Jurisprudence; 4.2.3.- Bank Secrecy Regulated by Law: 4.2.3.1 The Types of Data Intended for Access; 4.2.3.2 The Parties Legally Authorized to Access the Data (The Extending of Bank Secrecy Principle); 4.2.3.3 The Purposes for Accessing the Data (The Restriction of Bank Secrecy Principle by Law); 4.2.3.4 The Protection of Bank Secrecy Principle; 4.3.- Elements of Bank Secrecy: 4.3.1.- Parties Related through Bank Secrecy; 4.3.2.- Scope of Bank Secrecy; 4.3.3.- Bank Secrecy as a Clause in a Deposit Account Agreement; 4.3.4.- Legal Limits of Bank Secrecy; 4.4 Secrecy Characteristic on The Net: 4.4.1 Cryptocurrency Feature: 4.4.1.1 Understanding the Mechanics of Cryptocurrency Systems; 4.4.1.2 The Differences Between Cryptocurrencies and Fiat Currencies; 4.4.2 Secrecy Characteristic in Cryptocurrency: 4.4.2.1 Understanding the Existence of Secrecy Characteristics at Different Stages108 4.4.2.2 Differences Between the Secrecy Characteristic of Cryptocurrency and the Principle of Bank Secrecy; 4.4.3 The Policy of Cryptocurrency: 4.4.3.1 The Participation of Government in the Cryptocurrency System; 4.4.3.2 The Regulation of Cryptocurrency; 4.4.3.3 Taxes on Cryptocurrency: 5.- Consequences of Secrecy on International Taxation: 5.1 Differences Among Countries on the Balance of Secrecy Principles and Tax Justice; 5.2 Methods that Each Country Follows in Addressing Secrecy Internationally.

1.Introduction

This chapter presents a comprehensive analysis of the fundamental principles of secrecy in banking and cryptocurrency operations. Initially, it focuses on banking secrecy, discussing its application from a comparative legal perspective, and providing a theoretical framework and definition of the term. The chapter then introduces basic banking principles, offering a general understanding of banks, their functions, and their role as depositories. Banks are crucial financial institutions in the economy, especially in managing public funds and redistributing them as credit.

The legal principles governing banking operations include fiduciary principles, prudential principles, and secrecy principles. The fiduciary principle emphasizes the importance of trust between banks and customers in managing entrusted funds. The prudential principle requires banks to operate cautiously to mitigate risks that could harm customers and financial stability. The principle of secrecy, the main focus of this chapter, mandates that information regarding customers and banking transactions must remain confidential and not be disclosed without the customer's consent or a competent authority's directive.

Chapter 1 explores bank secrecy in a comparative legal context across various countries, including Indonesia, Singapore, Spain, the United States, and Switzerland. The discussion aims to provide a broader understanding of how bank secrecy is implemented and regulated in different jurisdictions and how these countries address related challenges and issues. For instance, in Indonesia, the discussion includes the meaning of privacy in constitutional law, the legal descriptions of the right to privacy and bank secrecy, factors causing bank secrecy to be non-absolute, and its correlation with international requirements.

In Singapore, the constitutional definition of privacy and the legal aspects of banking privacy and secrecy are discussed in depth. The chapter also examines challenges to the principle of absolute bank secrecy and efforts to harmonize with international standards. Spain's legal framework on banking privacy and secrecy is scrutinized, highlighting restrictions on banking secrecy and compliance with international norms. In the United States, the discussion explores how to balance privacy with investigative interests and compliance with global standards from a constitutional perspective. Switzerland, known for its strong tradition of bank secrecy,

addresses privacy in Swiss constitutional law, legal provisions regarding privacy and bank secrecy, and factors influencing absolute bank secrecy and its alignment with international expectations.

The chapter also outlines the theoretical framework and definition of bank secrecy, covering the nature and main sources of bank secrecy norms, which include customs, jurisprudence, and laws regulating bank secrets. This discussion aims to provide a robust theoretical foundation for the concept and implementation of bank secrecy. Elements of bank secrecy, such as the parties involved, the scope of bank secrecy, and bank secrecy as a clause in deposit account agreements, are explained in detail. The legal limits of bank secrecy are also outlined to clarify the extent to which such secrecy can be maintained and the conditions under which it can be disclosed.

This chapter explores the characteristics of secrecy in the digital era, especially regarding cryptocurrencies. It examines the features of cryptocurrencies, their differences from fiat currencies. It explores cryptocurrency policies, including government involvement, regulations, and taxation. The focus is on assigning international obligations to cryptocurrency users while upholding secrecy and tax fairness.

The conclusion of this chapter emphasizes the consequences of bank secrecy for international taxation. The discussion centres on the differing principles of balancing secrecy and tax fairness across countries and the methods each country employs in dealing with secrecy on an international level. Understanding these differences is crucial for identifying challenges and opportunities in the context of transparency and the exchange of tax information. Thus, this chapter provides a strong foundation for further discussion regarding bank secrecy and cryptocurrency, their implications for comparative law, and their impact on international tax policy.

2. Fundamental Principles of Confidentiality in Banking Operations

2.1 The General Understanding of Bank

Bank is an institution that handles money and provides services related to financial transactions, serving as financial intermediaries, accepting deposits, and offering loans. These institutions benefit from interest payments charged to borrowers and generating revenue from the lending process. (Selgin, 2024) Furthermore, bank is a financial establishment that facilitates the deposit, loan, exchange, or issuance of

money, as well as the transmission of funds. The establishment operates under securities law, comprising banking institutions that accept deposits and allow withdrawals within a legal framework. (Garner, 2004) Additionally, bank plays a crucial role in providing funds to individuals and business entities in need, channelling public savings into productive loans and investments. The essence of banking lies in the management of deposits and loans. In a broader sense, banking refers to any financial institution that engages in receiving, collecting, transferring, paying, exchanging, lending, investing, or securing money for customers. (Muskan, 2021)

Central and reserve financial institutions serve as monetary authorities responsible for managing the currency, money supply, and interest rates of a nation. The expansion of trade has led to an increase in the number of financial institutions and broadened the activities. Merchant bankers also engage in activities ranging from underwriting bonds to foreign loans, although control by executive and legislative bodies persists. (Muskan, 2021) Furthermore, financial institutions have evolved, and the interpretations of bank have developed accordingly. According to Hart, the banker is defined as follows.

> *"An individual or company conducting the business of receiving money, and collecting drafts for customers, obligated to honour cheques drawn upon bank from time to time by the customer to the extent of the amounts available on the current accounts."* (Hart, 1932, 418-419)

Referring to Cranston, bank definition is distinguished into two points of perspective namely common law and statutory interpretations. From the common law perspective, Cranston stated the following as the activities that are carried out by the banker.

> *"Three characteristics are usually found in the banker presently including (i) Accepting money from and collecting cheques for customers to place the funds in the credit, (ii) Honouring cheques or orders drawn on the bank by the customers when presented for payment and debit accordingly. The third characteristic is keeping accounts or something of that nature in the books where the credits and debits are entered." (*Cranston, 2007, 3)

Furthermore, the second perception is statutory definitions where bank is defined by Cranston in the following statement.

> *"Bank is any entity recognized by a governmental authority and where there are no specified criteria for the recognition, the approach grants excessive discretion to the state." (*Cranston, 2007, 3)

Gobat is a Senior Economist in the IMF's Monetary and Capital Markets Department, emphasizing that the primary responsibility of bank is to accept deposits from those with money, aggregate the funds, and lend the pool to borrowers. Bank is also an intermediary between depositors who lend money to financial institutions and borrowers who receive loans. The amount bank pays for deposits and the income received on the loans are called interest. (Gobat, 2012) Bank is also a financial institution engaged in credit and money management, providing a wide range of financial services. It accepts public deposits and allocates capital to productive sectors while facilitating money transfers between locations. Bank often takes deposits from companies and individuals which are further used for lending loans to businesses and consumers, thereby known as a money dealer. The financial institutions also operate under the regulations and oversight of the respective national laws and central banks, typically requiring a charter for operation and often structured as businesses. (Ar Rashid, 2022).

Bank functions within the service sector, specifically in financial management services. It serves as a repository for surplus funds and a source of credit for customers in need, exerting significant influence on a nation's economy. Governments also rely on the role of bank to maintain economic stability within the nation. Consequently, every nation has regulations governing banking institutions particularly about the function as custodians for monetary assets.

2.1.1 The Function of the Bank

Bank serve as a place to store money, performing several other functions that can be divided into two main types namely general and specific. General bank functions include the collection of public funds and the redistribution back to the public for various purposes, a role commonly referred to as financial intermediary. However, the specific bank functions are divided into three areas namely agent of development, service, and trust. (Gischa, 2021)

A) Agent of Development, bank plays an essential role in stimulating economic activities by motivating investment, distribution, consumption, and the use of money as a medium. (Gischa, 2021) All banking activities have a direct impact on the economic development of the community, as both the real and monetary sectors influence each other significantly.

B) Agent of Service, bank provides various financial services including fund storage and lending among others. As collectors of public funds intended for the community, the services provided should be related to the economic activities. (Gischa, 2021)

C) Agent of Trust**,** bank is regarded as an institution depending on trust as the key and main basis of banking activities. This trust is fundamental to safeguarding the interests of customers across all banking operations. (Gischa, 2021) Individuals who deposit funds with bank show confidence in the financial institutions. The trust is aimed at the community as customers can access the money seamlessly without concerns about bank insolvency or breaches of confidentiality.

Bank further upholds trust by conducting a thorough assessment of customers' loan repayment capabilities. This allowed the management to engage stakeholders in executing the core business functions. Employees and officials entrusted with positions of trust such as lending and asset management handle sensitive information about the financial matters of the customers. Bank also receives customer information related to payment transactions. Therefore, it can only operate successfully when the customer is confident that financial and private matters are kept confidential.

Bank secrecy is a crucial component of privacy protection, safeguarding the interests of individuals, businesses, and other corporations. (Federation of Finish Financial Companies, 2009, 1) However, several bank functions continue to evolve and are influenced by technological advancements as well as changing human needs. Customers increasingly adopt digital technologies in other sectors such as reserving flights and vacations, purchasing books and music, as well as shopping for groceries and other items online. With the availability of digital banking services, customer acceptance is swift which emphasizes the importance of financial institutions adapting to digital trends to remain relevant. (Olanrewaju, 2014) In the present digital era, banking services transcend local boundaries catering to global needs. Bank also provides physical comfort for customers such as dispensing cash and coins while prioritizing trustworthiness in safeguarding money and data. (Jacques, et.al., 2017) Money needs to be secured due to the significance beyond being a medium of exchange, especially in the evolution. Therefore, analyzing the definition of money is essential in correlation with the principle of bank secrecy.

2.1.2 The Money Avenue

Money serves several functions including the original and derivative roles. (Tim CNN Indonesia, 2021) The original function of money includes the status as a legal medium of exchange, a unit of account, and a store of value. (Tim CNN Indonesia, 2021) However, the derivative functions comprise money's role in transferring and accumulating wealth, driving economic activity, serving as a legal tender, and paying debts. (Tim CNN Indonesia, 2021)

The original function of money can further be explained in various roles. First, money serves as a unit of account (Brunner and Meltzer, 1971, 1) which is a tool used to measure value in economic transactions. It provides a common metric for assessing the value of goods and services exchanged within an economy. Second, money functions as a medium of exchange and is a widely acceptable method of payment. In the current era of advanced technology, the payment method extends beyond cash transactions to include credit cards, e-money, and digital transfers facilitated by bank accounts. Lastly, money is a store of value, allowing individuals to retain the value of the earnings by storing the funds in financial institutions. This preserves the value of money over time and ensures the purchasing power remains intact.

A function of money closely related to the principle of bank secrecy is the role as a store of value. (European Central Bank, 2022) Money is considered a store of value because it can be used for capital allocation and saving purposes. The capacity to retain value facilitates the transfer of purchasing power across time. An asset, currency, or commodity that can be saved and retrieved later without losing worth is considered a store of value. When an item's value remains constant over time or appreciates without depreciating, then the object qualifies as a store of value. (CFI Team, 2022)

An item or object considered a store of value is a resource that can be retrieved and used in the future while maintaining the purchasing power. Money is an asset that can be invested, deposited in bank, or kept securely at home for future purchases. Given the role in facilitating future transactions, the store of value function is crucial in the domain of money. Both individuals and governments placed trust in this function inherent in money. In the contemporary economy, money retains the function of enabling individuals to purchase goods and services with the same funds saved in the

past. Money holds value because the essence as a store of value underpins any currency's utility as a medium of exchange. For a currency to serve as a universally accepted method of transaction, it should be acknowledged by organizations, individuals, and governments. Additionally, the currency should also provide a reliable store of value to uphold economic stability. Examples of using money as a store of value include keeping cash in bank (a popular choice), investing in property, storing cash in a safe, and investing in companies. Money acts as a store of value is evident when individuals have the flexibility to withdraw and use the funds whenever needed. (Woerner, 2021)

Regarding the original function of money as a store of value, bank is distinguished as the most popular place for using money in this capacity. As emphasized in the previous analyse, financial institutions serve the function of money-saving guided by the principle of bank secrecy.

Bank secrecy is connected to financial institutions, as bank forms the cornerstone of the trust and confidentiality upon which the banking system operates. The exploration commences with the history of bank which has been essential since the inception of currencies were brought into existence. (Prabhavathi and Dinesh, 2018, 746) Bank initially arose to address the need for a secure avenue for saving money which served as the authorized medium of exchange. The evolution of money can be explained in several stages. (Garner, 2009, 3184) First, the barter system served as the medium of exchange where goods and services were traded directly between two individuals. (Prabhavathi and Dinesh, 2018, 746) Subsequently, Goldsmiths issued receipts for deposits which were used as a medium of exchange allowing individuals to purchase goods against these receipts. The next stage of evolution witnessed merchants lending a portion of the deposits to generate profits in the form of interest. This practice led to the establishment of regular financial institutions where Goldsmith started the business of lending and also provided higher interest rates to attract depositors. The new financial institutions thereby fostered a climate conducive to profit-seeking and borrowing. (Prabhavathi and Dinesh, 2018, 746) Money is an evolution of a medium of exchange that requires a secure storage facility, thereby leading to the evolution of the bank as a repository. Therefore, bank assumes the crucial function of safeguarding money which correlates with the foundational role as a store of value. Money’s functions also dictate the deposition in

bank, emphasizing the symbiotic relationship between money and financial institutions.

2.2 Banking Law Principle

Financial institutions fundamentally operate based on several key principles that serve as the standards for business.[3] These principles aim to prevent harm and help in achieving the objectives. Before exploring the principle of bank secrecy, it is essential to examine the overarching banking standards.

Among the standards, the principle of bank secrecy represents a significant component. However, it is part of a broader spectrum of banking principles that emphasize the legal relationship between financial institutions and customers. These include the fiduciary, prudential, and confidential standards. The banking principles originate from a contractual agreement between bank customers and financial institutions. When both parties consent to use banking services, the principles become operative. Conversely, the analyses focus primarily on the principle of bank secrecy with the fiduciary, prudential, and confidential standards serving as complementary aspects of the analyse.

2.2.1 The Fiduciary Principle

The fiduciary principle is used by financial institutions and customers based on trust in each other. Bank can handle money deposited by the public, which is also a responsibility based on trust. Establishing trust is essential for all banking operations, as the act determines customers' willingness to use the services. Despite this principle is considered straightforward, it serves as the cornerstone for the success and reputation of the bank. A trusted bank title attracts numerous customers to the services of the bank, thereby enhancing the institution's value. (Hariyanto, 2020) Bank is bound by fiduciary duties when providing trust services. This includes acting as escrow holders for money or serving as administrative agents for syndicated loans on behalf of other lenders. Additionally, financial institutions can also have fiduciary duties which comprise responsibilities to act in the best interests of the customers. Bank may further assume fiduciary obligations when financial transactions are initiated. (Tuch, 2018, 1)

[3] The banking legislation in Indonesia includes specific provisions, as a customary practice. In general, it regulates all banking activities in the country.

2.2.2 Prudential Principle

The prudential principle is important as the measures guide financial institutions to conduct activities with total care. For example, bank imposes certain conditions and conducts assessments when customers request credit services to ensure that the clients can fulfill the obligations responsibly. In managing customer finances, financial institutions are also required to apply the precautionary principle considering the public funds deposited. (Hariyanto, 2020)

Bank serving as a service agents should exercise caution to mitigate risks that can adversely affect both bank and the customers. In banking, the obligation of prudence is stated in the prudential banking principle as the basis for carrying out activities. This is conducted regarding the implementation of daily transactions which are full of financial risks such as lending, transfer of funds, and instalment payments. The principle of prudence supports the foundation of trust in banking activities, where transactions experience thorough analysis guided by prudential considerations. (Putera, 2020, 54)

The principle of prudence as the main standard in banking activities is closely related to public trust. This implies that public trust will grow and develop when banking transactions and activities apply the prudential principle. Therefore, the application of the prudential principle underscores banks' responsibility towards the customers. A breach of trust could severely damage the relationship between bank and the customers, emphasizing the critical importance of adhering to prudential standards across all banking functions. The prudential principle further states that bank should exercise due diligence in carrying out the functions and business activities, thereby promoting healthy banking conditions and preserving public confidence in the system. (Putera, 2020, 54)

2.2.3 The Confidential Principle

The principle of confidentiality holds significant importance in the banking industry. Therefore, financial institutions need to uphold the confidentiality of customer data to maintain trust and credibility. Bank should further work to safeguard information about depositors and transactions, comprising personal and transactional data. Access to this data should be strictly limited to authorized customers and individuals entrusted by the customer concerned with severe punishments imposed for any

misuse or illegal activity. Upholding confidentiality is intricately connected to the trust bestowed upon the bank by the customers. (Hariyanto, 2020)

The analysis of the three principles is contingent upon several interrelated banking legal standards. Particularly, bank secrecy serves as the foundation of public trust. The public's confidence in financial institutions is directly correlated with the assurance that the data remains confidential. Furthermore, the implementation of the confidentiality principle influences the prudential standard. In the present era of rapid information exchange, failure to exercise caution in sharing confidential customer data undermines the principle of confidentiality. Therefore, it is crucial to delineate the boundaries regarding data sharing, identifying who can access the information, and for what purposes to uphold the principle of confidentiality effectively.

2.2.4 The Bank Secrecy Principle

The most ancient hint of bank secrecy can be found in the Code of Hammurabi, (Capitani, 1988, 2) carved in stone in Babylon around 4000 years ago. The establishment of Banco Ambrosiano Milano in 1593 further made the earliest instance of formalized banking secrecy provisions. These regulations explicitly stated that the license would be revoked for anyone who violated the duty of secrecy. (Capitani, 1988, 2)

The principle of bank secrecy originates from unwritten customary law which is placed in a position of high value (respectable) and fair. (Federation of Finish Financial Companies, 2009, 1) Although there is a law regarding bank secrecy in Italy, it is not effectively implemented or enforced. (Federation of Finish Financial Companies, 2009, 61) Bank is a standard financial institution with a structure that evolves from transactions or relationships between the customer (account holders) and bank (acting as a personal agent). Essentially, the transactions form the fundamental relationships of bank secrecy as Todd stated in the following statement.

> *"The account holder signs an agreement with a personal bank agent agreeing to the conditions of the relationship and receives a number or pseudonym. These numbers are generally used when a client wishes to avoid raising the suspicion of home government authorities. The banking forms further develop two types of protection. Bank employees are protected from third parties and the secret accounts also protect account holders from unscrupulous workers."* (Todd Jones, 1992, 459)

According to the agreement between the account holder and the bank agent, a consensus is reached regarding the confidentiality of the account holder's information. This relationship evolves into a debtor and creditor with bank serving as a financial institution that lends, accepts deposits, and provides loans while safeguarding depositor funds. (Prabhavathi and Dinesh, 2018, 745) The banker may use parts of the deposits to make loans or trades without robbing the depositors of the right to use the funds. (Payson, 1934, 400). This will only have happened in the agreement based on the trust of privacy outlined in the contract.

Understanding the literal definition of the word "secrecy", which denotes the state or quality of being concealed from those who would be affected by the concealment. This concept was derived from the word "secret", which functions as a noun and referring to something withheld from the knowledge of others or shared exclusively with relevant parties. It also denoted information that cannot be disclosed without breaching trust, particularly within confidential relationships such as attorney-client privilege. (Garner, 2014, 437) In essence, an ethical dimension in banking activities between customers and financial institutions characterized by confidentiality is observed based on the definition of bank and secrecy. This ethical stance constitutes the principle of bank secrecy, which is grounded in ethics.

Associated with written regulation by law, this analysis depends on the legal system of the nation which is prevalent in civil law jurisdictions. The main source or basis of the law is legislation in civil jurisdictions. (Dainow, 1966, 424) A civil law nation that has been known for the principle of bank secrecy is Switzerland. (Lytvynenko, 2019, 303). The regulation of bank secrecy in Switzerland falls under the purview of criminal law. Intentional violation of bank secrecy will be punished by detention and fines, while negligence in maintaining secrecy may incur fines as well. (Cranston, 2007, 4)

By contrast with Switzerland, the United Kingdom upholds the principle of bank secrecy as a common law duty within the constitutional framework. Under common law, the primary source of jurisdiction is secondary to the underlying concept of *sui generis* action. (Cranston, 2007, 4) Tournier as a customer of *Union Bank of England* further claimed that the responsibility originates from the implication of contract terms.

However, the contract is not the most important factor as several conditions are considered including the following. (Cranston, 2007, 4)

1. Enforcing the principle of bank secrecy will be difficult for customers with substantial capital due to the benefits received by bank.
2. Strictly applying this principle to partners or business associates who also benefit bank poses challenges.
3. When the basis of the obligations is solely on the contract, parties accidentally disclosing or leaking data will not be given protection.

Based on the contract, bank can disclose data information included in the principle of bank secrecy principle with customer approval. Bank Secrecy comprises all information related to the depositors and deposits. (Art. 1.28 Indonesia Banking Law) The principle originates from the purpose of protecting the interests of bank customers, ensuring confidentiality regarding the financial condition and personal data. (Sutedi, 2010, 145) Bank secrecy also serves the interest of the financial institutions by fostering customer trust in managing the funds. (Husein, 2003, 145). Consequently, the principle of bank secrecy forms the foundation of the banking system.

The concept of bank secrecy has experienced significant evolution over time and remains relevant in present banking practices. To understand the current status, examining the history and development of the principle is crucial in this first section to become a written statute. An analysis of the development of bank secrecy in various countries has been published complementing each other over time. However, there will be variations in how bank secrecy is applied depending on the laws in place in each nation. In Switzerland, this principle is enshrined in the legal framework and regulations. Bank secrecy is based on various statutes and regulations within the context of the civil law legal system with the Swiss Banking Law containing provisions addressing the confidentiality of banking information. The historical implementation of bank secrecy in Switzerland is closely connected with the legal and regulatory structure, emphasizing the protection of information about bank clients. Conversely, legal and regulatory mechanisms exist to uphold the principle of bank secrecy in a common law system such as the United Kingdom where individual and financial privacy is essential. These mechanisms may allow for the disclosure of certain banking

information under specific circumstances. For instance, the United Kingdom has adopted measures to combat financial crimes such as money laundering and terrorism financing. This section provides a brief overview of the historical development of bank secrecy but the specifics will be analysed in the next sub-chapter. The principle of bank secrecy will be examined in the contexts of Indonesia, Singapore, Spain, Switzerland, and the USA, each offering unique insights into the implementation and regulation.

3. Bank Secrecy in Compared Law

Bank secrecy was recognized and implemented in various legal systems globally. However, countries that adopted the model law were not under any international obligation to apply the provision uniformly. (Graveson, 1968, 4) The countries were also not required to accept all the provisions without variation. (Graveson, 1968, 4) Diversity was expected to manifest in different spheres of law, considering the characteristics of citizens and needs as in the countries that will be reviewed.

Indonesia is a part of an international organization that had taxation interests in the international world. As a form of recognition of sovereignty, Indonesia further ratified international agreements on the exchange of information for tax purposes. Therefore, analyzing the principle of bank secrecy applied in Indonesia is considered necessary.

Singapore is an Asian nation known to be strong and big due to the principle of bank secrecy. This is because Singapore was a nation that enforced the principle and due to the successful private wealth management industry as well as the ability to attract foreign companies. Therefore, analyzing Singapore will be beneficial to the investigation.

Spain is a European Union member state that abided by the union law. The European Union is an international organization with a system dedicates to human rights and justice providing the legal framework. Furthermore, Spain is among the prominent member states of the OECD which plays a central role in organizing the AEOI.

Switzerland warranted a detailed analyses due to the strong commitment to bank secrecy. In response to international information exchange initiatives, the

government devised a national strategy including an information exchange system which was a proactive measure to address the impending information exchange protocols exemplified by the Rubik Agreement. Switzerland's stringent adherence to bank secrecy made the nation highly attractive to foreign customers. Consequently, the home countries were making efforts to recover taxes on assets held in Swiss banks.

The USA is a global superpower with substantial influence, especially in the financial sector. This influence enable the nation to advance the interests and priorities. Furthermore, the financial crisis and the subsequent decline in tax revenues partly due to assets held by American citizens abroad contributed to the creation of FATCA. A current mechanism for exchanging tax-related information is represented by FATCA. Therefore, analyzing the USA approach to the principle of bank secrecy is essential.

The theory of bank secrecy evolved and continued to be relevant in the present landscape. However, the historical development of bank secrecy was reviewed in this initial section to establish a written statute. Various publications analyzing the development of bank secrecy in different countries also complemented each other. There were variations in how bank secrecy was applied, depending on the laws in each nation. While a brief overview of the creation was provided in the section, specific details were covered in the next sub-chapter. A comprehensive overview of each subsection was provided before the details.

First, understanding how the right to privacy was defined within constitutional law was essential. This understanding was crucial for assessing the scope and limitations of privacy rights within a legal framework. This analysis provided insight into the foundational principles governing privacy rights, helping to contextualize analyses related to bank secrecy. Second, the legal description of the right to privacy and bank secrecy was explored. This included examining specific statutes, regulations, and legal provisions. The analysis further allowed for a comprehensive understanding of the legal landscape governing privacy rights and the protection of banking information. Third, examining the causes or motives behind the non-absoluteness of bank secrecy was essential. Recognizing that bank secrecy was not absolute prompted an exploration of the motives behind the limitation. The analysis further includes

considerations of public interest, government regulatory needs, and the balance between individual privacy as well as societal concerns. It further explored the nuanced factors influencing the boundaries of bank secrecy. Fourth, assessing how international requirements correlated with domestic laws regarding bank secrecy was crucial for ensuring compliance and harmonization. The analysis explored when domestic laws adequately meet international standards, potentially emphasizing areas for improvement or adjustment. It also considered the impact of global norms on the formulation and enforcement of domestic regulations. Each of these points contributed to the comprehensive understanding of the legal landscape surrounding the right to privacy and bank secrecy, providing a nuanced perspective on the various dimensions and considerations included in the legal concepts.

3.1. Indonesia

Indonesia was colonized by the Netherlands for 350 years and then occupied by Japan for 3,5 years. Consequently, the banking sector faced adjustments due to these invasions, a process that persisted even during the initial five years of independence. Part of the adjustments was the DJB, which was Indonesia's effort toward gaining recognition of sovereignty globally and nationalization. (Bank Indonesia, n.d) The DJB served as a circulation bank, (Bank Indonesia, n.d) regulating the monetary system and processing the authority to issue currency as stated in the Provisional Constitution of Indonesia in Art. 110. 1 and 2:

> *"For Indonesia, there was a Circulation Bank and Appointment as a Circulation Bank, as well as the arrangement of the structure and authority, was conducted with the Constitution framework"*.

The return of Indonesia to a unitary state triggered the evolution of a spirit of achieving a national economy free from foreign domination, particularly from the Netherlands. In response, the Indonesian government aimed to break free from the binding conditions established with the Netherlands during the Round Table Conference. (Cahyadi, et.al., 2004, 4) Following the conclusion of DJB's nationalization in 1951, the Nationalization Committee proceeded to formulate the Bank Indonesia Basic Law draft. Subsequently, developments in banking system regulations and the implementation of bank secrecy principles in Indonesia will be analysed in the following section.

3.1.1 Definition of Privacy in Constitutional Law

Privacy was not directly mentioned in the 1945 Constitution but the principles implicitly safeguarded individual rights and liberties. Furthermore, the essence of privacy was implicitly stated within Art. 28G.1 of the Indonesian Constitution (Ayu D. et all., 2019, 10) asserting.

> *"(1) Every individual shall be entitled to the protection of the family, honor, dignity, and property under control, as well as be entitled to feel secure and be entitled to protection against the threat of fear to do or omit to do something being the fundamental right."*

The concept of Personal Data evolved as an amalgamation of arrangements regarding privacy and personal data, consolidated into a separate legal instrument. Consequently, privacy protection and personal data obtained a *sui generis* position. (Ayu D. et all., 2019, 10) Specific regulations concerning the principle of secrecy have also evolved in Indonesia, where confidentiality became intricately connected with the concept of privacy.

The 1945 Constitution of Indonesia did not explicitly incorporate Art. 12 of UDHR into the text. However, human rights principles were inherent in several articles of the 1945 Constitution. Art. 28I.1 of the 1945 Constitution mandated that everyone had the right to life, free from torture and inhuman or degrading treatment. This provision correlated with human rights principles outlined in the UDHR. Furthermore, Art. 28J.2 asserted that everyone had the right to recognition, guarantees, protection, fair legal certainty, and equal treatment before the law. These principles also resonated with human rights values, emphasizing the importance of privacy and confidentiality in financial matters.

The right to privacy was not explicitly included in the 1945 Constitution and human rights were not also mentioned. However, the Indonesian government affirmed the commitment to human rights through various legal instruments including international conventions governing human rights. In practice, human rights principles were recognized and upheld in the Indonesian legal system. Additionally, the principle of bank secrecy was regulated in legal frameworks subordinate to the constitution and applied daily signifying the government's efforts to secure personal information data.

3.1.2. Legal Description of the Right to Privacy and Bank Secrecy

The regulation regarding the right to privacy was not specifically outlined in a distinct law. Therefore, analyzing the legal frameworks governing the banking system yearly was necessary. This analysis aimed to clarify the understanding of the principles of bank secrecy applied in Indonesia. The Indonesian Government focused on bank secrecy for many years, but the regulation was quite general and required further clarification.

a. Government Regulation in lieu[4] of Law 23 of 1960

Bank secrecy in Indonesia lacked legally binding force until 1960 when Government Regulation No. 23 was introduced. Despite gaining independence 15 years earlier, the government's concerns regarding the principle of bank secrecy became apparent only at this juncture. This marked the inaugural inclusion of bank secrecy regulations in Government Regulation in Lieu No. 23 of 1960 concerning Bank Secrecy. The swift formulation of these regulations bypassing legislative processes originated from the absence of explicit rules on bank secrecy since independence and the urgency of the matter. The government's considerations for enacting specific laws and regulations on bank secrecy concentrated on two primary considerations that was stated on letter d, b, c of consideration of part of Government Regulation in Lieu of Law 23 of 1960 concerning of Bank Secrecy. First, recognizing the societal benefits of depositing money in banks which provided a secure avenue for savings and facilitated the productive use of funds. Second, fostering public confidence in the security of bank deposits aimed to cultivate a conducive environment for a robust banking system allowing financial institutions to fulfill the roles in monetary and capital operations.

The enactment of laws regarding bank secrecy was aimed at fostering public trust in entrusting the funds to banks. The assurance that financial information would remain safeguarded was crucial for individuals to place confidence in bank. The concept of bank secrecy was deeply ingrained in the banking community's ethos and considered essential for the sound progression of the sector. Government Regulation No. 23 explicitly underscored the necessity for financial institutions to rigorously

[4] Glossary of Government Regulation in Lieu of Law: The regulation at the legislative level that must be promptly implemented based on the President's agreement. https://penerjemahpemerintah.id/assets/doc/glosari/GLOSARI%20BIDANG%20HUKUM%20dan%20Peraturan%20Perundang-Undangan.pdf Retrieved October 2023

adhere to bank secrecy. However, there remained a lack of specificity in defining the information consisting of the term "bank secrecy," as legislators did not provide comprehensive details. The regulation broadly referred to maintaining confidentiality in all matters related to bank subscriptions, rooted in customary practices that prioritized the protection of personal property. Conversely, individual property rights could be restricted in the interest of public welfare or state concerns. Originally safeguarded bank secrets could further be disclosed when urgently required for state interests, such as in determining tax liabilities or in judicial proceedings related to criminal cases with prior authorization from the relevant authorities.

Establishing a strong framework for bank secrecy was essential to safeguard against instances where state officials might compromise confidentiality. This measure aimed to ease public concerns, assuring society that the deposited funds would not be subject to misuse by external entities. Through the enactment and meticulous oversight of bank secrecy regulations, there was an expectation that individuals would experience an increased sense of security fostering confidence in retaining the funds without apprehension. This was anticipated to contribute to broader economic and monetary advancements.

The fundamental principle of bank secrecy underscored that financial institutions were expressly prohibited from divulging banking information about the economic status of the customers. (Consideration of Government Regulation in Lieu of Law 23 of 1960) This confidential information was mandated to be concealed by banking institutions, except in cases explicitly allowed by the provisions of Article 3 of the legislation. Article 3 delineated the circumstances under which access to bank secrecy was permissible including.

> *"1. In the context of a criminal case, the court was authorized to solicit permission from the bank concerning the financial status of the suspect or defendant.*
>
> *2. For taxation purposes, the Indonesian taxation governor could propose to the Minister of Finance regarding bank customer information."*

These specified exemptions were designed to facilitate the disclosure of bank secrecy solely for criminal and taxation investigations. Beside the exemptions, violations of the provisions were subject to penalties including imprisonment and fines

as stipulated in Article 6 of Government Regulation in Lieu of Law 23 of 1960 concerning of Bank Secrecy. Furthermore, the allowance for exceptions to bank secrecy was contingent upon the presence of a recognized public interest, particularly in taxation. This exception was inherently grounded in domestic considerations within each nation.

The formalization of bank secrecy necessitated the expeditious enactment into law as outlined in the Government Regulation in Lieu of Law. However, the realization of this transition took seven years to be completed. The regulations were further elevated to the status of law in 1967, integrated with principles articulated in the Indonesia Banking Act (Law 14 of 1967). These provisions governing bank secrecy were established in preceding regulations, remained intricately detailed, and experienced no substantive alterations during the legislative process.

b. Indonesia Banking Act 7 of 1992

During the new order government (1965-1998) particularly in 1992, updates were made to the Bank Indonesia principal law. The definition of bank secrecy was written, comprising everything related to information about the depositing customer and the savings. (Art. 40 Indonesia Banking Act 7 of 1992) Bank secrecy was all things related to the information about the Customer Deposit (Art. 1.6 Bank Indonesia Regulation Number: 2/19 / PBI / 2000 concerning Requirements and Procedures for Granting Written Orders or Permits to Open Bank Secrets) who placed the funds in the form of deposits based on bank agreements with the relevant customers. (Art. 1.4 Bank Indonesia Regulation Number: 2/19 / PBI / 2000 concerning Requirements and Procedures for Granting Written Orders or Permits to Open Bank Secrets) Depositors were subject to banking activities while customer deposits were funds entrusted by the community to the Bank based on fund deposit agreements in various forms including demand deposits, certificates of deposit, savings, and/or other similar forms. (Art. 1.2 Bank Indonesia Regulation Number: 2/19 / PBI / 2000 concerning Requirements and Procedures for Granting Written Orders or Permits to Open Bank Secrets) Bank is the place for storing the object of customer deposits. Furthermore, the definition of a bank denoted a business entity collecting funds from the public in the form of deposits and distributing the money to the public through loans and/or other forms to improve the lives of numerous individuals. (Art. 1.1 Bank Indonesia Regulation Number: 2/19 / PBI

/ 2000 concerning Requirements and Procedures for Granting Written Orders or Permits to Open Bank Secrets) Bank as an intermediary institution in carrying out the business activities depended on the element of public trust, especially the trust of the customer who placed the savings in the bank. As a trust institution, bank was required to keep everything related to the information about the customers of depositors and deposits at bank. (Part I General Explanation of Bank Indonesia Regulation Number: 2/19 / PBI / 2000 concerning Requirements and Procedures for Granting Written Orders or Permits to Open Bank Secrets) Consequently, bank had the responsibility for maintaining the confidentiality of the bank's customers who have entrusted the data to the financial institutions. In principle, bank secrecy was needed as a factor to maintain the trust of deposit customers. (Consideration of Bank Indonesia Regulation Number: 2/19 / PBI / 2000 concerning Requirements and Procedures for Granting Written Orders or Permits Opening Bank Secrets)

Bank secrecy was subject to current changes on the agenda, reflecting the evolving landscape of financial regulations and international cooperation. In contrast to the regulations of 1967, the amendments represented exceptions that became more widespread and contained more detailed arrangements. Therefore, the application of the principle of bank secrecy became less rigid. Considering the need to enhance social oversight of banking institutions, the provisions of bank secrecy which were previously rigid had to be reviewed. In this context, bank secrecy was an element that every financial institution had to uphold as a public trust institution managing public funds but not all matters handled by the bank were classified. (Explanation of Indonesia Banking Act 7 of 1992, page 33) Furthermore, financial institutions were required to keep confidential information regarding the Depositors and the deposits, except in the case referred to in Articles 41, 41A, 42, 43, 44, and 44A.

Article 41.

> *"For taxation, the Chairperson of Bank Indonesia at the request of the Minister of Finance had the authority to issue written instructions to the financial institutions. Bank would provide information and present written evidence as well as letters regarding the financial condition of certain Depositing Customers to tax officials*."

Article 42 Paragraph 1.

> *"For the benefit of the judiciary in criminal cases, the Chairperson of Bank Indonesia could permit the police, prosecutors, or judges to obtain information from financial institutions regarding deposits of suspects or defendants."*

Article 43.

> *"In a civil suit between bank and the customers, the board of directors of bank would inform the Court of the financial condition of the customer concerned and provide other information relevant to the case."*

Article 44 Paragraph 1.

> *"In the context of exchanging information between institutions, bank directors would notify the financial condition of the customers to other financial institutions."*

Article 44A Paragraph 1.

> *"Based on the request of approval or power of attorney from the Depository Customer which would be made in writing. Bank was obliged to provide information regarding the Depositing Customer deposit in the bank which was concerned with the party designated by the Depository Customer."*

The exceptional bank secrecy was initially commended with two reasons namely taxation and crime cases, and it had been expanded to include five more reasons beyond the initial purpose. Furthermore, it has become more prevalent in recent times stimulated by strong reasons and the evolution of the theory of the end of bank secrecy. (Johannesen and Zucman, 2014, 73) The existence of exceptions in the provisions of bank secrecy allowed for certain interests of an agency that requested information or data about the financial condition of the customer in accordance with the applicable legal provisions.

c. Indonesia Act 10 of 1998

The act of banking was changed but bank secrecy was similar to the previous as of 1998. The only difference was the additional Article 41A which regulated the exceptional for bank receivables.

Article 41A of Indonesia Banking Act 7 of 1992.

"To settle bank receivables that have been submitted to the State Receivables and Auction Affairs Agency / Committee on State Receivables."

The scope of bank secrecy was evident to be narrow, indicating the current change not only for internal consideration but also due to global influences. Recently, the government drafted a white paper for revising banking laws. This White Paper included proposals addressing civil society concerns such as bank refusing to provide information citing bank secrecy. In certain cases, the bank was not willing to provide information on the participation in funding a development project. (Indonesia, 2018, 6)

Other content of the proposal was in terms of crime, particularly in corruption. It was regulated in general that bank secrecy could be accessed for criminal interests. However, the Governor of Bank Indonesia did not require permission to access information, particularly in cases of corruption. It was based on The Supreme Court Letter No.KMA/694/R, 45/XII/2004 concerning legal considerations. The letter aimed for the implementation of the authority of the Corruption Eradication Commission in response to the Letter of the Governor of Bank Indonesia No.6/2/GBI/DHK/Secret that gave authority to the KPK in implementing investigation and prosecution assignments. Based on the provisions were the permit procedure for opening bank secrecy as stipulated in Article 29 Paragraphs (2) and (3) of Act Number 20 of 2001 in conjunction with Article 42 of Act Number 7 of 1992 concerning Banking as amended by Law Number 10 of 1998 did not apply to KPK. (Hermansyah, 2005, 140)

Another factor influencing the rigidity of bank secrecy was a decision issued by the Constitutional Court regarding joint assets in divorce cases. The court ruled that the bank was not required to keep any information about the Depositors and the deposits a secret allowing third parties to access it. Based on the consideration of Article 40 Paragraph 1 Indonesia Act 10 of 1998 did not contradict the constitution. (Constitutional Court, Verdict of number 64/PUU-X/2012, page 32)

A significant change in bank secrecy access came with the issuance of Government Regulation in lieu of Law 1 of 2017 concerning Access to Financial Information for Taxation Purposes. This regulation invalidated Articles 40 and 41 of

Indonesia Act 10 of 1998 concerning the implementation of access to financial information for taxation interests. Therefore, Article 41 of the Banking Law had to be removed from the Banking Bill. (Indonesia, 2018, 9-10) This regulation was issued to fulfill Indonesia's commitments to international agreements in taxation, particularly in implementing the AEOI, and should immediately form statutory regulations. (Consideration part of Government Regulation in lieu of Law 1 of 2017) A significant change occurred in accessing bank information for taxation purposes. Previously, it was regulated that a permit needed to be filed with the Ministry of Finance and the Governor of Bank Indonesia. However, accessing bank information for taxation became automatic with the issuance of the Government Regulation in Lieu of Law in 2017. In summary, bank secrecy was governed by various legislative enactments. Significantly, the confidentiality provisions related to banks exhibited a degree of flexibility, especially regarding taxation matters. Recognizing that the regulatory landscape underwent modifications in 2017 was essential. It impacts both external relations with foreign countries and internal matters concerning access to taxpayer information for bank customers in Indonesia.

3.1.3. Factors Contributing to the Non-Absoluteness of Bank Secrecy

The tax motive consistently served as the reason the principle of bank secrecy was not considered absolute. However, taxation was not the sole factor influencing this principle. Other motives included criminal cases, civil lawsuits between a bank and the customers, bank receivables, information exchange between financial institutions, and requests for approval or power of attorney from deposit customers. Since the inception of independence, the Indonesian government have disclosed bank secrecy primarily for taxation objectives. Even though the disclosure of bank secrecy for taxation purposes expanded in scope and methods, it initially required prior permission from the finance minister and the governor of Bank Indonesia but later transitioned to automatic access by the tax office. The consideration of taxes became increasingly crucial in Indonesia regarding access to information under the principle of bank secrecy. Consequently, it was concluded that taxation being a fundamental source of state revenue significantly influenced the application of the principle of bank secrecy in Indonesia. As Musgrave stated, the function of taxation was to serve fiscal policy interests. (Wołowiec, et.all., 2014, 52) Fiscal policy constituted the most influential factor in legislative decision-making. (Canfied-Davis, et.all., 2010, 54) Lawmakers

prioritized factors with fiscal implications when shaping policy decisions. (Canfied-Davis, et.all., 2010, 59) Therefore, the impact of bank secrecy on taxes exerted a substantial influence on a nation's fiscal policies. In Indonesia, a series of laws were implemented to regulate bank secrecy with confidentiality provisions showing flexibility, particularly concerning tax-related issues.

3.1.4. Correlation with International Requirements

Indonesia engaged with the global community and established relationships with other countries in the evolution of implementing the principle of bank secrecy. The nation facilitated both the provision and receipt of financial information with other countries. This reciprocal arrangement aimed to combat tax avoidance, prompting Indonesia to coordinate through legal frameworks (Indonesia Financial Service Authority Regulation 25 /POJK.03/2015) and ratify conventions. (Indonesia Presidential Regulation 159 of 2014 (validation of Convention on Mutual Administrative Assistance in Tax Matters) The cooperation was also based on the reciprocity principle, forming the basis for restrictions on bank secrecy. Consequently, the thesis explored how legal foundations can reinforce such cooperation.

A divergence evolved between the absolute secret concept and the theory of relative bank secrecy. (Hermansyah, 2005, 132) The absolute bank secrecy theory mandated financial institutions to maintain confidentiality concerning customer information regardless of any circumstances either under normal or extraordinary conditions. However, the relative bank secrecy theory allowed financial institutions to disclose customer information for urgent purposes such as state or legal interests. (Hermansyah, 2005, 132-133) During the drafting of banking legislation concerning the principles of bank secrecy, access to personal information data experienced specific changes. Initially rigid, the regulations gradually became more flexible through legal provisions aimed at preventing violations.

3.2. Singapore

Singapore was a high-income nation in Southeast Asia (UN, 2019) and was part of Malaysia under British colonization. (LePoer, 1989, 16) However, the Malaysian parliament passed a bill supporting separation on August 9, 1965, leading Tengku Abdul Rahman to decide on Singapore’s separation from Malaysia. (LePoer, 1989, 57) Following six years of independence, Singapore issued the Declaration of British Commonwealth Principles in 1971. (House of Commons Foreign Affairs Committee,

2012, 131) Additionally, Guernsey was a territory for which the United Kingdom was responsible for external relations (House of Commons Foreign Affairs Committee, 2012, 129) shared the values of the Commonwealth and the Singapore Declaration of Commonwealth Principles of 1971. These values included a commitment to democracy and democratic processes such as free and fair elections and representative legislatures, the rule of law and independence of the judiciary, good governance comprising a well-trained public service and transparent public accounts, and the protection of human rights, freedom of expression, as well as equality of opportunity. (House of Commons Foreign Affairs Committee, 2012, 131)

As an independent state and a member of the British Commonwealth of Nations, Singapore's leaders focused on building a progressive and wealthy city-state in Southeast Asia. (BBC, 2018) Particularly significant was the thriving economy, which attracted attention from neighboring countries and foreigners hoping for stability for the funds. McKinsey[5] further estimated that the funds of rich Indonesian individuals deposited in Singapore amounted to around US $ 200 billion. (Fitriya, 2017) This influx of funds emphasized the significance of Singapore's banking system and the application of bank secrecy. (Ying, 2015, 36)

3.2.1 Legal Aspects of Privacy and Bank Secrecy

Pertinent privacy issues were addressed by Singapore through a combination of laws, although privacy was not explicitly protected by the constitution. (APEC, 2016, 1) The specific law that was regulated in terms of bank secrecy was The Banking Act.

Bank secrecy in Singapore was imposed by section 47 of the Banking Act. Section 47(1) provided the following statement.

> *“Customer information shall not, in any way, be disclosed by a bank in Singapore or any of the officers to any other individual except as expressly provided in this Act."*

Customer information further included data relating to the accounts, deposits, investments, and safe custody arrangements. While the Banking Act did not explicitly define the word “customer”, common law suggested the term referred to individuals

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[5] McKinsey also known as McKinsey & Company is a global management consulting company that provides consulting services to businesses, governments and organizations. See https://www.mckinsey.com/about-us/overview/our-purpose-mission-and-values

who held an account with bank or for whom bank agreed to open an account. (APEC, 2016, 35) Additionally, the principle of bank secrecy existed in Singapore banks through an implied contractual duty of confidentiality arising from the relationship between the banker and customer. Various aspects of customer information were explained in section 40A of the Act concerning the bank. (Section 40A The Statues of The Republic of Singapore Banking Act 1970)

> *1. "Any information relating to or any particulars of an account of a customer of bank, either the account is in respect of a loan, investment, or any other type of transaction but did not include any information that was not referable to any named customer or group of named customers, or*
> *2. Any information relating to.*
> *a. any deposit of a customer of bank,*
> b. *any funds or assets of a customer (either of the bank or any financial institution) placed with that bank for management investment or any safe deposit box maintained by or any safe custody arrangements made by a customer with the bank but did not include any information that was not referable to any named individuals or group of named individuals."*

Singapore imposed penalties for breaches of banking secrecy provisions in contrast to Indonesia where violations of the principles were not regulated or subject to fines. Violations of Article 47 by bank officers led to fines of up to $ 125,000 or a maximum prison sentence of not more than three years or both and bank also facing fines of up to $250,000. Furthermore, Article 20 specified that the revocation of license was enforced against financial institutions, directors, or officers holding managerial or executive positions when bank violated Laws concerning the secrecy. (Tan, 2014)

3.2.2 Challenges to Absolute Bank Secrecy

Singapore applied non-rigid bank secrecy instead of enforcing absolute and strict principles. Exceptions were established in the enforcement of the principle, with the most important notion being the requirement for written permission except as provided in the statute to cover cases where the customer requested disclosure. The application of Singapore's bank secrecy principle was not absolute and strict, as evidenced by the regulation regarding exceptions. These exceptions were outlined in the law, which distinguished between recipients of information who were allowed to disseminate the data (Part I Third Schedule Singapore Banking Act) and parties who were prohibited from disseminating bank confidential information to others unless specified by law or court order. (Ramesh, 2010, 44) The contents of Part I of the Third

Schedule of the Singapore Banking Act permitted the disclosure of customer information concerning outsourced bank operational functions as outlined in Article 58A. Recipients of this information included any individual working with the bank-related entity to perform the outsourced function. (Annex A (1) Banking Regulations Summary of Key Amendments Proposed to The Banking Regulations)

The Banking Act delineated various conditions under which disclosure of customer information was permissible. For example, banks could disclose customer information with the customer's written consent. Singapore banks would include some form of consent to disclosure in the standard terms and conditions. (Annex A (1) Banking Regulations Summary of Key Amendments Proposed to The Banking Regulations) However, broad terms and conditions consent provided at the time of account opening generally did not fulfil the requirements for permitted disclosure as outlined by the statute. Consent was typically given when the customer did not have a specific disclosure in mind and could not differentiate between favourable and unfavourable disclosures. (Annex A (1) Banking Regulations Summary of Key Amendments Proposed to The Banking Regulations)

The exceptions to bank secrecy principles were detailed in the Third Schedule and divided into Parts I and II. Each exception was also subjected to specific restrictions including limitations on to whom the information could be disclosed and the extent of data that could be shared. In Part I of the Third Schedule, recipients of the information were not prohibited from further disclosing the data to any other individual. (Section 47 The Statues of The Republic of Singapore Banking Act 1970) In Part II of the Third Schedule, recipients of the information were not allowed to further disclose the customer information to any other individual except as authorized under the Third Schedule or when mandated by court order. (Section 47 (3) The Statues of The Republic of Singapore Banking Act 1970)

In contrast to Singapore, where services were prioritized as a primary source of income, Indonesia relied heavily on natural resources as a significant source of state income after taxes. It was important to recognize that Singapore placed significant attention on the service sector to become the second pillar of economic growth after manufacturing due to the absence of natural resources. (Cahyadi, et.al., 2004, 4) Therefore, Singapore accumulated crucial financial capital for economic advancement

over the years facilitated by continuous motivation from the government that created policies establishing easy foreign investment. An institution was subsequently established by the government to streamline the process of transferring investments into the nation by allowing foreign investors to bypass various bureaucracies. (Cahyadi, et.al., 2004, 5) Consequently, Singapore evolved as an offshore financial center and ranked 5th in the 2020 Financial Secrecy Index showing the significant influence and service to Southeast Asia countries. (Tax justice Network, 2020, 1)

3.2.3 Harmonization with International Standards

Singapore enacted bank secrecy laws but the state also committed to cooperating with other countries in implementing these principles. This cooperation extended to areas such as tax cooperation, AML, and CFT. (Ying, 2015, 36) Furthermore, Singapore effectively established a legal structure correlating with the AEOI Standard and met the stipulations of the Terms of Reference. This comprised both domestic legislations obliging Reporting Financial Institutions to perform due diligence and reporting procedures (CR1) as well as an international legal framework enabling information exchange with Singapore's respective Interested Appropriate Partners (CR2). (OECD, 2022) Singapore fostered cooperation with other countries for the exchange of information for tax purposes.

As a young nation, Singapore achieved remarkable success despite lacking natural resources beyond the citizens. Human resource development served as a crucial avenue for inclusive development as the resources were predominantly relied upon by the nation. Furthermore, Singapore diversified from the electronics sector into industries such as chemicals, pharmaceuticals, and professional services. The success of the efforts depended on elevated levels of education and skills, which were essential for supporting evolving industries and creating job opportunities. (Lee Kuan Yew School of Public Policy, 2023) Consequently, Singapore's adept management of bank secrecy principles reflected the commitment to thriving by providing services to the global community and further generating income for the nation.

Although Singapore cooperated in the exchange of tax information with other countries by joining international agreements, the nation was often analysed as a tax haven. This deliberation was not without basis, as the nation possessed certain criteria

typical of tax havens. Several factors contributing to the nation becoming a tax haven were stated in the following. (Jiang, 2023)

> *(1) "Low or Zero Tax Rates Tax havens often maintained significantly lower corporate tax rates or even imposed zero taxes on certain types of income such as capital gains, dividends, or interest.*
> *(2) Confidentiality and Financial Privacy. Tax havens enforced strict laws protecting the privacy of financial transactions and account holders, ensuring confidentiality and limited disclosure of financial information.*
> *(3) Lack of Exchange of Information. Tax havens have limited or no agreements for exchanging tax-related information with other countries, making the process challenging for tax authorities from other jurisdictions to access financial data."*

The factor of confidentiality and financial privacy impacted the lack of exchange of information because a commitment to confidentiality and financial privacy made countries hesitant to participate in cooperation with others for information exchange. Singapore originally considered a nation in the gray area was included in the grey list by the OECD as a tax haven state in 2009. The gray list included countries committed to internationally agreed tax standards but had not substantially implemented the measures established. This list also included Switzerland, Belgium, Luxembourg, and islands such as the Bahamas. (Chow, 2009)

During this period, Singapore had not standardized international taxation and responded that the state could not cooperate with neighboring countries such as Indonesia. Singapore further refused to exchange information in 2017 with Indonesia. (Awwaliatul, 2017) The nation committed to participating in AEOI responded by stating that the nation would request data from other neighboring countries that cooperated with each other. (Awwaliatul, 2017) When reviewing each nation's commitment to AEOI, it became evident that the nation had to adhere to standardized requirements to ensure equal capabilities and competencies in implementing the agreement.

Indonesia made progress in fulfilling the requirements that became the standard of the AEOI in 2017. Consequently, the nation in 2018 was able to participate in the second batch of information exchange conducted by the OECD. This batch included Azerbaijan, Brunei Darussalam, China (People's Republic of China), Hong Kong, Indonesia, Japan, Macau (China), Malaysia, Pakistan, and Singapore. (OECD, 2023) Significantly, Singapore also participated in the second batch of AEOI

exchanges marking a significant step in shedding the reputation as a tax haven nation by establishing information exchange cooperation with other countries.

The development allowed Indonesia to access the wealth data of its citizens who purchased houses worth 2 trillion in Singapore. (SS, 2023) Additionally, Singapore and Indonesia renewed the MOU in the fields of digital technology, taxation, and customs with several activities agreed upon as a form of MOU implementation including the exchange of information. (Kurniati and Candra, 2022) This cooperative relationship in the context of information exchange contributed to eliminating Singapore's status as a tax haven state because each nation cannot be isolated from dealing with other jurisdictions by refusing cooperation in exchanging information.

Moreover, the Financial Secrecy Index ranked Singapore as the third among world countries (Tax Justice Network, 2020) despite the participation in AEOI and the willingness to cooperate in information exchange with Indonesia. This raised questions about the effectiveness of the information exchange process.

However, Singapore carried the primary factor associated with being labeled a tax haven named low tax rates. Bennedsen and Zeume further stated defined a tax haven as.

> *"A state or territory in which corporate and personal tax rates were very low allowing foreign companies or individuals to have incentives in establishing shell companies by shielding the income from higher tax liabilities at home."* (Bennedsen and Zeume, 2018, 1221)

The BEPS in the second pillar provided a basis for countries to determine taxes at 15%. (Hatch, 2023) Among ASEAN countries, Singapore indeed served as a destination for storing treasures from neighboring countries. Aside from being business-wise, Singapore aimed to excel by providing the best service while leveraging the sovereignty to provide low tax rates compared to other ASEAN countries as depicted in the following table. (Vivian, 2023)

Number	ASEAN Countries	Income tax	VAT
1.	Indonesia	22%.	11%
2.	Malaysia	33%	10%

3.	Singapore	17%	7%
4.	Filipina	25%	12%
5.	Thailand	20%	7%
6.	Brunei Darussalam	18,5%.	-
7.	Vietnam	15-17%	10%
8.	Laos	24%	10%
9.	Myanmar	25%	Commercial tax rates were 0% to 8%.
10.	Kamboja	20%	10%

Comparing corporate income tax rates, Singapore and Vietnam shared the same rate at 17% alongside Singapore and Thailand ranging from 15% to 17%. The VAT rate remained consistent between Singapore and Thailand at 7%. Despite these figures, Singapore ranked 9th in the Corporate Tax Haven Index due to the capacity. (Tax Justice Network, n.d a) Significantly, Singapore evolved as the most preferred place for Indonesian citizens to save money with a majority disclosing IDR 56.96 trillion in assets held by 7,997 participants. (Idris, 2022) This proved the state's ranking as the 9th among world countries in the ranking of corporate tax haven index.

From the analysis above, it can be seen that Singapore has privacy and data disclosure laws; thus, according to OECD criteria, Singapore is not considered a tax haven. However, according to measurements by the Tax Justice Network, Singapore is on the list of jurisdictions that assist individuals in hiding their finances from the law. This criterion is assessed by an index that identifies countries supplying the greatest financial secrecy and highlights the laws that governments can amend to reduce this secrecy. (Tax Justice Network, 2022) On the other hand, Singapore is still considered a tax haven for different reasons, particularly because its tax rate is the lowest among ASEAN countries.

3.3 Spain

The analysis started by examining Spain's approach to privacy regulation which was mainly defined in the constitution. Subsequently, the European Union's regulations on the right to privacy would be explored considering Spain's membership.

With this groundwork in place, the analysis would further consider the detailed legal provisions in Spain comprising LOPD and LGT.

3.3.1. Privacy in Constitutional Law

Every citizen and public authority adhered to the Constitution and legal provisions. (Art. 9 Spain Constitution) Public authorities were tasked with enhancing, ensuring, and facilitating the freedom and equality of individuals as well as groups in various aspects of life, such as politics, economics, culture, and society. (Art. 9 Spain Constitution) This underscored the Constitution's commitment to the principle of legality, ensuring that legal enactments did not adversely affect individual rights and prohibiting arbitrary actions by public authorities. (Art. 9 Spain Constitution) The Spanish Law System protected the privacy of the citizens legally. As regulated in the Spanish constitution and it stipulated that the right to honor personal and family privacy was inviolable (Art. 18.1 Spain Constitution) and the law limited the use of data processing to ensure respect for privacy. (Art. 18.1 Spain Constitution) The Spanish constitution guaranteed the right to honor personal and family privacy as well as self-image. Therefore, financial institutions should respect the honor, privacy, and image of individuals (Blanco, et.al., 2021) since the protection came from authorities.

Privacy was highly protected by the constitution but there were no specific provisions regarding privacy in financial data and no special laws governing bank secrecy in Spain. (Blanco, et.al., 2021) The principle of bank secrecy was guaranteed by Art 18.1 of the Spanish Constitution which regulated the right to privacy, (Rosenthal, 1994, 189) guaranteeing the fundamental right to privacy not only in the personal life but also in terms of information related to the economic situation. (Rosenthal, 1994, 189) Any breach regulations of privacy is considered a serious offense, which was punished according to the ordinary sanctions procedure provided under Spanish banking regulations. (Siguero and Bernar, 2020)

Apart from regulating privacy in very detailed terms, Spain further acknowledged and correlated with globally declared human rights. Spain took a unique approach compared to the two countries previously analysed as the state considered and reflected on the matters independently. This was evident in Art. 10 of the Spanish constitution emphasizing that the principles related to fundamental rights and freedoms recognized by the Constitution should be interpreted in accordance with the

Universal Declaration of Human Rights and international treaties and agreements ratified by Spain. (Art. 10.2 Spain Constitution)

3.3.2. Legal Framework for Privacy and Bank Secrecy

A distinction was obtained between data protection and privacy in the legal framework of Spain. While both were considered fundamental rights rooted in respect for human dignity, the approaches embodied distinct aspects. The equality of data protection and privacy emphasized the fundamental right of individuals to decide to disclose personal information or safeguard aspects related to private and family life, home, and communications. The regulations governing data protection further established security principles and specific measures, offering a framework to address cybersecurity concerns effectively. (Lapuente and Bosch, 2021, 351) Both fundamental rights found recognition in the Lisbon Treaty (Charter of Fundamental Rights of the European Union) and the Spanish Constitution of 1978. (Menendez, 2023) Furthermore, bank confidentiality in Spain was intricately connected to data protection and privacy. It represented a privacy right achieved through specialized data protection measures applied to the information stored in bank.

Specific sectors were governed by regulations in Spain that incorporated provisions for data protection, particularly in cases where certain categories of personal data and specific processing activities demanded specialized safeguards. This included areas such as the financial, electronic communications, and health-related industries, each having a set of data protection codes of conduct. (Lapuente and Bosch, 2021, 352) However, the rights to data protection and privacy in Spain were not absolute as the information had to be weighed against other fundamental rights and freedoms such as freedom of information or expression, as well as other legitimate interests including intellectual property rights, public security, and the prosecution of crimes. The responsibility of maintaining this balance primarily depended on organizations and individuals as well as the judgments that could be contested before the Spanish DPA. (Lapuente and Bosch, 2021, 352) Spain ensured that the nation did not compromise the public interest in upholding the protection of citizens' private rights. The Spanish government further adopted a middle-ground approach, supervising access to private data for reasons of public interest.

The Spanish banking system exhibited a distinctive characteristic in the form of bank secrecy, an obligation imposed on credit institutions to safeguard the confidentiality of customer information from external entities excluding supervisory authorities. Furthermore, credit institutions along with the executives, directors, and significant shareholders were obligated to uphold the confidentiality of all information related to customer balances, transactions, and other dealings. The obligation remained unless legal requirements or supervisory authorities necessitated disclosure. In exceptional cases, any transmission of confidential data adhered to the client's instructions, or the guidelines stipulated by applicable law. (Machuca and Bernar, 2020, 514-515) The Spanish government also established a clear legal distinction between privacy rights and bank secrecy, articulating each within the framework of data protection regulations.

Furthermore, data protection applies to both natural persons and legal entities. Natural persons include companies that have legal rights and obligations recognized and protected by state law. Thus, natural persons have the right to privacy, especially concerning the protection of confidential data. As a natural person, these rights and obligations arise from a civil contract, and the status of a natural person is obtained after registration and recognition by state law. The Spanish government regulates data protection in Article 83 of Ley 10/2014, de 26 de junio, de ordenación, supervisión y solvencia de entidades de crédito. According to this law, natural persons are obliged not to disclose information to third parties, such as balances, transaction positions, and client operations. This clause applies to banking institutions as well. Violating these regulations carries consequences as stated in Art. 38.4 Ley 10/2014, de 26 de junio, de ordenación, supervisión y solvencia de entidades de crédito.

Nevertheless, Spain formulated a nuanced legal description of the right to privacy and bank secrecy, emphasizing detailed and applicable provisions. In contrast, Singapore recognized as a hub for storing valuable assets in the Asian region lacked clarity in the constitutional regulations. Similarly, Indonesia experienced an increased awareness period regarding privacy protection fostered by the digital era. Moreover, Spain regulated it in the following Acts.

a. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Individuals Regarding the Processing of Personal Data and on the Free Movement of the Data as well as Repealing Directive 95/46/EC

Apart from regulating the right to privacy and bank secrecy in detail, Spain is a member of the European Union which adheres to and enforces similar regulations. While the Union allowed for the exchange of information for tax purposes, it maintained strict regulations governing the access to and protection of personal data. The Union regulated access to personal data but there was special treatment to be followed as a form of protection. Access to personal data in the processing should follow several principles. The first guideline was that personal data was processed legally, fairly, and transparently in relation to the data subject (legitimacy, fairness, and transparency). (Art. 5.1.a) Regulation (EU) 2016/679) The purpose of data processing also had to be in the public interest, for scientific or historical research or statistical purposes correlating with Art. 89(1). (Art. 5.1.b) Regulation (EU) 2016/679) The article aimed to protect the rights and freedoms of data subjects ('restrictions on retention'). (Art. 5.1.e) of Regulation (EU) 2016/679) Even the Union regulated the processing of personal data to be guaranteed and protected from accidental loss, destruction, or damage with appropriate technical actions namely with integrity and confidentiality. (Art. 5.1.f) of Regulation (EU) 2016/679) The European Union also established criteria for the legality of personal data processing. According to the criteria, processing would be considered lawful when it was approved by the subject (Art. 6.1.a) of Regulation (EU) 2016/ 679) or when there existed a contract to which the data subject was a party. (Art. 6.1.b) of Regulation (EU) 2016/679) Additionally, processing would be considered lawful when it was required to fulfil a legal obligation imposed on the controller (Art. 6.1.c) of Regulation (EU) 2016/679) or when necessary to protect the vital interests of data subjects or others. (Art. 6.1.d) of Regulation (EU) 2016/679) Processing would be justified when it was necessary for the performance of tasks carried out in the public interest or the exercise of the official powers conferred on supervisors. (Art. 6.1.e) of Regulation (EU) 2016/679) Therefore, adherence to a minimum of a single requirement was essential for the processing of personal data to be considered valid.

European Union Member States have the flexibility to maintain or introduce specific provisions to customize the application of personal data processing rules in the domestic environment of the nation. This regulation aimed to ensure lawful and

fair processing including for other special processing situations. The basis for processing should be established by the law of the union or the member state under the controller's jurisdiction. (Art. 6.3 Regulation (EU) 2016/679) The European Union further showed a meticulous and protective approach to privacy rights. This was evident in the requirements that the processing of personal data should be regulated by formal law as a legal basis. The legislation could include detailed provisions to customize the application of the rules outlined in this regulation. The provisions covered various aspects including the conditions governing the legality of processing by controllers, the type of data to be processed, the relevant data subject, the entities and purpose of disclosure of personal data, limitations on objectives, storage periods, and processing operations as well as procedures. The measures further aimed to ensure lawful and fair processing, especially in specific processing situations. This arrangement was intended to achieve the objectives of the public interest and correlated with the legitimate objectives to be achieved. (Art. 6.3 of Regulation (EU) 2016/679)

b. Organic Law 3/2018 Concerning the Protection of Personal Data and Guarantee of Digital Rights.

Spain has a Data Protection Agency operating under the regulatory framework established by Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural individuals concerning the processing of personal data and the free movement of the data, repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance) and Ley Orgánica 3/2018, de 5 de diciembre, de Protección de Datos Personales y garantía de los derechos digitales.

Based on Art. 18.4 of the Spanish constitution, the protection of natural individuals and legal entities in connection with the processing of personal data was a fundamental right that received legal safeguarding. The constitution recognized the fundamental right to the protection of personal data, ensuring that the use of information technology was limited to uphold the honor and privacy of individuals and families, as well as the full exercise of citizens' rights. Consequently, the processing of personal data in the financial sector for tax purposes in Spain was processed under protective measures. Financial personal data was considered a basic right deserving

protection, guaranteed by controlling the use, purpose, and impact of processing the data. This ensured that citizens could reject the use of personal data for purposes outside those regulated.

The method of data protection mandated that public bodies were required to report to the Spanish Data Protection Agency when using the personal data of citizens. This report included background information and supporting documents needed to perform research activities. Furthermore, the communication would fall under the provisions of Art. 5.1 (a) of Regulation (EU) 2016/679 when the information contained personal data. The data collection conducted by the Spanish Data Protection Agency extended beyond obtaining data from the reporting public entity but also included collecting information from the Public Administration including the tax administration and Social Security.

c. Spanish General Tax Law number 58/2003

Taxpayers were required to provide taxation data, reports, records, and supporting documents to the tax office. (Art. 93.1 LGT) Not only individual citizens but also public and professional officials were required to cooperate with the tax office by providing all types of important tax information excluding certain data. (Art. 93.1 LGT)

The Spanish Tax Law regulated the information obligations of tax authorities concerning the data. The obligation of personal information on financial data protected by the principle of banking secrecy was regulated in Art. 93.3 of the LGT. The article stated that failure to fulfil the obligations stipulated would not be covered by banking secrecy. The banking activities referred to were individual requirements related to the transfer of demand, savings and time deposits, loan and credit accounts, as well as other active and passive operations. These included the operations reflected in temporary accounts or manifested in the issuance of checks or other payment orders, from banks, savings banks, credit cooperatives, and any agency engaged in banking or credit traffic. The activities could be examined in carrying out the inspection or collection function subject to prior permission from the Tax Office agency as determined by regulation.

Individual requirements had to specify the identification data of the check or payment order in question, the operation under investigation, the affected taxpayer,

the authorized individuals, and the relevant period as referred to in Article 93 Paragraph 3 LGT. Investigations conducted following the provisions of this section could affect the origin and destination of the movement of checks or other payment orders. However, the investigation should not exceed the identification of the individual and the account from which was found to be for the purpose.

The Spanish Government through the tax regulations authorized tax officers to access data covered by bank secrecy. This provision correlated with regulations regarding data access outlined in the principles of bank secrecy, which had defined limitations to a certain extent. The codified forms specified regulations to define the proper scope of the investigation conducted by tax and judicial authorities. (Rosenthal, 1994, 190)

The limit of bank secrecy pertained to the right of tax inspectors (and collection agents) to investigate client accounts. In all cases, the law required the provision of information enabling tax authorities to identify the account owner. Additionally, Information had to be provided to tax authorities regarding any individual under audit or for use in criminal prosecutions (i.e. in prosecuting monetary offenses). Further limitations on the powers of the tax authorities were provided by the law. (Rosenthal, 1994, 190)

(i) Authorization from a specific regulatory body to investigate accounts, and

(ii) The account to be investigated should be determined. Although no justification for the investigation was required, certain formalities should be adhered to including the presence of an affected party.

The regulation established clear boundaries regarding the parties authorized to access information and the accounts subject to investigation. The Spanish government effectively synchronized regulations, particularly in ensuring synchronization as well as harmonization in related regulatory fields.

3.3.3. Limitations on Bank Secrecy

All financial institutions in Spain recognized the principles of bank secrecy and applied the standards before promulgation which were part of the habit of protecting customers' data. Every bank in Spain was subject to the bank secrecy principle that

established the structure by the Spanish regulations, which was respect to the information obtained. (Rosenthal, 1994, 190) Furthermore, the principles of bank secrecy reflected the policy that information and documents which were in the possession of Bank of Spain officials should be kept confidential. The specific provisions in terms of confidentiality that the Bank of Spain official was not able to publish, communicate, or exhibit privileged information to third parties without the express consent of the interested party. (Rosenthal, 1994, 190)

The general concept was based upon the custom and practice of the banking industry while the aspects of the principle were based on legal regulations. (Rosenthal, 1994, 190) Banks had to keep clients' information confidential from third parties other than the supervisory authorities who traditionally had a feature of the Spanish banking system and were codified in law. (Menéndez, 2007, 1) Financial entities should further implement appropriate measures to ensure that the confidentiality of personal data was maintained. However, there were exceptions to the confidentiality obligation, including Tax information, AML/CFT information, and exceptions based on the Law on Credit Institution Regulations. (Benito, 2022)

The General Tax Law mandated taxpayers to submit various types of tax-related information to the Tax Administration, including specific data, reports, historical details, and supporting documents. This comprised information pertinent to meeting individual tax responsibilities and deductions derived from the economic, professional, or financial dealings with other individuals. (Benito, 2022) As per the regulations outlined in the AML/CFT Law, entities under regulation would furnish the necessary documentation and information to The Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences (Sepblac) or the affiliated bodies as mandated for the execution of the functions. Additionally, these entities have the authority to share information solely to prevent or hinder money laundering or terrorist financing activities, particularly when a potential exists. The suspicious operation would be conducted with another regulated entity and a similar modus operandi once rejected. (Benito, 2022)

Moreover, there were exceptions including when the data subject explicitly agreed to data disclosure, publication, or transmission, or when the data constituted aggregated information used for statistical purposes or presented in a summarized

format preventing any form of identification, even indirectly, or when information provision was necessary. (Benito, 2022)

> *"Competent judicial authorities, both domestic and foreign, as well as other relevant bodies such as those overseeing financial institutions, insurance companies, and financial markets, had the authority to access certain information. This access was contingent upon reciprocity and adherence to equivalent professional secrecy standards. The authorities were also empowered to intervene in cases of breaches or potential breaches in the market to ensure proper functioning. Additionally, entities responsible for combating money laundering or terrorist financing along with tax authorities were among individuals with access. The Ministry of Economy, the Fund for Orderly Bank Restructuring, and regional authorities overseeing credit institutions had supervisory roles, particularly during emergencies extending to corresponding authorities in the Union member states. Other entities including the Spanish Court of Auditors or a Commission of Inquiry of the Parliament, the EBA, the European Systemic Risk Board, the ESMA, and the EIOPA, could access relevant information for statutory functions. These access rights were governed by contractual or institutional protection systems following applicable regulations. The process was related to Article 113(7) of Regulation (EU) No 575/2013 of 26 June 2013 on Prudential Requirements for Credit Institutions and Investment Firms and Amending Regulation (EU) No 648/2012."* (Benito, 2022)[6]

Authorities should emphasize the need for information provision to combat money laundering, terrorist financing, and ensure tax transparency. This was the reason absolute bank secrecy was not upheld. Therefore, the secrecy of bank information was not unconditional due to various factors.

3.3.4. Adherence to International Norms

Spain became a member of the European Union on January 1, 1986. (Spanish Presidency Council of The European Union, n.d) Within the Union, regulations were established to foster cooperation among member states in terms of exchanging information (Art. 1.1 DAC) via electronic methods between countries regarding coordination and evaluation. (Art. 1.2 DAC) This cooperation could also be built through bilateral or multilateral agreements. (Art. 1.3 DAC) In 2012, Spain and four other countries agreed with the USA to share FATCA information through an Intergovernmental Agreement. During the period, the OECD also recommended

[6] The application of the principles of bank secrecy and transparency depends on the operation of the transparency system within a government, encompassing both the transparency of the financial system and banking regulations. This is crucial because international transparency is inherently linked to domestic transparency.

improvements for automatic tax information exchange. (OECD, n.d a) Spain was active and cooperative in sharing tax-related data driven by both domestic laws and international expectations, especially in Europe. This collaboration was crucial due to the closeness of European Union countries and the interconnected economies.

Spain regulated the exchange of data for tax purposes with other countries, specifically within the framework of double taxation agreements in reciprocal cooperation with European Union countries or international or supranational entities. (Art. 177.1 LOPD) However, this authority was subject to predetermined limitations ensuring a balance between enforcement and individual rights. (Art. 177. 4 LOPD) Regulations regarding the exchange of information for tax purposes were included in tax provisions. (Art. 177. 2 LOPD) The Spanish government paid extraordinary attention to accessing the information for tax purposes not only domestically but also for cooperation because this process was categorized as part of the existing tax system. In general, the tax system was still limited to tax collection and distribution in other countries.

Spain automatically implements the DAC, which regulates the framework for administrative cooperation between EU Member States regarding tax matters. The Directive aims to improve cooperation and the exchange of information between tax authorities in the EU, thereby enhancing efforts to combat tax evasion and avoidance and ensuring the proper functioning of the internal market. Over the years, these regulations have been amended several times to include new categories of information and to strengthen the cooperation framework.

A comparison between Indonesia, Singapore, and Spain, was essentially an apples-to-oranges due to the distinct starting points and backgrounds, particularly concerning privacy regulations. The influence of the European Union as a regional international institution compelled Spain to adopt specific regulatory models. While the influence of the European Union prompted Spain to adopt specific regulatory models, it could not impose the same on Indonesia and Singapore. However, these models could be considered when crafting regulations and establishing enforcement mechanisms to mitigate losses resulting from legal ambiguities or lack of regulation.

3.4 USA

3.4.1 Constitutional Perspective on Privacy

The right to privacy was guaranteed by the USA Constitution, even though the word "privacy" was not explicitly mentioned. The Supreme Court also inferred the right to privacy from various parts of the Bill of Rights and common law. (American Library Association, n.d) The Bill of Rights reflected the protection of certain aspects of privacy, specifically in the 4th and 5th Amendments. These corrections pertained to the privacy of individuals and property against unreasonable searches over the 4th and 5th Amendments privilege against self-incrimination, protecting the privacy of personal information. (The Right of Privacy, n.d)

3.4.2. Legal Description of Privacy Rights and Bank Secrecy

The USA enacted a legal system based on the principles of common law. (Jones, 1992, 464) Bank also had a duty to confidentiality to customers based on the decision of the Court of Appeal in Tournier v National Provincial and Union Bank of England [1924] 1 KB 461. According to the decision, the contract between bank and the customer implied by method that the banker would keep information on the customer confidential. (Spearman, 2012, 74) However, there were certain exceptions that the banker owed a client which was a contractual duty of secrecy under Tournier except the following.

> *"a) disclosures were compelled by law, b) there was a duty to the public to disclose, c) the interests of the bank required disclosure or d) when disclosure was made with the express or implied consent of the customer."* (Jones, 1992, 465)

Following this, the USA enacted The Financial Recordkeeping and Reporting of Currency and Foreign Transactions Act of 1970, known as the BSA, to regulate bank secrecy. (DSC Risk Management Manual of Examination Policies Federal Deposit Insurance Corporation, n.d, 8.1-1) The BSA was further known as a federal statute that required banks and other financial institutions to maintain records of customers' transactions and to report certain domestic and foreign transactions. This act was passed by Congress in 1970 and was designed to help the federal government in criminal, tax, and other regulatory investigations. (Garner, 2004, 445) BSA was remedied by Congress due to some privacy deficiencies with the RFPA in 1978 which included.

“The RFPA restricted government access to individual or small partnership banking records meeting BSA requirements. The government should be authorized by the customer or have a judicial or administrative subpoena, search warrant, or a special RFPA formal written request to obtain the records.” (Jones, 1992, 465)

Bank Secrecy principle was observed to have certain limitations in USA implementation. Furthermore, the BSA consisted of two parts namely Title I Financial Recordkeeping and Title II Reports of Currency and Foreign Transactions. The implementing regulations under the BSA originally aimed to aid the investigation of criminal activities from income tax evasion to money laundering. In recent years, the BSA's reports and records have been used as tools for investigating individuals suspected of engaging in illegal drug and terrorist financing activities. (DSC Risk Management Manual of Examination Policies Federal Deposit Insurance Corporation, n.d, 8.1-1)

3.4.3 Balancing Privacy and Investigative Interests

Bank secrecy rules in the USA covered individuals, entities, and financial institutions. The Right to Financial Privacy Act of 1978 (Mello, 2012, 126) "Privacy Act" granted bank customers privacy rights over financial information. While the Privacy Act protected this right, it allowed federal agencies to access customer account information under specific conditions. Accessing private information also had requirements and exceptions. Customers could challenge federal agencies' requests for bank records, but objections were limited to relevance or notification requirements. The Privacy Act did not protect company financial information.

Financial privacy in the USA was not absolute, which was evident in the lack of confidentiality of bank records from federal agencies. This was based on certain formal requirements and the validity of the request. Bank Secrecy Act empowered the Minister of Finance to mandate financial institutions to keep records and report specific transactions for enforcement in criminal, tax, or regulatory matters.

Personal financial information was private unless there was an error. Subsequently, the right to privacy should not hinder tax authorities from obtaining information to assess taxes owed. Neglecting tax obligations could not be justified by

the right to financial privacy. Law abuse was also forbidden reflecting the main purpose of taxes to finance public services and promote fairness.

Confidentiality of bank records in the USA was governed by federal and state laws, including common law obligations. The Gramm-Leach-Bliley Act addressed the commercial use of customer information. Furthermore, the RFPA shielded financial institutions' customer information from improper disclosure to federal authorities. (The European Banking Federation, 2004, 24) It prohibited disclosing consumer records to the federal government without due process. Financial institutions should protect consumers information and the reporting provision should exempt information on alleged crimes. While financial institutions needed to file SARs with the Treasury Department, bank was required to also inform customers. Furthermore, Government officials investigating SAR-related crimes could access customer information without an official order. (The European Banking Federation, 2004, 24)

3.4.4 Conformity with Global Standards

The USA ranked second[7] on the 2020 Financial Secrecy Index. (Tax Justice Network, 2020, 1) The interesting data was on the secrecy score which was an international standard and cooperation in terms of bilateral treaties was 34 greater than Cayman Island. (Tax Justice Network, 2020, 1) The USA had more concentrated on the building of cooperation with other countries. Since 1992, it was realized that bank secrecy evolved over the past century. Furthermore, the principle aimed to meet the needs of individuals avoiding government criminal and fiscal practices. Jones further argued that the president needed to pursue international cooperation due to the diplomatic efforts evolving friction and did not have an agreement even though it would be reducing the conflict. (Todd Jones, 1992, 507) Initially, the USA faced challenges with the citizens holding funds abroad and failing to report the tax liabilities. In 1992, the idea of requiring international collaboration to ensure tax compliance arose but in a different form. Subsequently, the USA initiated a proactive approach in 2008. (Scott D., 2013) Additionally, the FATCA was passed into law in March 2010 and became effective on July 1, 2014. (Tax Justice Network, 2020, 4) The execution of

[7] The Financial Secrecy Index (FSI) is a tool designed to measure the extent to which a jurisdiction's financial system allows for secretive financial activities that can facilitate tax evasion, money laundering, and other illicit financial practices. It is compiled and published by the Tax Justice Network (TJN), an independent organization that advocates for transparency and the curbing of tax evasion.

FATCA prompted other countries to amend national tax laws by incorporating policy changes within the jurisdictions.

A comparison among the four countries including Indonesia, Singapore, and Spain showed that despite the USA not explicitly mentioning rights to privacy in the constitution, the states intricately regulated the implementation of the principle of bank secrecy. This was driven by the vested interest in information data which was crucial to the diverse economic activities including USA companies and economic ventures across various countries. However, Spain with constitutional provisions safeguarding the right to privacy rigorously regulated the handling of the citizens' information data. Indonesia, Singapore, and Switzerland while not explicitly addressing the regulation of the right to privacy in the constitutions, each approaches information data protection differently contributing to varying levels of privacy in each nation.

Bank secrecy in different countries had taxation implications often leading to deviations from the principle, particularly in cases of tax evasion or avoidance. Additionally, bank secrecy was implemented with exceptions in some instances. Every nation had regulations regarding the bank secrecy principle, but the implementation varies due to several factors. These differences originated from each nation’s unique interests. On one hand, a nation might use the principle to attract foreign investments thereby enriching the state with funds from citizens of other countries. On the other hand, a nation might prioritize access to the citizens' financial information leading to a more flexible implementation of bank secrecy. The implementation of bank secrecy principle was driven by each nation’s interests which were influenced by factors such as natural resources, tax revenue, and sovereignty.

Despite these variations, there were similarities in bank secrecy principle. It included a private business relationship between customers and banks with implications for the public interest. Government laws governed public interest transforming the regulations from a purely private matter, especially concerning taxation. In this context, a flexible implementation of bank secrecy principle was considered necessary to allow governments to regulate exceptions for sharing customer data depending on the objectives and the authorized parties accessing the information.

3.5. Switzerland

Switzerland protected bank secrecy interest to the customer based on the nature of law, both generally non-contractual and contractual. (Rosenthal, 1994, 194) The authoritative sources of Swiss banking secrecy regulations included the Swiss Constitution, Civil Code, Obligations, Banking Code, and Penal Code. (Moser, 1995, 324)

3.5.1 Privacy in Swiss Constitutional Law

Swiss constitution implied the enforcement of the individual right to privacy which was the Federal Supreme Court upholds the existence of individual rights. (Moser, 1995, 326) Hans Rudolf stated that before the Civil Code regulated the individual sphere, it was suggested by the Swiss Federal Supreme Court. The individual sphere was a private sphere of an individual including information about financial affairs and fortune. (Rosenthal, 1994, 189) The right to privacy was explicitly outlined in the Swiss Constitution under paragraph 13, stating.

Art. 13 Right to privacy

> *"1. Every individual possessed the right to privacy in the private and family life and in the home, as well as correlating to the mail and telecommunications.*
>
> *2. Every individual had the right to be protected against the misuse of personal data."*

Switzerland enforced strong regulations in the constitution to protect the right to privacy, specifically focusing on safeguarding information and data for both individuals and families. Spain and Switzerland shared similarities in the constitutional regulations concerning the privacy rights of the citizens. Both countries emphasized the privacy not only of individuals but also of family life, emphasizing the need for protection by the state government.

3.5.2 Legal Provisions Regarding Privacy and Bank Secrecy

Switzerland further governed the right to privacy through statutory regulations aside from being stipulated in the constitution, including The Swiss Code of Obligations, which was a component of the Civil Code, the Banking Act, and the Penal Code. The civil right to personal privacy as stated in Article 28 of the Swiss Civil Code (Hofman, et.al., 2018, 3-4) acknowledged the rights to privacy for individuals and

companies. This comprised economic privacy and the confidentiality of information related to banking relationships and assets.

The contractual relationship between the customer and Bank under Article 398 of the Swiss Code of Obligations where an agent was liable to the principal for the diligent and faithful performance of the business entrusted. This obligated bank to keep customer data entrusted to the institution confidential. (Hofman, et.al., 2018, 3-4)

Article 47 of the Swiss Federal Act on Banks and Savings Banks (amended 2016) known as the Banking Act posed as the fundamental legislation overseeing bank secrecy in Switzerland. (Hofman, et.al., 2018, 1) Regarding this article, the Swiss Banking Code mandated a confidentiality obligation on bank but not within a civil law framework. A breach of the obligation constituted an unauthorized disclosure of banking secrets by bank. In terms of legal recourse for a breach of contract under Swiss law, remedies typically included either specific performance (potentially an injunction against the disclosure of protected information) or damages. (Moser, 1995, 201) Article 47 of the Swiss Federal Act on Banks and Savings Banks presented these stipulations.

> *"(1) Every individual working at bank had to keep secrets, (2) Third parties who led others to infringe the secrecy duty were also to be punished, even when the offense never took place, (3) Infringement due to pure negligence, as well as the intentional infringement was to be punished, (4) The infringement of bank secrecy would be prosecuted by the court on the initiative, (5) The penalties included a prison term not to exceed six months or a fine not to exceed 50,000 and either penalty could be cumulated, (6) Breach of professional secrecy remained punishable even after termination of a public or private employment relationship or the practice of a profession, and (7) Bank secrecy was not absolute. In specific legal circumstances, Swiss authorities were to be granted the right of access to private banking records."* (Moser, 1995, 324)

An authoritative source of the banking secrecy was Article 321 of the Swiss Penal Code stipulating that the actual provision regarding bank secrecy punishing violations of professional secrecy should be regulated by the Banking Code. Article 162 of the Swiss Penal Code applied to the non-bank sector of the Swiss financial market and prohibited financiers from disclosing commercial and business secrets.' Article 273 addressed "espionage and the supplying of economic information to foreign officials and private organizations". The Swiss Penal Code imposed the duty

of banking secrecy on the financier under the theory that disclosure of domestic information would harm Switzerland economically. (Moser, 1995, 324)

Switzerland had clear and strong provisions regulating the right to privacy despite not being a member of the European Union such as Spain. Over the years, Switzerland established the nation as a secure destination for saving money.

3.5.3. Factors Impacting Absolute Bank Secrecy

The banker was obligated to uphold the principle of confidentiality and could further face questioning when the confidentiality was breached. (Moser, 1995, 326) Even though Swiss Bank Secrecy was known as a rigid principle, the Swiss struggled to attempt to change the principle. (Moser, 1995, 326) Swiss criminal proceedings further provided a similar exception for all cantonal and federal levels. The only exception made by the course of administrative proceedings that the banking duty secrecy which included tax fraud or tax evasion. (Moser, 1995, 324)

The exception of the Bank Secrecy was influenced by the increase in criminal banking activity. It made the officials concerned that the world community would perceive Switzerland negatively. (Moser, 1995, 327) Therefore, Swiss needed to address the circumstances which was to restore the image. (Moser, 1995, 327) Certain factors contributed to the change in Swiss Bank Secrecy including money laundering, organized crime activity which was included in criminal banking activity, and tax evasion. Furthermore, the international factor originated from criticism by the USA stating that the nation pressured Switzerland to enact legislation making money laundering crime and tax evasion in Switzerland. (Moser, 1995, 327) This was a reason to extend measures against bank secrecy into international prestige. The prestige was damaged when a nation associated with the protection of tax evasion suggested an unbalance in the share of the tax burden in other states. Bank secrecy protected tax evasion against tax justice.

Switzerland granted the USA prosecutors access to bank records protected by banking secrecy for the prosecution of money launderers. The policy was enforced by Article 305 of the Swiss Penal Code enacted in 1990. This led to the relaxing of Swiss banking secrecy laws further to ease USA investigations of money laundering offenses

in Switzerland. Furthermore, Switzerland ratified the European Accord on Fighting Money Laundering in 1993. (Moser, 1995, 327)

3.5.4. Correlation with International Expectations

Swiss participation was unavoidable in the context of global tax information exchange, as Switzerland was of interest to various other countries. Switzerland further provided judicial assistance to the countries based on the principle of reciprocity. For the agreement to be valid, it needed to include provisions related to reciprocal cooperation. (Rosenthal, 1994, 201) Furthermore, the agreement on reciprocal cooperation also applied to requests about proceedings in criminal matters. (Rosenthal, 1994, 201)

Swiss was further known as a nation that had a strong bank secrecy principle globally and influenced other countries. Based on the data of the financial secrecy index, Switzerland had the third rank in 2020. (Tax Justice Network, 2020) Guex stated that Switzerland struggled in the strategy of attracting foreign capital to Switzerland. (Guex, 2000, 241) Starting with the introduction of the principle of bank secrecy, which was not accepted by all cantons in Switzerland before 1934. However, this changed when Switzerland experienced the following.

> *"Lacking comparable industrial and commercial power, Swiss banks could in no method compete with financial centers such as London, Paris, or Berlin. However, members of the Swiss banking circles realized that the tax increases occurring in several countries offered the nation an interesting possibility. Attracting Switzerland's foreign capital seeking to evade domestic taxation was considered to be exorbitant."* (Guex, 2000, 241)

The point was important because the outcomes provided evidence that sovereignty was the final reason for bank secrecy. Therefore, what was most important, respecting the sovereignty of a nation or tax justice for the citizens? The situation was further motivated by the economic condition and motivated the Swiss to gain a new dimension of the importance of banking secrecy. Following this, not only was banking secrecy simply an instrument with primarily internal functions that were designed to protect the banks from the domestic tax authorities but also an instrument with external functions. The instrument allowed banking secrecy to serve as an instrument to attract foreign capital to Switzerland. (Guex, 2000, 241) The efforts were

attracting foreign capital to Switzerland that needed high trust in bank customers. These circumstances were well understood by Switzerland which was ranked 3rd in the 2020 Financial Secrecy Index based on this discovery. (Tax Justice Network, n.d b) Even though it was initially explained and mentioned that Switzerland had a strong commitment to the right to privacy, Switzerland opened the cooperation to other countries for the exchange of information. Within the framework of AEOI, financial institutions such as banks, collective investment schemes, and insurance companies obtained data regarding various forms of investment income and client account balances for individuals who were tax residents in other countries. This data was then conveyed to the FTA through the e-Portal, which was subsequently shared with the respective tax authorities in the relevant foreign jurisdictions. (FTA, n.d) Furthermore, under the global standard for AEOI, the FTA shared financial account data with 104 countries. (FTA, n.d)

Switzerland despite being located in the heart of the European continent (Encyclopedia Britannica, 2024) was not a European Union member in contrast to Spain which was a member of the Union. (The European Union, n.d a) Consequently, Switzerland's regulation of the principle of confidentiality was not obligated to correlate with European Union law as it was confined to bilateral agreements made by Switzerland. The adherence to international standards on Bank Secrecy and domestic law was also influenced by the historical role as a trusted repository for money from neighbouring countries since the World War era. Additionally, Switzerland heavily depended on income from the financial services sector.

Bank secrecy, as demonstrated by the comparison above, reveals that Spain is the only country among the five that explicitly and specifically enshrines the right to privacy in its constitution. Despite Singapore and Switzerland being prominent nations for wealth storage services catering to cross-border customers, their constitutions do not address this matter in detail. A commonality among these five countries is that taxation serves as a primary factor that renders the principle of bank secrecy non-absolute, both domestically and internationally. From a domestic perspective, the USA faces challenges with its citizens storing assets abroad. As a result, it relies on its influence over foreign financial institutions to obtain information about these assets. Externally, technological advancements necessitate that these countries collaborate in exchanging information across national borders. Spain stands out as a model for

international cooperation, its due to robust regulatory frameworks and facilities. In contrast, Indonesia requires time to develop the necessary technological and legal infrastructure to meet the standards of the AEOI initiative.

4. Theoretical Frame and Definition of Secrecy in Banking and Cryptocurrency

4.1 Nature of Bank Secrecy

Cranston suggested that two legal products regulating privacy and bank secrecy were part of human rights. Article 8 of the European Human Rights Convention which covered protection for an individual's personal and family life, home, and correspondence did not explicitly include bank secrecy rules but could be used to support the process. (Cranston, 2007, 3) Two arguments were made in support of the imposition of a bank secrecy obligation. (Cranston, 2007, 4)

1) The nature of commercially sensitive business information, and

2) The main argument for bank secrecy obligations was the value for individuals in protecting personal autonomy.

Personal autonomy was closely connected to privacy and personal information that could not be shared without the permission of anyone in the banking sector referred to as bank privacy. (Hawkshaw, 2014, 159) There were no explicit written guidelines about the control of a secrecy bank in the early history. However, someone's personal information was accepted as a right to privacy that could not be easily disseminated without the permission of the information's owner. The data was further part of human rights which it had since birth.

The principle of bank secrecy essentially protected customer information from third parties as a mandatory responsibility of the banking institution towards the customers. This obligatory responsibility originated from professional legal relationships that demanded professional secrecy. (Lytvynenko, 2019, 303) Therefore, the act of preserving the information constituted the rights of the customer. Since customers entrusted the information to bank, the reciprocal relationship was not solely for business or management purposes but rather a part of the right to privacy. The principle of bank secrecy further safeguarded the privacy rights of bank customers thereby contributing to the shaping of human rights.

The bank, as a legal entity, is obligated to maintain the confidentiality of the data entrusted to it, as discussed in the principles outlined in Chapter One. This obligation extends beyond individuals; legal person also has the right to privacy and data protection (Sloot, 2015, 26). Legal person can file lawsuits if their rights are violated. Data protection for legal person includes safeguarding against unfair treatment, ensuring access to data, and adhering to rules for processing data safely and confidentially (Sloot, 2015, 45). However, this analysis will primarily focus on the subject of natural person law.

4.2 Key Sources of Norms About Bank Secrecy

The principle of bank secrecy which had evolved previously was not initially recognized as law. However, the principle experienced a process to become recognized as a law coexisting with other regulations. This correlated with the theory proposed by Sudikno Mertokusumo regarding the sources of law. (Mertokusumo, 2005, 83) Mertokusumo's theory stated that the sources of law pertain to the origin of a particular value or norm. Legal sources were further classified into *"formele zin"* (formal origin) and *"materiele zin"* (material origin). (Simanjuntak, 2019, 87) Formal legal sources viewed from a juridical perspective in the formal sense referred to the origin in terms of the form. These generally included (i) Laws, (ii) Customs, (iii) Treaties, (iv) Jurisprudence, and (v) Doctrine. (Ngutra, 2016, 210) Material sources of law perceived in terms of the content included regulations such as the Criminal Code, which addressed general crimes, offenses, and breaches. From a material perspective, the Civil Code addressed issues related to legal subjects, goods as legal subjects, agreements, evidence, and absoluteness. (Ngutra, 2016, 210)

Formal sources of law comprised laws enacted by legislatures, customs, treaties, jurisprudence, and doctrine. (Rosa, 2022) In the context of formal legal sources, Bank Secrecy initially included a relationship between parties with an interest in storing money transactions securely. This transaction was repeated over time which led to disputes between the parties and requiring a judicial intervention, thereby contributing to the development of jurisprudence. Eventually, an agreement between the parties evolved to be regulated by the government through laws with penalties for violations. In terms of material legal sources, the transition from private agreements to public regulations included government intervention through statutory regulations. The government gained the legal authority to access information protected by bank

secrecy, transforming the nature of the relationship between financial institutions and the customer. This shift underscored the importance of implementing data protection frameworks to prevent the misuse of personal data and maintain public trust in organizations handling the information.

4.2.1 Custom

Bank secrecy was enforced by the law throughout the development of financial institutions which was a policy maintained by bank employees and stakeholders. In the development, bank secrecy became a significant influence on the law, economy, and even taxation of a nation and the global community. However, the principle of bank secrecy principle was unwritten and initially existed as a custom. When a custom becomes a rule, it would typically include two elements namely the repetition of behaviour and what was known as *'opinio iuris'*. (Werner, 2019, 10)

The repetition of behaviour was depicted by the actions of the parties including the financial institutions and the customer which was exemplified by the Tournier case. While the principle of bank secrecy was fundamentally rooted in the right to privacy, the regulation experienced several stages of development. It began as a form of trust between customers and the institutions, evolving to include judicial decisions in the context of disputes, and eventually became subject to statutory regulations imposing penalties for violations. Initially, this trust between customers and banks was based on informal and unwritten laws. (ECCHR, 2023)

Bank secrecy was further observed provided that the banking system existed. Initially, the principle was based on unwritten customary law and was supported by what was considered decent and fair. (Federation of Finish Financial Companies, 2009) The customary law in question was an unwritten rule that was well-known, widely understood, and recognized by the parties and consistently implemented for a long period. Additionally, the custom was not against the applicable law as there would be no legal punishment for violations because it was not a written regulation. Although disputes arose and required resolution through the court system or mediation, as it was based on consent between the parties. Furthermore, the WIPO defined custom with the following definition. (Wipo, n.d)

> *"Custom denoted a rule of conduct, obligatory on those within the scope and established by long usage. A valid custom should be of immemorial antiquity,*

certain and reasonable, obligatory, and not repugnant to Statute Law but it may derogate from the common law." (Wipo, n.d)

When the principle of bank secrecy was regulated by criminal law and a violation occurred, the responsible party would be subject to sanctions imposed by the government. This would not be the same when regulated in terms of civil law, as the parties would have the right to pursue the interests.

The secrecy inherent in the banker-customer relationship as described by Theresia and Chryssantus further formed the basis for Abdullah S's argument. According to Abdullah S, (Christiani and Kastowo, 2019, 9) *"The relationship between the banker and customer, particularly about secrecy was implicitly established."* This signified that banks were obligated to safeguard customer secrets held by bank. Consequently, the agreement between bank and the customer became effective originating from an unwritten arrangement. The concept was explicitly addressed in the legal framework of the bank-customer contract. (Christiani and Kastowo, 2019, 9)

4.2.2 Jurisprudence

Personal data was used in the public interest to facilitate access and allowed for the collection of large amounts of tax data. However, the data did not necessarily imply that there was also a public interest in disseminating raw data in masse without supervision. Access to financial data for taxation purposes, as a basis for public interest, could be tolerated with oversight.

The principle of bank secrecy in essence was an ethic and a custom between the customer and bank. Discrepancies could also evolve in the relationship between the two parties. Consequently, the solution was to take the case to court for a decision to be made. There was a case in terms of secrecy that was written by Toulson and Phipps, known as the pioneers of the bank secrecy principle. In the case of Tournier v National Bank (1924):

"The plaintiff banked with the defendants at the Moorgate Street branch. The account became overdrawn and agreed to pay off the overdraft in weekly installments of 1 pound sterling. The address was that of a firm whose employment was about to be agreed upon. Failing to pay the installment, the manager of the defendants' branch telephoned the employers to ask for the private address. In the course of the conversation, the manager informed the employers that the plaintiff got into difficulties with the employers who refused

> *to renew employment and sued the defendants for damages."* (Pranacitra, 2018, 43)

The plaintiff sued bank because there was a violation of secrecy implicit in the contract between the institution and the customer. The trial in the first instance favoured the bank against the claimant (customer). However, the customer appealed this decision, and the Court of Appeal allowed the appeal and ordered a new trial. All judges, namely Bankes, Scrutton, and Atkin, L.J., confirmed that bank had a duty of secrecy obligations to customers. (Pranacitra, 2018, 43) The duty of secrecy obligation required a more detailed explanation in the description of the scope. Therefore, Atkin, L.J. stated.

> *"To what information does the obligation of secrecy extend? It goes beyond the state of the account, either there was a debit or credit balance, and the amount of the balance. The secrecy should extend to all the transactions that went through the account and to the securities, given in respect of the account, and respect of the matters. Furthermore, extended beyond the period when the account is closed, or ceased to be an active account. The obligation also extended to information obtained from other sources than the customer's actual account, when the occasion upon which the information was obtained arose out of the banking relations of bank and the customers. For example, to assist the bank in conducting the customer's business."* (Pranacitra, 2018, 43)

The banker further had the right to keep the customer's information confidential. Furthermore, Bankes LJ stated four qualifications as the duty of secrecy was not absolute.

> *"(a) where disclosure was under compulsion of law, (b) where there was a duty to the public to disclose, (c) where the interests of bank required disclosure, and (d) where the disclosure was made by the express or implied consent of the customer."* (Spearman, 2012, 78)

The decision indicated that bank had a duty to protect the privacy information of a customer. However, the Judges provided a view that certain reasons could justify accessing private information, considering legal interests, public interest, financial institutions, and consent with customers. The case of Tournier v National Provincial and Union Bank of England (1924) represented a monumental case that became jurisprudence that banks had a duty of confidence to the customers. Tournier v National Bank (1924) happened and was solved in England which was known as the state of origin and place of development of the common law legal system. (Dainow, 1966, 419) The common law created the first uniform rules and the first basis of

uniformity in the legal order by establishing general norms that were common throughout the nation. (Dainow, 1966, 419) Additionally, the legislation was directly applicable to a particular situation in the common law legal system where the courts were obliged to provide the decisions according to the text. Whenever any question or doubt could be raised, the statute was given a narrow interpretation to minimize the disruption of the common law and to preserve a maximum authority in the courts. (Dainow, 1966, 422)

Following this, England had several colonies including Singapore (LePoer, 1989, 16) which applied the common law legal system under English influence. This was the reason Singapore's law followed Tournier's consensus on bank secrecy based on common law rules until 2001 after which reforms were introduced. (Ying, 2015, 35) Singapore was among the Southeast Asia countries that advanced economic development recently which was influenced due to bank secrecy applied to the neighbourhood countries. The section was analysed further in the next subchapter.

According to Article 8 of the Convention, as referenced in the Guide to the Case-Law of the European Court of Human Rights, personal data was safeguarded within the Convention's framework (Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland [GC], 2017, 137; Z v. Finland, 1997, 95). This protection was crucial for ensuring individuals' rights to privacy, family life, home, and correspondence, as outlined in the Convention. (Ying, 2015, 35) The development of the concept of bank secrecy is also upheld in judicial decisions. It is recognized that the protection of individual rights, including the protection of personal data, is an integral part of human rights.

4.2.3 Bank Secrecy Regulated by Law

The principle of bank secrecy originated from an agreement between parties using bank services. However, disputes between these parties often led to court intervention for resolution by a judge. The judge's decision served as precedent for similar cases making bank secrecy a private matter. This transitioned into the public domain when governments formalized the principle into law, imposing sanctions for violations. To regulate domestic interests, countries globally adopted the principle of bank secrecy according to the respective cultures and laws. The principle governed which parties were legally entitled to access personal data for predetermined

purposes. There were three main points considered namely (1) the types of data intended for access, (2) the parties legally authorized to access the data, and (3) the purposes for accessing the data.

4.2.3.1 The Types of Data Intended for Access

The data in question was classified as personal data which falls under the protection of individual human rights. In civilized societies, safeguarding individual privacy and protection was considered a fundamental policy. (Wood, 1998) The concept of personal data was defined as "any information relating to an identified or identifiable individual". (European Court of human Rights, 2022, 7)

The type of data referred to in the principle of bank secrecy for access was personal financial information. This included information extracted from individual banking documents, either the sensitive data or professional transactions of the data subject. The copying and subsequent storage of banking data by authorities fall within the domain of "personal life" and "correspondence". (European Court of human Rights, 2022, 16) The personal financial data included names, addresses, account numbers, and account transactions. Furthermore, the principle of bank secrecy gained legal force and consequences when it was officially included in regulatory laws both at the level of the legal hierarchy and below.

4.2.3.2 The Parties Legally Authorized to Access the Data (The Extending of Bank Secrecy Principle)

The extension of the principle of bank secrecy occurred due to the access to financial personal data. It originated from an agreement between two parties, established as a valid civil agreement serving as law for the participatory parties. Consequently, the parties legally authorized to access the personal financial data were bound by the agreement. Banking activities also had widespread impacts across various aspects of life and formed the foundation of government operations. The government further intervened in the private sphere of the citizens by regulating the bank secrecy principle which was in the public interest.

The participation originated from the recognition of public interest, granting the government the right to access the personal financial data of the citizens. Public interest was characterized by actions or outcomes benefiting the general public

(Goodwin, 2012) and was prioritized over private interests due to the broader impact on society.

The extension of the bank secrecy principle was justified by public interest considerations. Disclosure was further necessitated for several reasons including combating money laundering, terrorism, tax crimes, and safeguarding inheritance rights often guided by judicial decisions.

4.2.3.3 The Purposes for Accessing the Data (The Restriction of Bank Secrecy Principle by Law)

The main restriction of bank secrecy principle was that access to personal financial data was limited to specific purposes only. The laws of each nation varied in the regulations of the purposes for accessing financial data including in Indonesia, Singapore, Spain, USA, and Switzerland. However, the countries shared a similarity in legalizing the access of financial personal data by the government for criminal and tax reasons. For processing criminal data, banking data such as terrorism, money laundering, and tax fraud were essential. Tax interests also played a crucial role, necessitating international agreements that called for collaboration between countries to repatriate assets of the citizens stored abroad and addressing both international as well as domestic concerns.

The principle of bank secrecy was still strictly adhered to but regulated by laws and regulations. Customer data could be shared but with limitations such as certain specified parties, predetermined purposes, and specified customer data privacy limitations.

4.2.3.4 The Protection of Bank Secrecy Principle

Despite government policies allowing access to bank customer data under certain restrictions, strong protections remained in place to safeguard sensitive information. These protections included the imposition of criminal fines and prosecution for unauthorized access. Additionally, access to personal data previously approved by the owner was also protected. This was regulated in the laws of each nation and responsible institutions were formed to supervise the process. Further examination these cases would be provided in the subsequent paragraphs for Indonesia, Singapore, and Spain.

The European Union regulated data access protection through legal frameworks. Regionally within the Union, data protection arrangements were very strict as reflected in the national regulations in Spain. Despite cooperating in terms of information exchange, any deviation from the right to privacy was legally safeguarded. This legality formed the basis for the establishment of protection institutions.

The Spanish Data Protection Agency, known as the AEPD, functioned as the authority responsible for overseeing and enforcing data protection laws within Spain. The primary objective was to safeguard individuals' privacy rights, promoting and ensuring compliance with data protection regulations. (Data Protection Laws of The World, n.d)

The AEPD was responsible for implementing and overseeing compliance with the GDPR, a regulation of the European Union that addressed data protection and privacy. This regulation applied to all the member states including Spain. The AEPD had the responsibility of supervising and regulating the handling of personal data by individuals, businesses, and government entities within the jurisdiction. (Ministerio de Sanidad, n.d)

The agency interpreted and enforced data protection laws in Spain, ensuring that organizations adhered to the relevant regulations. Providing information and guidance on data protection laws and best practices to individuals and organizations was a key role of the AEPD. Endowed with authority, the agency investigated complaints, data breaches, and potential violations of data protection laws. It was empowered to impose sanctions and penalties on organizations failing to comply with these laws. The AEPD actively worked to raise awareness regarding data protection issues and advocated for the importance of respecting individuals' privacy rights. The GDPR established stringent rules for personal data processing and enhanced individuals' rights concerning personal information. Public or private entities processing personal data in Spain fell under the supervision and enforcement purview of the AEPD. The agency played a crucial role in ensuring that businesses and organizations handled personal data responsibly and following legal requirements.

Indonesia initially regulated personal data protection through ministerial regulations, which were further evolved into legal frameworks. This differed from Spain and bound by EU regulations had to adjust the national regulations accordingly.

Initially, protecting personal data was not considered important or urgent. However, the protection of personal data became recognized as legally essential and deserving of attention. Indonesia further regulated the data at the level of legislation, namely Ministerial Regulation No. 20 of 2016 concerning PDP stipulated on 7 November 2016. Over the next six years, this regulation experienced drafting and eventually became law. In 2022, Law (UU) Number 27 of 2022 regarding Personal Data Protection was enacted. A key aspect of the law was the establishment of an institution, and the specific duties and responsibilities of the Personal Data Protection Agency were further delineated in regulations derived from the PDP Law. The regulations governing PDP institutions were outlined in Articles 58 to 60.

Article 58 specified that the institutions played a crucial role in implementing personal data protection and were established as well as accountable to the President. Article 59 of the PDP Law detailed that the institution was responsible for formulating policies and strategies to safeguard personal data, providing guidance for personal data subjects, controllers, and processors.

The institution further faced supervisory responsibilities concerning the implementation of personal data protection, enforced administrative law against violations of the law, and facilitated out-of-court dispute resolution. As stipulated in Article 60 of the PDP Law, the institution possessed the authority to formulate and establish policies in the domain of personal data protection, monitor compliance by personal data controllers, and impose administrative sanctions for violations committed by personal data controllers and/or processors. Furthermore, the institution was empowered to assist law enforcement officials in addressing alleged criminal acts related to personal data as outlined in the PDP Law and collaborated with personal data protection agencies from other countries in addressing alleged violations of cross-border personal data protection.

Singapore further regulated data protection through laws and regulations since 2012, particularly with the enactment of the PDPA 2012 (Act 26 of 2012) and the PDPR 2021. (PDPA Act 26, 2012) The nation protected personal data with the existence of PDPA, which provided a baseline standard of protection for personal data in Singapore. It complemented sector-specific legislative and regulatory frameworks such as the Banking Act and the Insurance Act. (PDPA Overview, nd.) The PDPA

established a fundamental level of safeguarding for personal data within Singapore. It worked in conjunction with industry-specific legislative and regulatory structures, including the Banking Act and Insurance Act. The Act also comprised a range of stipulations concerning the acquisition, adoption, revelation, and maintenance of personal data within Singapore. Additionally, it facilitated the creation of a national DNC Registry enabling individuals to register Singapore telephone numbers. This registry empowered the entity to decline unwanted telemarketing communications from organizations.

The PDPA further acknowledged the importance of safeguarding individuals' data and enabling organizations to legitimately and reasonably collect, use, or disclose the information. The implementation of a data protection framework became crucial to prevent the misuse of personal data and to uphold the trust individuals placed in organizations handling the data. Through overseeing the exchange of personal data among organizations, the PDPA also aimed to enhance Singapore's standing as a reliable hub for businesses. The entity’s scope comprised personal data stored in both electronic and non-electronic formats. However, the scope generally excluded (1) individuals acting on a personal or domestic basis, (2) individuals acting in the capacity of employees within an organization, (3) public agencies concerning the collection, use, or disclosure of personal data, and (4) business contact information, including an individual's name, position or title, business telephone number, address, email, fax number, and similar details. Organizations engaging in activities related to the collection, use, or disclosure of personal data were obligated to adhere to various data protection requirements. More information about the obligations was found for further understanding. (PDPC, n.d)

The government implemented protection measures for the right to privacy of the citizens in every nation. The responsibility went beyond merely creating a secure environment due to government obligations and was also crucial for economic safety reasons. This included the nation’s income derived from taxes because data protection was connected to the right to privacy, essential for maintaining the confidentiality of financial assets, either stored in banks or digital assets. Despite variations in regulations among countries due to both external and internal factors, the protection of personal information data was universally regarded as highly important. This was

due to the demands of the current era of information technology, which was highly susceptible to the risks of misuse of personal data.

4.3 Elements of Bank Secrecy

4.3.1 Parties Related through Bank Secrecy

Several parties were included, and the transaction was based on the relationship between bank and the customer. The parties to whom bank secrecy principle applied were who used bank's services. This was because any piece of information and data that bank needed to provide services necessitated the use of private data by the customers. Furthermore, the provision of services carried out by bank included processing private data, which could not be shared or consumed by anyone other than two parties namely the banking service provider (bank) and the recipient of the banking service (the customer).

According to Cranston's broad definition, a customer was someone who interacted with bank for banking service. Customers included those who had accounts, borrowers, and those who used banks for financial services such as financial advice, fund management, securities and derivatives transactions, among others. Customers could also come from other financial institutions and business partners, as well as commercial and private clients. (Cranston, 2007, 4)

The parties engaged in the principle of bank secrecy were those who used the bank's facilities. A contract determined the relationship between the service recipient and the service provider. (Cranston, 2007, 4) And the bank secrecy principle governed the relationship between the two parties engaged in the contracts. As explained by Cranston, the essence of the relationship between bank and the customer was a contract. Specifically, a contract that adhered to civil law principles and accordance with applicable law.

The party who had signed the contract was included as shown in the contractual relationship. In bank secrecy principle, the parties were those who had signed the document namely bank as the provider of banking services and the client as the recipient of banking services. A third party, known as someone who did not sign the agreement, referred to those who had not been part of the banking contract. The third party could have been positioned as the government, either the government of bank where the transaction had taken place or the government of the customer where the

transaction originated. The other parties also included judges, tax authorities, police, and the court system, among others.

According to Cranston, the duty to confidentiality was not exclusive to the account holder. (Cranston, 2007, 4) Furthermore, customer information was accessible by more than a single employee in bank. Employees of the bank were also instructed to obey the bank's confidentiality policy in this situation. Additionally, the *pacta sunt servenda* principle was well-known in which the agreement between the parties applied the law. The principle of bank secrecy was the agreements in the banking contract relationship. Customers' information had to be kept private by bank, ensuring the security and confidentiality of the personal data.

The bank, as an institution and legal entity, is obligated to maintain the confidentiality of data entrusted to it, as discussed in previously. This obligation extends beyond individuals' right to privacy and data protection, encompassing legal entities as well (Karthik & Sampath, 2024, 1). Legal person also has the right to file a lawsuit if their data protection rights are violated. This protection includes safeguards against unfair treatment, ensuring access to data, and establishing rules for processing data securely and confidentially (Karthik & Sampath, 2024, 16). However, the present analysis will focus more deeply on the subject of natural person law.

4.3.2 Scope of Bank Secrecy

Bank secrecy principle covered the information about the customers, ensuring the confidentiality of the financial information. Data used in identifying bank's customer was also protected by bank secrecy. The principle protected all information about an individual's private personal circumstances, such as family relationships or corporate or trade secrets, as well as the financial status of the bank's customers, undertakings belonging to the same consolidation corporation or conglomerate, or other individuals connected with the operations. (Federation of Finish Financial Companies, 2009) The required information was collected by bank in connection with a loan application on the customer's profitability calculations, business contracts, business arrangements, and new goods. (Federation of Finish Financial Companies, 2009) This secrecy obligation covered both permanent and temporary customer relationships. The obligation was applied not only to banking transactions between bank and the clients but also to matters outside the customer relationship when bank had received

information in connection with banking transactions. (Federation of Finish Financial Companies, 2009) Furthermore, all information considered to be kept private was protected by bank secrecy. (Federation of Finish Financial Companies, 2009) Indonesia, Singapore, Spain, the USA and Switzerland further enforced the Securities laws, which granted extensive powers to inspect books and documents, thereby superseding bank secrecy. (Wood, 1998) Consequently, these countries exhibited relative characteristics in the internal regulation of bank secrecy. The five countries further engaged in international information exchange. The confidentiality principle was therefore not inflexible, as information exchange agreements were necessary to meet the requirements for data provision. However, variations in the extent of bank confidentiality and the flexibility of the right arose from certain countries necessitating specific data.

4.3.3 Bank Secrecy as a Clause in a Deposit Account Agreement

The Deposit Account Agreement constituted a contractual agreement between the customer and the bank that contained important information about the customer's account. The agreement comprised crucial terms and agreements enforceable by both bank and the customer. (BAC Community Bank, 2019) All existing conditions applied to all accounts at the bank. This agreement was binding because when the customer did not agree with the material, it was advisable not to use the services of bank. (BAC Community Bank, 2019) In that sense, the customer did not have the opportunity to change the contents of the existing agreement.

The material that had to be approved by the customer in the Deposit Account Agreement was the disclosure of information to third parties about the customer's account. Disclosing this information as required by law for the customer to disclose to bank. (BAC Community Bank, 2019) The statement contained important information that was required by law for the customer to provide to bank. (BAC Community Bank, 2019) However, differences could be perceived in how much bank secrecy there was and how flexible this right was because some countries required specific data.

Bank could disclose the following information as part of the protocol namely name, address, information of those included on behalf of the customer or in certain other capacity as guardians during account openings or loan originations, and evidence of the transaction pattern. Bank would disclose the information to third

parties about the customer's account or the transfers the customer made for several reasons including (1) when needed for the completion of transfers, (2) to check the presence and status of the customer's account for a third party, such as a credit bureau or a merchant, (3) to comply with government agency or court orders, or (4) when the customer gives bank a written permission. (BAC Community Bank, 2019)

4.3.4 Legal Limits of Bank Secrecy

Cranston showed that the principle of bank secrecy had a public policy justification with Banks providing advice. Additionally, the only reason given in the assessment to imply a confidentiality obligation in the bank-customer contract was that customer credit was highly dependent on strict adherence to that trust. (Cranston, 2007, 170) Banks were therefore required to hold onto closely the principle of bank secrecy.

Both commercial and private customers valued the confidentiality of the finances in practice. For banks that did not maintain the confidentiality of the customers' finances, it led to losing public trust. However, there was a public interest in the law which required banks to keep customer financial information confidential because the public interest had to be balanced with confidentiality. This balance was necessary to handle cases/actions of tax deductions in inappropriate amounts, manipulation of tax avoidance payments, drug smuggling, money laundering, and hiding of profits. Financial institutions also needed access to complete information about the credit applicant's history. (Cranston, 2007, 170)

The objective of the policies was to enforce bank secrecy, which was part of banking regulation. Enforcement of banking policy including bank secrecy implementation necessitated law enforcement measures. Apart from law enforcement, banking policies had to strike a balance between several competing interests. (Effros, 1998) These included:

1. Motivating savings in banks both for domestic and foreign customers with the guarantee of confidentiality.
2. Safeguarding a banking system based on trust and reputation from impropriety, as the banking system could be threatened when the public lost confidence in the integrity. (Effros, 1998)

For these reasons, bank licensing system generally required high standards of management integrity and compliance with the law. Transparency was also essential to fight fraud and foster public trust. However, this transparency came into conflict with the need for privacy which was also necessary to maintain public trust. As Effros further suggested, the process contained certain limitations on the enforcement of bank secrecy principle, including (Effros, 1998):

1. Preventing violent crime (forgery, burglary, bribery, and drug trafficking),
2. Preventing economic law evasion (exchange regulation, trade and customs, as well as antitrust laws),
3. Ensuring corporate transparency and fair stock markets (audited financial statements, prospectus filing, false markets, and insider trading),
4. Inspecting corporate governance,
5. Providing regulatory oversight of banks,
6. Supervising stock dealers and financial advisers,
7. Handling civil litigation (evidence discovery and pre-and post-judgment attachments), and
8. Enforcing regulatory oversight of banks.

Customer information data was protected from third parties as a mandatory responsibility of the financial institution to the customer's bank, according to the principle of bank secrecy. This responsibility was an obligation of bank and a right of the customer. The principle of bank secrecy was also part of the right to privacy which was a fundamental human right. Initially, the relationship between the two parties was civil but developed into a public legal relationship due to regulation. This legal process ensured that when a violation occurred, the party responsible for the violation faced punishment according to the laws and regulations. Every nation practiced the principle of bank secrecy because states conduct transactions in banks even as a source of income. Banks that failed to maintain the confidentiality of the customers' finances suffered a loss of public trust. However, there was a public interest in the law that required banks to keep customer financial information confidential because public interest had to be balanced with confidentiality. A balance was needed between preventing personal financial data misuse and using it for public interest.

The principle of bank secrecy evolved from storing money in banks across borders during wartime to the modern trend of storing money abroad facilitated by

technological advancements. This evolution extended into digital transactions including conventional and digital currencies. Meanwhile, security in banking now varies significantly when we focus on the internet. The internet is not only a medium for sending money but also has its own unique characteristics. The main characteristics of this variation are based on the network's attributes, including anonymous access, cryptography, communication secrecy, border lessness, and virtuality. These aspects will be discussed in the next section.

4.4 Secrecy Characteristics on The Net

Certain definitions of digitalization were observed but the most suitable was in terms of cryptocurrency written by Merriam-Webster. (Merriam Webster, n.d) Digitalization represented *"the process of converting something to digital form."* (European Regional Development Fund, 2019) Furthermore, the simplest definition of digitalization was changing analog data to digital form. It changed forms from analog to digital after scanning which could be seen on the screen of the PC (European Regional Development Fund, 2019) Transfer of physical data or hard files in the form of paper document files to a PC to become non-physical data or soft files in the form of data files stored on computer devices or storage devices such as disks, CDs, USB, external hard discs, etc.

In the early days of computer technology, digitalization was termed "Web 1.0" where individual PCs stored data but could not connect or interact with other computers. These PCs primarily served as data storage and offered limited information. Users faced challenges in finding information as websites were difficult to navigate. (Jha, 2023) The next stage in computer technology enabled users to connect, interact, and exchange information. Users could share the accounts known as social media which enabled connection and communication with others online. The world of social media was broad and diverse, including platforms such as Friendster, Twitter, Facebook, Pinterest, Instagram, YouTube, TikTok, and WhatsApp. Essentially, this implied that data stored on computer devices could be easily distributed and shared. The advancements further characterized the interactive phase of computer technology, referred to as Web 2.0. (Jha, 2023) During the Web 2.0 stage, cashless lifestyle was established as any individual with an account could engage in various interactions without restrictions, provided the process correlated with the will and consent of the customer.

The progression of computer technology advanced from Web 2.0 to 3.0, leading to changes in the functions and profound impacts on human life. Web 3.0 was characterized by several key features such as semantic web functionality, the integration of AI and blockchain technology systems. (Jha, 2023) The semantic web was an "*extension of the WWW in which data were given interpretation (semantics) to enable computers "reason" in response to user searches."* (Hoshc, 2023) It also represented an innovative type of website that incorporated knowledge, endowing the process with more intelligent characteristics compared to previous web iterations. Web 3.0 was further engineered to comprehend users searched by analyzing web usage patterns. For instance, the browsing preferences of an artist would differ from those of a fast-food entrepreneur when both use Web 3.0 resources. Consequently, this adjustment influenced the user-specific web pages customized by the Web 3.0 system.

Another feature of Web 3.0 was the integration of AI which was defined as "*the ability of a digital computer or computer-controlled robot to perform tasks commonly associated with intelligent beings."* (Copeland, 2023) AI emulated human learning by using data and algorithms, progressively enhancing the precision. An AI-powered website could organize data and provide relevant information customized to individual users. It further stimulated deeper automation and converted information into knowledge by comprehending the pattern of the users. The application of AI and machine learning functioned as a "global brain," interpreting content both conceptually and contextually. (Jha, 2023) Web 3.0 was further observed to be smarter than 2.0 due to the ability to think similarly to humans.

The design of Web 3.0 also possessed a blockchain system which was a *"database technology that depended on a ledger distribution throughout a computer network and records known as blocks."* (Britanicca, 2024) When individuals experienced the term "blockchain," it was typically associated with Bitcoin and other digital currencies. The concept of "blockchain" evolved in a 2008 white paper authored by an anonymous developer or group known as Satoshi Nakamoto. The group introduced a peer-to-peer system for electronic currency exchange, which served as the basis for Bitcoin and the most renowned cryptocurrency. Blockchain was the foundational technology that enabled the organization, preservation, and authentication of transactions within the Bitcoin network, rendering the system an

essential component. (Alman and Hirsh, 2019) This was crucial to examine cryptocurrency within the context of Web 3.0. Not only did Web 3.0 incorporated blockchain technology but also served as the foundation for the evolution and growth of the technology. Web 3.0 further played a crucial role in supporting cryptocurrency as a fundamental service. (Jha, 2023) The key characteristic of Web 3.0 was blockchain technology, which significantly influenced the existence of cryptocurrency. It provided features that were impervious to third-party interference, thereby ensuring confidential privacy.

Web 2.0 introduced a cashless and digitized fiat currency lifestyle. Subsequently, a new lifestyle evolved with the advent of Web 3.0 featuring the blockchain system mentioned earlier. In the domain of cyberspace, digital currencies were distinct from fiat currency as the assets could not be altered or stored electronically. These digital currencies known as cryptocurrency were traded or transferred through Web 3.0 and possessed real-world transaction capabilities. The currencies held intrinsic value similar to fiat currency and the worth could be compared to gold. (Telefonica, n.d) The easiest method to obtain virtual currency was by using prominent online platforms specifically designed for this purpose. Furthermore, the platforms typically charge a small fee for each transaction traded on the system. Once an individual acquired virtual currency, it could be stored in a digital wallet. This virtual currency could then be used such as physical currency, for real-world purchases or within the metaverse. The significant aspect of the transactions was the security and decentralization, facilitated by Blockchain technology. (Telefonica, n.d) In essence, blockchain technology safeguarded access to cryptocurrency ensuring security from external interference.

4.4.1 Cryptocurrency Feature

Cryptocurrency was a digital currency created through a decentralized network, not governed by any central authority, and also used cryptographic methods to ensure secure transactions. (Cambridge Dictionary, n.d) The word originated from two words namely "cryptography," which referred to secret codes, and "currency," denoting money. In essence, cryptocurrency represented a virtual currency safeguarded by encryption (Kompas, 2022) to ensure security. (Tech – Tim, 2021) In simple terms, it served as a form of currency protected by complex secret passwords to ensure the security and integrity of digital money. (Kompas, 2022) The most popular

cryptocurrency included Bitcoin, Ethereum, Binance Coin, Cardano, and Dogecoin. (Kompas, 2022) Cryptocurrency lacked a physical presence while referred to as a currency. The digital assets existed as balances stored on a publicly accessible ledger which was used for online transactions without the need for intermediaries such as banks. The currency adopted P2P system functioning without centralized storage or a single administrator. (Tech – Tim, 2021) Fundamentally, cryptocurrency operated through a cryptographic system and the remaining question to explore was what cryptography was and how it worked.

4.4.1.1 Understanding the Mechanics of Cryptocurrency Systems

The security system of cryptocurrency depended on cryptography as a safeguard which was a method used to secure information and communication channels by using codes. The concept has been in existence since World War II when Germany used the code to transmit secret information to prevent easy decryption by the Allies. The adoption of cryptography ensured the integrity of cryptocurrency transactions, making the currency impervious to manipulation or forgery. (Kompas, 2022)

Nakamoto further defined the cryptocurrency project as an electronic payment system grounded in cryptographic proof rather than trust. This cryptographic proof manifests as transactions that experienced verification and were documented within a program known as a blockchain. (Kompas, 2022) Furthermore, a purely peer-to-peer form of electronic currency enabled online payments to be transmitted directly from a party to another bypassing the need for bank. (Nakamoto, 2009)

Cryptocurrency was characterized by three key features namely encryption, decentralization, and anonymity. The term "encryption" referred to the process of converting electronic information or signals into a secret code making it unintelligible to anyone without the proper decryption tools. This code consisted of a complex system of letters, numbers, or symbols that were impossible to comprehend or use without special equipment. (Cambridge Dictionary, n.d) The encryption process transformed data into a series of codes, making the process challenging for unauthorized individuals to decipher. Only the intended recipient with the correct decryption keys could access and decipher the encrypted data. (Kompas, 2022)

The second characteristic was decentralization which ensured that no single authority or institution had control over the entire network. In contrast to traditional currencies such as dollars, Euros, or even the Rupiah, the digital currency was not governed by a central authority in terms of the value. Therefore, the responsibility for controlling and managing the currency depended entirely on cryptocurrency users through the Internet. (Kompas, 2022) In this context as exemplified by CBDC, the discourse pertained to private currency as opposed to public currency. A CBDC referred to a digital version of public currency issued by a central bank. It contained a digital representation of coins and banknotes in the shape of digital tokens. (European Data Protection Supervisor, 2023)

The third characteristic anonymity was associated with the identity of cryptocurrency users. To use the currency, users needed to install a wallet[8] on a computer or mobile device. This wallet would automatically generate the initial address of the cryptocurrency. Similar to email, users could share cryptocurrency addresses which could only be used once. Ownership of the cryptocurrency could be stored on a personal computer with encrypted files or through services provided by third parties, all without the need to show the identity. This process allowed for cryptocurrency ownership with an anonymous identity. (Tech – Tim, 2021)

The recording of cryptocurrency was centralized within a system known as blockchain technology. (Kompas, 2022) Blockchain technology served as a public ledger for transactions and formed the foundation of a network, often referred to as the blockchain. Verified cryptocurrency transactions were permanently recorded within the blockchain. Furthermore, cryptocurrency wallets store sensitive data known as private keys or seeds which were used to digitally sign transactions and provide mathematical proof of ownership for the wallet holder. (Tech – Tim, 2021)

Cryptocurrency ownership could indeed remain anonymous, making the process a preferred choice for money laundering and various illicit activities. Cryptocurrency could be transmitted via the internet to anyone possessing a Cryptocurrency wallet address. (Tech – Tim, 2021) The P2P network topology devoid of central administration rendered the digital currency resilient to manipulation by

[8] It depends on the type of cryptocurrency because each cryptocurrency requires a storage space known as a wallet. The cryptocurrency is bitcoin in this context.

entities such as cybersecurity authorities or government bodies. Cryptocurrency streamlined cross-border transactions and ensured greater privacy, as it was not confined by the legal or regulatory constraints of any single nation. Cryptocurrency transactions were also recorded in public ledgers without showing the parties' identities, thereby enabling potentially illicit or criminal activities that were challenging for authorities to trace. These activities comprised illegal arms trade, drug trafficking, terrorism financing, and similar actions. (Tech – Tim, 2021)

The most straightforward method to obtain digital currency was by using prominent online platforms designed for this purpose imposing transaction fees. Once an individual obtained cryptocurrency, it was held in a digital wallet. Subsequently, digital currency could be used similarly to physical money, allowing for real-world or metaverse purchases. Every transaction was secured and decentralized, courtesy of Blockchain technology. The value and use of cryptocurrency often resembled that of gold, where an increased interest from investors could drive up the worth and vice versa. Similarly, cryptocurrency in the metaverse exhibited fluctuations correlated with the interests of users on each platform. This implied that the value changes with transactions both within and outside the virtual domain. (Telefonica, n.d)

4.4.1.2 The Differences Between Cryptocurrency and Fiat Currencies

In the present world, conducting payment transactions using various methods such as debit and credit cards or even mobile phones without the need to carry a physical card. This practice was referred to as electronic payment as individuals could pay for groceries at supermarkets, dine at restaurants, purchase clothing, settle public transportation fares, or transfer substantial sums of money internationally in real time with the simple use of a card or a mobile phone. The funds used for these transactions were typically stored in bank account or as a digital balance which decreased when payments were made. This eliminated the need to carry physical cash and served as a convenient method for both developed and developing countries, often referred to as "cashless" transactions.

Cashless transactions were essentially transactions carried out through credit and debit cards, as well as electronic systems rather than relying on physical coins and banknotes. Another method to understand cashless transactions was by considering the elimination of physical currency altogether and transitioning to a fully

digital transaction system. (Kadar, et.al., 2019) However, a cashless system enabled individuals to digitally store money on a card and was progressively becoming standard practice in numerous workplaces. (Kadar, et.al., 2019) Cashless transactions provided several advantages including convenience, speed, and enhanced security. It also enabled more accurate financial record-keeping and minimized the risk of physical money being lost or stolen. Digital fiat currency was used for transfers, payments, and transactions with digital money presented in a digital form. This transformation was driven by advancements in digital technology. The processes were initially manual but have now transitioned into the digital domain. (Tekinerdogan, 2012) The concept referred to digital money that could be printed and taken in a physical form when printed or exchanged. For example, the balance in savings would change when withdrawn from an ATM or bank corresponding to the specified nominal amount. The process included the transition, conversion, or evolution from physical money to digital fiat currency.

The change was driven by technological innovations that were incorporated into real-life scenarios to meet individuals' needs, streamline tasks, and reduce the time required for various activities. However, this evolution extended beyond merely transforming physical currency into digital fiat currency. Technology continued to progress giving rise to digital advancements such as the World Wide Web which transitioned from 1.0 to 2.0 and was now progressing towards 3.0. (Tekinerdogan, 2012)

The primary function of any tool or object designated as money was to possess the power of exchange. Fiat currency evolved as a medium of exchange, serving as the most common and fundamental method for this purpose. Based on the European Central Bank's definition cited by the OECD, money comprised anything used for exchanging value in transactions. (OECD, 2020, 19) In practice, cryptocurrency functioned as a method of trade facilitating transactions across borders with ease. On May 22, 2010, Laszlo Hanyecz made history by trading 10,000 Bitcoins for a pair of Papa John's pizzas. Back then, the British forum user saw the act as a good bargain to pay $25 for the pizzas equating to around $41 for the 10,000 Bitcoins. The deal became even more profitable when nine months later bitcoin reached parity with the US dollar, making the two pizzas worth $10,000. Fast forward five years and the same

pizzas were valued at $2.4 million. Currently, this pizza order holds an estimated value of over $93 million in worth. (OECD, 2020, 19)

Peter Saddington, the Chief Technology Officer of VinWiki made a substantial acquisition in 2017 when a 2015 Lamborghini Huracan was purchased for 45 Bitcoins which amounted to about $420,000. It was crucial to state that Saddington had initially acquired these Bitcoins back in 2011 for just $115. The term 'Lambos' had become a playful meme within the crypto community, symbolizing extravagant purchases. Luxury vehicles such as a 2008 Ferrari 430 Coupe valued at 2200 BTC or a 2009 Mercedes-Benz SL65 AMG BLACK costing 3500 BTC could now be purchased using cryptocurrency. Crypto enthusiasts often tech aficionados have readily accepted the use of bitcoin for transactions. Significant instances included the 2013 purchase of a Tesla S for 91 BTC in Florida equivalent to $109,000 at the time, and almost $850 million currently. (Storm Gain, 2020)

The subsequent experience of paying with cryptocurrency was using the potential of Bitcoin for educational pursuits by enrolling in universities that accepted cryptocurrency payments. The University of Nicosia in Cyprus made history by accepting Bitcoin as payment for courses as early as 2013 while King's College became the first university in the USA to follow suit in 2014. Additionally, esteemed institutions such as Berlin's European School of Management and Technology in Germany, as well as The Lucerne University of Applied Sciences and Arts in Switzerland joined the ranks of those accepting Bitcoin. Significantly, Switzerland was known for the openness to cryptocurrency ventures. (Storm Gain, 2020)

From buying pizza and Lamborghinis to paying tuition fees, cryptocurrency has gained acceptance in society as a valuable medium of exchange. While cryptocurrency possessed distinct characteristics that set the currency apart from traditional fiat monies, both effectively served as functional alternatives. Although both were classified as currencies, the two asset classes exhibited significant disparities. A key distinguishing feature was that cryptocurrency functioned as digital money. These differences essentially defined the value and utility of cryptocurrency.

Fiat money was operated within a centralized system, where the government exercises control through a central bank. The exclusive authority held by public institutions to issue banknotes and coins served as a representation of a nation's

sovereignty. (OECD, 2020, 19) However, cryptocurrency serving as digital money were operated within a decentralized system and were not subject to government authorities. Fiat money was physically printed by the central bank which was an official state-appointed financial institution and was distributed through financial and banking institutions. In contrast, cryptocurrency were digital currencies that could be obtained through the process of mining on the blockchain system. This fundamental distinction in the issuance process placed "virtual currencies" apart from fiat currencies. Virtual currencies were similar to a form of private money, as the currency were not issued by a public authority and remained largely unregulated. (OECD, 2020, 20)

Conventional currencies such as the dollar, euro, or yen were produced and overseen by the central bank or the appropriate governmental entity of the countries. In contrast, cryptocurrency such as Bitcoin, Ethereum, or Ripple were generated and governed by cryptographic protocols and decentralized networks. There was no sole authority that held control over the currency. (Trade Station Institutional, 2024)

Fiat currency was physically printed while crypto was entirely digital. (Trade Station Institutional, 2024) It was further subject to restrictions between countries and typically required intermediaries, such as banks which were subject to international regulations. In contrast, cryptocurrency could be freely used across borders and accessible to anyone with an internet connection. (Trade Station Institutional, 2024) Fiat money was universally recognized by each nation as a medium of exchange or currency while cryptocurrency was not universally acknowledged by all countries as a medium of exchange and were often considered more comparable to digital commodities similar to gold. (Trade Station Institutional, 2024) Traditional money transactions could not be tracked from sender to recipient without the authorization of relevant authorities. However, cryptocurrency offered the flexibility to be used and received by individuals regardless of location or time and without reliance on traditional banking or government institutions. Cryptocurrency such as Bitcoin introduced a new level of trust into the future of the global financial system. The foundation of the Bitcoin system was built upon transparency, mathematical principles, and the consensus of everyday users. Fiat money movements could be continuously monitored to trace the origin and destination. (Trade Station Institutional, 2024) Cryptocurrency used blockchain technology and cryptographic methods which could generate a transparent transaction history. (Trade Station Institutional, 2024) Traditional currencies were

regulated by governments or banking institutions while cryptocurrency was controlled through a consensus mechanism including miners worldwide. No single nation or institution could exert control over cryptocurrency.

Conventional currencies further depended on trust in governments and the financial institutions issuing the currency which was grounded in the nation's economic stability, monetary policy, and legal framework. However, cryptocurrency depended on decentralized and transparent blockchain technology to validate transactions, and trust in the assets was primarily rooted in technology and mathematical principles. (Trade Station Institutional, 2024)

Traditional currencies were typically connected to physical identities, including names, addresses, and bank account numbers, as well as transactions. It often contained rigorous identification and verification procedures. However, cryptocurrency could be used with a degree of pseudonymity, and certain assets provided even greater anonymity in transactions. (Trade Station Institutional, 2024)

The local currencies depended on centralized security systems such as financial institutions which were vulnerable to attacks by malicious entities. In contrast, cryptocurrency used robust cryptographic technology to safeguard the security and integrity of transactions. There were also particular security risks associated with network breaches named 51% attacks and other threats to crypto wallets or exchanges. (Trade Station Institutional, 2024)

Despite the fundamental differences between cryptocurrency and conventional currencies, the roles of both in the financial system continually evolve. While conventional currencies remained the primary form of payment in many countries, cryptocurrency progressively gained acceptance as digital assets or alternative payment methods in certain regions. In certain instances, the usage became more widespread.

4.4.2 Secrecy Characteristic in Cryptocurrency

Secrecy essentially implied that the information could not be accessed by the general public or only authorized parties could access the data. When information was kept confidential, the data was limited to specific uses and cannot be used for purposes beyond those limitations. (Government Offices of Sweden, n.d, 23) The key issue here was the participation of intermediary parties. These intermediaries between

the customer and financial institution were developed in the public interest. Consequently, the state had the authority to access the information solely for the purpose of the interest without infringing upon the ownership of information held by bank customers. This situation differed from the secrecy characteristic in cryptocurrency transactions.

4.4.2.1 Understanding the Existence of Secrecy Characteristics at Different Stages

Individuals with the right to access were limited to buyers and sellers in cryptocurrency transactions with no third parties or governments engaged. This exclusivity was ensured by distinctive features such as anonymity where only direct participants knew the details and encryption with codes requiring specific passwords to decrypt making the process challenging for third parties to gain access. Additionally, the decentralized nature of cryptocurrency transactions implied that each party managed the actions independently adding to the level of confidentiality. This secrecy characteristic shared a common objective with the principle of bank secrecy which was to prevent access by third parties.

There were essentially two steps taken to ensure privacy in the cryptocurrency system, effectively masking the owner's identity while still allowing for historical tracking. The primary principle including protecting the owner's identity to prevent the disclosure of other transactions connected to the same owner. The first step in preserving privacy was achieved by segregating information flow through the use of an anonymous public key. (Nakamoto, 2009, 6) Additionally, a new pair of keys should be used for each transaction to prevent the process from being connected to the same owner as an extra layer of protection. (Nakamoto, 2009, 6)

Cryptocurrency in electronic payment systems based on cryptographic proofs allowed two parties to transact directly without the need for a trustworthy third party. (Nakamoto, 2009, 1) However, both sellers and buyers received protection without the need for third-party participation. Transactions that were computationally infeasible to reverse served as a safeguard against fraud for sellers and the implementation of Escrow Routines could effectively protect buyers. (Nakamoto, 2009, 1) These cryptocurrency transactions heavily depend on cryptographic codes and computer technology. Furthermore, security protection was established through secret code algorithms and information technology-dependent methods.

The system allowed transactions to be made public without showing the owner's identity. The necessity for a full public announcement eliminated the approach but privacy could still be preserved by interrupting information flow in other methods by keeping the public key anonymous. With this method, the public could observe money being sent from an individual to another but without any information connecting the transaction to specific individuals. (Nakamoto, 2009, 1) Initially, this might be considered unusual because the information was indirectly accessible to parties other than the engaged individuals. However, the owner could conceal identity from third parties allowing access solely as a transaction. Technological advancements and applied algorithms also facilitated the feasibility of these practices.

Blockchain was the most important point to understanding how cryptocurrency developed the secrecy on the net. It consisted of data blocks that used advanced algorithms to store information. These blocks were connected and shared across a peer network, comprising several trusted entities. Each network member possessed a unique digital signature or key associated with the transactions. Hacking a blockchain was challenging, although not entirely impossible because the technology incorporated inherent features that safeguarded the integrity of each record fostering the network's resistance to breaches. A helpful analogy was to envision the blockchain as a book where each page represented a distinct document, such as a contract or an academic transcript. The pages were sequentially numbered and any attempt to insert or modify a page within the book would be detectable as an alteration. Similar to real book, the blockchain could have an endless number of pages but could only append new pages to the end of the book without affecting the content of previous pages and the order. (Alman and Hirsh, 2019, 15) However, there were exceptions when relating to hacking particularly in cases where sophisticated cybercriminals exploited vulnerabilities in internet security measures. This implied that third parties could breach confidentiality without any permission.

Continuing with the book analogy, this suggested that duplicates of the blockchain or the book were dispatched to various locations either local, regional, or international. The content within the book was interconnected and identical copies were disseminated across the peer-to-peer network. The blockchain was immutable and could not be modified without the consensus of over 50 percent of the network. However, the blockchain could be tampered with or altered when faced with an attack

from a faction commanding more than 51 percent of the network referred to as a 51 percent attack. These attacks were more inclined to focus on the more valuable cryptocurrency networks rather than other forms of blockchain applications. The security levels of blockchains varied depending on the construction and distribution extent. (Alman and Hirsh, 2019, 15)

Internet confidentiality systems, although susceptible to breaches, did not automatically imply government participation in every transaction. This was because the parties operated independently and in a decentralized method. Therefore, careful consideration was needed to make sure no one was negatively affected. For example, tax policies should be thought about to determine taxation on cryptocurrency transactions.

4.4.2.2 Differences Between the Secrecy Characteristic of Cryptocurrency and the Principle of Bank Secrecy

Based on the explanations described above, the principle of secrecy was evident to be applied not only to transactions within institutional banks but also to transactions in the online domain including cryptocurrency. This principle was fundamentally in place to safeguard and restrict information from external parties who were considered unauthorized or lacking the right to access the data.

Banking secrecy was both a professional obligation and a right, implying that financial institutions were obligated not to disclose a customer's financial information obtained during business interactions. Simultaneously, these institutions have the right to resist inquiries from third parties to protect the customer's interests. From the customer's perspective, banking secrecy was a privilege suggesting that the financial information should be legally protected and inaccessible to other parties. (Ping, 2004, 376) The understanding of the characteristic of secrecy in the online world could be connected to the principle of bank secrecy leading to a conclusion.

The parties further used the services of banking institutions in the context of bank secrecy which were based solely on agreements between the parties without requiring specific expertise. In contrast, cryptocurrency transactions used internet facilities and the characteristic of secrecy did not require traditional banking services. The participating parties engaged in buying and selling activities or exchanging

cryptocurrency using codes within the Web 3.0 system ensuring that transactions correlated with the agreements of each party.

History showed that the practice of storing money in bank started with individuals aiming for a sense of security for the assets. In the world of cryptocurrency, the concept of electronic transactions without third-party participation evolved creating a system that could establish trust among the parties.

Before the principle of bank secrecy became codified into law, the principle evolved from custom to jurisprudence and was eventually legally regulated with penalties for violators. However, the secrecy characteristic in the online domain operated securely provided no party feels aggrieved which precluded the need for binding legal provisions. Access to this system was limited to individuals with the necessary programming skills when the code was opened. The following was a comparative table for further elaboration:

No		The principle of bank secrecy	The characteristic of secrecy in the net
1.	Methods	Using bank.	Using the internet method.
2.	Parties	Users of bank services (customers) and financial institutions.	Internet users.
3.	Advantage	Both parties' benefited from each other as banks could rotate money as capital and customers got storage services with profit sharing in the form of interest.	Highly dependent on internet facilities that could not be accessible to everyone, especially in remote areas.
4.	Background	Commenced with the need for storage in a secure location.	Originated with the idea of electronic transactions without reliance on trust.
5.	Concrete law	Progressed from custom to jurisprudence and eventually legal	There would be no legal sanctions provided no

		regulations with penalties for violators.	party had complaints due to harm.
6.	International developments	Evolved into limited rights to privacy for public interest	Countries and international organizations commenced researching and developing regulations to make legal arrangements

Source: Conclusion from 4.4.2.1 and 4.4.2.2

The characteristic of secrecy in the online domain was constructed by a system based on computer technology programs that operated independently between the parties and capable of being executed internationally. The characteristic of online secrecy has distinct features. The concept of secrecy was constructed by the system and safeguarded by technology. While initially discovered by humans, the system now operates automatically.

4.4.3 The Policy of Cryptocurrency

Cryptocurrency was perceived as a social phenomenon, influencing human interactions within society. It was used for transactions within a stable and rational financial-economic system, necessitating the need for policymaking. Furthermore, policy was defined as a theoretical or technical instrument formulated to address specific problems that have a direct or indirect impact. The definition of policy was further analysed as follows *"a theoretical or technical instrument that was formulated to solve specific problems affecting the societies directly or indirectly."* (Estrada, 2011, 523) The policy was crucial for each government to establish an approach to handling the currency.

The first transaction using cryptocurrency took place on May 22, 2010. (Crypto News, 2023) Furthermore, an explanation of cryptocurrency evolved through a journal article published on October 31, 2010. (Madey, 2017, 14) Transactions including this new currency prompted diverse thoughts, considerations, and legal determinations to ensure easy integration without jeopardizing the existing system. The OECD had also proposed the periodic review of the Legal Instruments Council Recommendations on Cryptographic Policy Guidelines every five years to foster international cooperation on

matters of cryptographic policy. (OECD, n.d b) Various forms of policies were conceived leading to the enactment of legislation concerning cryptocurrency. The sub-chapter further examined the legal aspects surrounding the existence of cryptocurrency.

4.4.3.1 The Participation of Government in the Cryptocurrency System

The widespread use of cryptocurrency and the cross-country nature elicits varied responses from a nation to another. Significantly, El Salvador and the Central African Republic adopted cryptocurrency as the official currency. (Communication Team of Telefonica, 2022) India further proposed that the effective regulation of cryptocurrency necessitated global cooperation. (Reuters, 2023) Internationally, each nation had a unique approach to regulating crypto, but a common denominator was the participation of the government in overseeing the circulation of this currency.

Cryptocurrency faced challenges related to definition and regulation as a new entity. (Madey, 2017, 43) The growth of the currency alongside traditional monies presented threats and risks to law enforcement, the financial system, and society at large in addition to the benefits. (Madey, 2017, 33) The assets were fundamentally characterized as open protocols on a decentralized network with no central server setup. (Madey, 2017, 44) Consequently, an assessment of government supervision was necessary.

The initial focus of regulation was on the use of cryptocurrency for money transfers and basic payments. However, cryptocurrency exchangers should meet the criteria of being recognized as money transmitters to address the anonymity associated with the currency in compliance with applicable laws and regulations. The entities should also adhere to 'know your customer' requirements for all clients trading the currency. (Madey, 2017, 45) Furthermore, the objective of these measures was to prevent tax fraud, illicit transactions such as money laundering and other criminal activities.

Regulations became necessary as the value and usage of cryptocurrency continued to increase and the implementation was demanded, especially with the introduction of more sophisticated financial instruments related to the currencies. (Madey, 2017, 46) Another underlying reason for governments to engage in cryptocurrency regulation was that the authorities should not abdicate the

responsibility as custodians of the respective economies to a free market for the assets. Additionally, the currency posed a threat to national security as the prices became more interconnected with other assets in financial institutions. (Madey, 2017, 47) Regulation became essential when new financial instruments such as cryptocurrency began to play a role in established financial systems.

Cryptocurrency regulation needed to broaden the focus beyond addressing anti-money laundering and illicit trading activities. This expansion should comprise innovative technologies facilitating the transition of money exchange into new and evolving financial instruments. The failure of governments to undertake these measures led to increased risk and instability. Finally, governments should decide how to tolerate the growing number of cryptocurrencies. (Madey, 2017, 11)

The existence of cryptocurrency should be acknowledged, and both the government and society should adapt to the presence by formulating regulations and ensuring implementation. This was to avoid disrupting the circulation of traditional currencies and the correlation with tax interests.

4.4.3.2 The Regulation of Cryptocurrency

The determination of cryptocurrency in each nation was different and motivated by several factors. These factors comprised the development of cryptocurrency within the nation, the government's response, and issues arising from the evolution of the assets. Several countries generally considered virtual currencies to be 'legal' provided the asset did not prohibit the buying and selling of cryptocurrency, as well as the use for the purchase of goods and services. (OECD, 2020, 17) Other countries recognized the legality of virtual currencies often having specific laws or regulations that provided explanations and outlined regulatory requirements. In these laws or guidelines, the use of crypto assets was implicitly or explicitly acknowledged as legal. However, certain jurisdictions emphasized that virtual currencies were not considered legal tender. (Madey, 2017, 47) Certain jurisdictions further imposed complete or partial bans on virtual currencies.[9] These bans often restricted specific activities that were

[9] Based on information from the Indonesian bank, there was no decision to recognize cryptocurrency as a method of payment. This uncertainty arose due to a contradiction with Law No. 7 of 2011, Article 1(1), which defined currency as the Rupiah issued by Indonesia. Article 21 of the same law mandated the use of Rupiah in all transactions including online transactions, thereby prohibiting the use of cryptocurrency in transactions in Indonesia. The restriction was further outlined in Bank Indonesia Regulation No.18/40/PBI/2016 on the Implementation of Payment Transaction Processing.

part of the token lifecycle. (Madey, 2017, 14) Part of the countries that prohibited the use of cryptocurrency as a medium of exchange for goods was Indonesia. While Crypto Assets were still prohibited from being used as a method of payment, the currency could be considered investment tools and traded as commodities on futures exchanges. (OECD, 2020, 17)

Instead of banning the use of cryptocurrency as a means of payment, the EU regulates the existence and circulation of cryptocurrency from upstream to downstream. The EU regulates the use of cryptocurrency as a means of payment and various aspects of the crypto asset market through the MiCA. MiCA mandates that crypto asset issuers provide clear and transparent information to investors, including detailed white papers, thereby ensuring transparency. Additionally, MiCA requires all service providers related to crypto assets, such as crypto exchanges, digital wallet providers, and investment advisory services, to obtain permits and be supervised by national financial authorities in EU member states. This regulation aims to ensure robust oversight and regulation. MiCA also establishes standards to protect consumers from the risks associated with investing in crypto assets, including measures to prevent fraud and market manipulation. It strengthens Anti-Money Laundering (AML) and Countering the Financing of Terrorism (CFT) rules to ensure that crypto assets are not used for illegal purposes. Overall, MiCA aims to protect both investors and consumers by creating a safe and orderly environment for investment while maintaining financial market stability.

The OECD provided an analysis of guidelines for drafting regulations on cryptocurrency. It furnished basic principles for the formulation of regulations on the currency, comprising 'Trust,' Selection,' 'Market-driven development,' 'Standards for cryptographic methods,' 'Protection of privacy and personal data,' 'Lawful access,'

Bank Indonesia Regulation Number 11/12/PBI/2009 concerning Electronic Money stated that electronic money could be used as a method of payment when certain requirements were met, specifically when circulated based on the amount of money deposited in Rupiah. However, cryptocurrency was generated through a mining system and did not qualify as a method of payment.

According to established regulations, cryptocurrency could not serve as a method of payment in Indonesia. However, the currency was still traded in the nation and the usage was limited to being treated as a commodity as outlined in the Regulation of the Commodity Futures Trading Supervisory Agency (Bappebti) No. 5 of 2019 regarding Technical Provisions for the Implementation of the Crypto Asset Physical Market. For various undeniable reasons, it was crucial to formulate cryptocurrency legislation from national to international levels. Standardization was necessary to pre-emptively address all potential challenges. Despite variations in domestic regulations and law enforcement cultures from a nation to another, the characteristics of cryptocurrency remained consistent. Therefore, examining the guidelines provided by the OECD was essential.

'Liability,' and 'International cooperation.' The last three principles namely 'Protection of privacy and personal data,' 'Lawful access,' and 'International cooperation' constituted components of the tool for exchanging information in the application of secrecy principles. In determining the form of protection, the state could decide to safeguard privacy and personal data while still engaging in international cooperation through legal access. This became a significant consideration when the principle of secrecy experienced modifications, deviating from the original value that prohibited access by third parties. With the guiding principles for drafting crypto legislation, these three principles served as the foundation and should be applied. (OECD, 2022)

There was an increasing need for countries to define and establish appropriate legal frameworks for the tokens as the use of virtual currencies expanded globally. The legal status of virtual currencies varied greatly between countries remaining undefined or evolving which complicated characterization and regulation, leading to different or uncertain tax treatment. (OECD, 2020, 19)

A law could be formed based on the characteristics of the nation. However, when the objective was to cooperate with other jurisdictions, the nation would strike a balance with existing laws to facilitate the smooth operation of the reciprocity principle. Attention should also be given to the readiness of each nation's internal facilities and infrastructure.

4.4.3.3 Taxes on Cryptocurrency

This section should be presented as part of a discussion on the characteristics of internet secrecy, particularly in relation to the taxes on cryptocurrency. In the traditional financial system, taxes on fiat money are normal and commonly found in every country. However, the taxation of cryptocurrencies, which originate in cyberspace, requires further analysis.

The correlation between the characteristics of the internet and the taxation of cryptocurrencies is akin to the issue of secrecy in fiat currencies. The anonymity provided by the internet can hinder the taxation of cryptocurrencies. Therefore, it is crucial to first understand how cryptocurrencies can be taxed. The approach must begin with an examination of the characteristics of the cryptocurrency itself.

The initial consideration when analysing cryptocurrency taxes was how virtual cryptographic codes could be used to fulfill tax obligations to the state. Cryptocurrency

can be used to pay taxes and another consideration was how the currency would be taxable. FATF defined 'virtual assets' as 'digital representations of value that could be traded or transferred digitally and could be used for payment or investment purposes. (OECD, 2020, 31) Cryptocurrency functioning as a virtual asset represented an intangible commodity in the form of digital assets, thereby falling within the category of taxable goods. (Pintu, n.d) While taxation served as an expression of economic capacity, the essence depended on wealth that could be allocated to an individual acting as a taxpayer. Taxation was imposed on manifestations of actual or potential wealth, which could take the form of income, assets, or consumption. (Fernandez Amor, 2022, 68) Cryptocurrency possessed a unique quality that rendered the asset an expression of economic capability.

The exclusivity of the currency originated due to the data formed which could not be duplicated. Data stored in a computer could be easily duplicated in large quantities and transferred to various media. However, cryptography ensured that the data could not be easily duplicated. The second factor contributing to the exclusivity was the presence of digital signatures, enabling exclusive individualized access to the handling of data of interest. (Fernandez Amor, 2022, 65) These attributes made the currency similar to gold in limited quantity. Gold was characterized by stability and could be stored for extended periods. It was easily identifiable and malleable, making the currency highly useful for civilian entities to mint coins. As asserted by Rowlat, for an element to function as currency, it should not be overly abundant. Gold remained the sole element meeting all the criteria. The combination of these properties bestows upon gold the status of a valuable element for currency. Gold presented in optimal quantities, stable, and non-toxic could be fashioned into coins and proved beneficial for civil authorities. (Madey, 2017, 19) The assessment of the value inherent in cryptocurrency, compared to the value of gold provided a clear picture. Starting from the organization of data codes, cryptocurrency acquired value due to the exclusivity similar to gold that could be physically touched. Consequently, cryptocurrency should be considered an object of economic value, subject to ownership, and transactions including the currency should be susceptible to various legal actions including intended tax payments.

There were several taxable events in virtual currency taxation. First, the state considered exchanges between virtual and fiat currencies to lead to taxable events. Second, the receipt of new tokens through mining constituted a taxable event. Third, occasional trades or transactions made for personal profit often incur capital gains tax liability. (OECD, 2020, 20) These transactions could be easily and quickly conducted across countries leading to various problems such as differences in national laws treating cryptocurrency. Another issue was the anonymous and decentralized characteristics limiting the government's ability to track the amount in circulation.

The problems faced by Indonesia with the implementation of tax regulations were not complex despite the relatively young stage of the implementation. [10] Taxpayers were even willing to pay the required taxes, although data on state losses originating from crypto taxpayers not reporting have not been found. This indirectly supported what the IMF stated that the most significant risks to the tax system caused using cryptocurrency were proving to be the greatest. The support was majorly in

[10] The cryptocurrency was regulated at the level of a Ministerial regulation namely Minister of Trade Regulation No. 99/2018 concerning General Policy for the Implementation of Crypto Asset Futures Trading (Crypto Asset) and Minister of Finance Regulation Number 68/PMK.03/2022 Concerning Value Added Tax and Income Tax on Crypto Asset Trading Transactions. Crypto assets could be traded as commodities in Indonesia but cannot be used as a method of payment. Financial institutions such as banking, insurance, and multi-finance were prohibited from using and facilitating cryptocurrency assets because cryptocurrency were commodities regulated by the Commodity Futures Trading Supervisory Agency (Bappebti) and not financial service products. The Indonesian government showed a view other than the immeasurable amount of assets circulating the market to disrupt the running of the market economy. However, there was also a concept known as Cryptocurrency exchange specifically referred to as 'swap.' The regulation of the swap mechanism by the Indonesian Government included the exchange of cryptocurrency with other assets and/or goods other than the assets and/or services.
The number of crypto asset investors in Indonesia significantly increased to 17.4 million investors in May 2023, as reported by the Commodity Futures Supervisory Agency (Bappebti). The growth rate for crypto investors in May 2023 was 0.87%, leading to an increase from the previous 17.2 million to the current 17.4 million individuals. Annually, the number of crypto investors registered with Bappebti increased by 3.28 million individuals, representing a growth of 23.23% compared to May 2022 when the count was 14.12 million individuals. In 2020, the transaction value amounted to IDR 64.9 trillion. After a year, the figure experienced a significant jump to IDR 859.4 trillion by December 2021. From January to May 2022, transactions were recorded at IDR 192 trillion. Many novice investors entered the crypto market due to the Fear of Missing Out (FOMO) effect which was the fear of being 'left behind' by not participating in cryptocurrency investment activities.
The implementation of cryptocurrency tax collection regulations took effect on May 1, 2022, providing an increment to state revenue. After a month, the government managed to generate 48 billion IDR (Indonesia Dollar Rupiah) in revenue from cryptocurrency taxes in June 2022. By August 2022, the recorded tax revenue had surged to IDR 126.75 billion, reaching three times the amount collected in June 2022. Finance Minister Sri Mulyani Indrawati successfully collected a total of IDR 246.45 billion in cryptocurrency tax revenue throughout 2022. This included IDR 117.44 billion in income tax from trading through the domestic electronic system and self-deposit, as well as IDR 129.01 billion in Value Added Tax (VAT) from collections by non-treasurers. Although taxpayers did not object to cryptocurrency tax collection, Indonesian law needs to be correlated with other countries participating in information exchange or bound by information exchange agreements when it came to information exchange requiring access and reporting for transparency.

developing countries where demand for the assets appeared relatively strong due to tax administrations showing weak perspective. (Baer et.all., 2023, 26)

The evolution of cryptocurrency became a complicated issue between jurisdictions in Europe where the assets were used as a method of payment. As mentioned previously, cryptocurrency transactions were conducted in various countries. The transactions were also observed in Spain that openly market the sale of apartments in Malaga including the use of cryptocurrency. (Crypto Real Estate, n.d)

The act showed that there was no consensus and a shared view in treating cryptocurrency. (OECD, 2020, 18) In the growing academic literature, there was often a lack of comprehensive guidance or a framework regarding the treatment of the assets for tax purposes leading to partial or incomplete guidance. The lack of direction could be attributed to the complexity of defining the tax treatment of the assets covering a wide range of aspects, as well as the rapidly changing nature. (OECD, 2020, 41) In this case, the currency provided limited opportunities for fair taxation. (European Commission, 2023) However, the existence of cryptocurrency and the development disrupted traditional methods of conducting financial business including tax collection. (Baer et.all., 2023, 3)

The disruption was observed within the European Union environment where prior considerations and examinations focused on the harmonization of tax collection for cryptocurrency to prevent losses. A solution to the disruption was transparency as analysed in the previous sub-chapter. A political agreement was then reached by the Union Finance Ministers on new tax transparency rules for all service providers facilitating cryptocurrency asset transactions for customers residing in the European Union. Presently, tax authorities lacked the information needed to monitor income earned using cryptocurrency and easily traded across national borders. This severely limited the ability of tax authorities to ensure effective tax payments, leading to European citizens losing significant income from taxes. Therefore, tools were needed to obtain the necessary information to ensure that the new products were treated the same as traditional products. The objective was to create equal competition and ensure fair taxation including the increased use of tax identification numbers and regulations for high-net-worth individuals.

Tax authorities could not be aware due to the lack of information even for a citizen running a business. Certain taxpayers could not even know that declaring the net worth was crucial. Therefore, a system was needed that genuinely provided an avenue to acquire information for tax purposes. This system would require the asset service providers to report transactions annually and the reporting should be relatively detailed. Investors, taxpayers, and platforms needed to ensure that everyone was aware of the obligations and rights of cryptocurrency users as well as the associated responsibilities. Currently, tax return forms have been filled out in certain Member States and banks have provided information relieving taxpayers of the need to do anything except to confirm the accuracy of the provided information. Tax authorities in certain countries such as Belgium or Sweden sent the taxpayers a tax letter reporting that cryptocurrency was traded last year and stating the profit with the taxpayer only needed to confirm the accuracy. While the taxpayers may not have to take proactive steps, it was recommended to stay vigilant. Additionally, platforms needed to inform taxpayers that individual information data would be shared with tax authorities. The key point was that when the public knew the information was going to be reported, the taxpayer would voluntarily declare the funds based on national obligations and procedures. (Baer et.all., 2023, 3)

The challenges faced by tax authorities were unprecedented when exchanging information on cryptocurrency. The scarcity of available information including statistics and research, particularly in the context of taxation, posed a unique challenge. Estimating the potential tax implications was both novel and intriguing, due to the assistance of the European Union's JRC. The participation in producing estimates for the outcomes of obtaining information and implementing national tax measures was groundbreaking and represented a pioneering effort globally.

The efforts were exceptionally new and interesting and the JRC further took pride in being the first in the world to embark on the initiative. Understanding the diverse types of cryptocurrencies and the various stages of the usage was crucial as it significantly impacted taxation and reporting for tax purposes. The subsequent challenge included the parallel legislation within the European Union. Furthermore, there was an international dimension to consider as the challenge extended to ensuring easy collaboration between the Union and the OECD frameworks. This collaboration was essential to ensuring that Member States received the necessary

information. Additionally, tax authorities should obtain relevant information when the service provider was located outside the Union. The overarching objective was to achieve positive outcomes for both tax authorities and the platforms. (Baer et.all., 2023, 3)

So, this final chapter can provide a little clue that there is a great need for global exchange of information between countries, not only regarding fiat currency but also regarding the storage of cryptocurrencies. The exchange of information for tax purposes regarding conventional money differed from that of cryptocurrency. Conventional money exchange of information was initiated by both countries which had been frequent for a significant period following the agreements signed. The implementation of information exchange included overcoming the principle of bank secrecy. However, this was based on common interests considering that the concept of banking existed for centuries and was universally present in every nation with nearly every adult human on earth having bank account number. The exchange of information regarding cryptocurrency was also a necessity due to shared public interests among countries. Conversely, the implementation varied in each nation because the concept had different interpretations and applications. The discrepancy was motivated by the recent evolution of cryptocurrency which disrupted the existing tax system. (Baer, et.all., 2023, 3) Both shared the same objective which was tax justice. The pursuit of tax justice in the exchange of cryptocurrency information with unique characteristics will be elaborated in the next chapter 3.

Initially, it would be useful to close this chapter with a examination of the privacy implications in international taxation. This will provide a transition to the next chapter. Specifically, it is necessary to explore the argument that secrecy as a right to privacy can outweigh the implementation of tax obligations in the public interest.

5. Consequences of Secrecy on International Taxation

International taxation evolved due to the interaction among overseas countries which included export and import. The processes of purchasing and selling activities between countries to fulfill the necessities of the nation were delivered through export and import. The delivery process of goods made the nation create the rule for getting orderly. Furthermore, the activities were internationally and were to be done in more than a single nation (Delahunty, 2016, 364) and every state had different regulations

in various fields. Taxation was a particular sector that give important implications to direct and indirect taxes between the countries. (Frenkel, et.al., 1990, 1) The taxes were not only goods but also capital that could move freely across national borders. (Frenkel, et.al., 1990, 1) The movement of capital and goods internationally led to each flow being subject to more than a tax jurisdiction, (Frenkel, et.al., 1990, 1) leading to the issue of double taxation. Double taxation posed a significant problem, as articulated by Frenckel, who stated that

> *"When a resident's capital income was taxed by both the home and foreign nation where funds originated, the income would incur double taxation*." (Frenkel, et.al., 1990, 1)

The solution evolved between the countries engaged in the situation through consensus and mentioned as international taxation. Considering the economy of the countries driven by globalization, international taxation evolved with the changing times. (Calich, 2011, 19) H. Kohler stated that globalization was.

> *"The process that led to the integration of economies and societies, characterized by the increasingly free flow of ideas, individuals, goods, services, and capital, was not merely imposed upon us. Instead, it evolved as a product of fundamental forces for change rooted in human nature. These forces included the desire for improvement, innovation, expanded opportunities, and freedom of choice. Additionally, political decisions favoring openness have largely accompanied the consolidation of democracy.*" (Kohler, 2020)

The core characteristic of globalization was free to flow as the idea. (Calich, 2011, 20) The free flow of individuals, goods, services, and capital flow in different manners. (Calich, 2011, 20) Furthermore, specifically for capital flow from a nation to another was supported by the advanced technology. A. Mc Grew further asserted.

> *"The development of new technologies also contributed to the free flow of capital and trade through the improvement of communication (e.g., Internet and Email) and transfer of resources such as electronic banking and worldwide transfer of funds."* (Calich, 2011, 21)

The technology gave support for moving the capital easily and conveniently. Additionally, the capital was saved in the institution which was addressed as bank representing an institution with the function to organize savings and redistribute the funds overtime for specific use by different actors. (Caldarado, 2013, 116) The banking

institution which had bank employees and individuals holding positions of trust received as part of the jobs such as lending, asset management services, payment transactions information of the financial and the matters of customers' identity as well as other individuals. Therefore, the customer was confident with the financial and private matters kept confidentially when bank could only operate successfully. Members of banks' bodies could not also disclose the information of the customers' business to third parties. Bank secrecy was part of the protection of privacy which protected private individuals, undertakings, and other corporations. (Federation of Finish Financial Companies, 2009,1) The privacy rights were also understood by the customer since the institution of bank existed. Privacy rights were further known as bank secrecy which was applied to information and used for identifying bank's customer. (Federation of Finish Financial Companies, 2009,1)

Mc Grew's opinion was reinforced by advancements in technology, which facilitated more efficient and secure methods of data storage and transfer. This opinion did not only pertain to traditional assets such as conventional currency stored in bank which could facilitate evasion or tax avoidance on a global scale but also extended to cryptocurrency.

Due to the unrestricted movement of capital, individuals could deposit the money in bank located in a different nation from the place of residence. This scenario included navigating through the legal frameworks of a minimum of two different countries. The capital being deposited belonged to citizens who were obligated to pay taxes in the respective countries. Therefore, countries not only grapple with international taxation but also need to navigate bank secrecy principle to access capital stored beyond the borders. The enforcement of bank secrecy regulations also had implications for international taxation. Furthermore, Van gave the following opinions.

> *"There were two main categories of case that international taxes had to address. First, taxation concerns **Individuals from outside** a nation who engaged in activities, transactions, or have property or income within the nation. Second, taxation including individuals who were citizens of a nation but engage in activities, transactions, or **possess property or income abroad.**"* (Vann, 1998, 2)

In both types of transactions, taxpayers were required to report and fulfil tax duty due to the agreement signed by both countries. Failure to comply necessitated disclosure, which intersected with bank secrecy principle. Legal conflicts originating from bank secrecy obligations either statutory or contractual in different jurisdictions contributed significantly to the issues. (Hare, 2015, 9)

The impact of bank secrecy on international taxation necessitated negotiation and consensus-building among countries to find a resolution. Cranston pointed out that conflicts arose when the laws of different jurisdictions required bank to disclose information, potentially violating the laws of another jurisdiction. (Cranston, 2007, 451) To address the conflicts, international cooperation became essential. (Cranston, 2007, 454) This cooperation could take various legal forms, including unilateral, bilateral, or multilateral agreements. For example, bilateral cooperation occurred between countries such as Indonesia and Singapore.

For countries lacking abundant and sufficient natural resources to support the economies, alternative sources of livelihood were pursued. A source of livelihood managed was the business of services because the emphasis was on thinking, creativity, and hard work. Among these service industries, banking was distinguished with the principle of bank secrecy serving as the cornerstone. The principle of bank secrecy was fundamental to banking operations, as trust and risk management form the core of the banking business. (Calmejane, 2021)

Bank prioritized trust as the most valuable asset, meticulously crafting the products to ensure security and compliance with data protection regulations. The principle of bank secrecy played a crucial role in safeguarding sensitive assets, specifically in business models reliant on personal data usage. Countries also defended the economic interests through banking services, establishing trust with counterparties for mutual benefit. Compliance with bank secrecy regulations further reinforced confidentiality obligations for certain countries. (Calmejane, 2021)

Bank secrecy correlated with a nation's sovereignty, affirming the right to determine the destiny without external interference as evidenced by Switzerland and Singapore. While rooted in data privacy, bank secrecy served purposes beyond finance necessitating flexibility in the application. (Calmejane, 2021) This dynamic

necessitated flexibility in applying the principles of bank secrecy. (Hermansyah, 2005, 132) Originally confined to internal affairs, bank secrecy intersected with broader data privacy concerns such as tax information exchange agreements. While the agreements were within each nation's prerogative, participation posed challenges for countries such as Singapore and Switzerland, whose economies depended heavily on banking services. The potential erosion of customer trust underscored the delicate balance between privacy and transparency in international financial practices.

Technological advancements did not only facilitate capital flow and trade via enhanced internet communication as analysed in the preceding sub-chapter. However, the development also propelled the rise of cryptocurrency. Opportunities for international tax evasion or avoidance were not limited to conventional currency stored in bank but extended to cryptocurrency with the evolution of more sophisticated technology. Cryptocurrency could be easily bought, sold, and transferred on open stock exchanges without state oversight. (Yereli AB, 2018, 219)

The characteristics of cryptocurrency posed challenges in taxation, similar to storing conventional currency in bank across countries. Cryptocurrency was often used for tax avoidance purposes, given that the majority of cryptocurrency wallet owners treat the currency as investment accounts. However, profits in the wallets typically remain inaccessible to tax authorities unless expressly declared. (Yereli AB, 2018, 223) Despite cryptocurrency data falling under privacy rights, the currency used for tax evasion could not be justified. Resolving these issues required agreements between both jurisdictions.

In contrast to the principle of bank secrecy where access was restricted, the government sourced for methods to gain access from cyberspace to the real world in the case of cryptocurrency. Platforms served as intermediaries in cryptocurrency transactions similar to banking institutions which allowed monitoring of user activity. Consequently, privacy rights could be curtailed for public interest purposes.

Balancing public interest and privacy rights, along with resolving jurisdictional conflicts, necessitated international cooperation. Achieving this balance was more feasible within national frameworks than internationally, affecting tax fairness within countries.

5.1 Differences Among Countries on the Balance of Secrecy Principles and Tax Justice

Every nation adhered to the secrecy principles and tax justice aimed at enhancing the well-being of the citizens. The application was inherently tied to the sovereignty held by each nation. Furthermore, the concept of sovereignty represented the highest authority exercised within a specific geographical region. (Besson, 2011) The practices were implemented within a nation's domestic context, guided by the principle of sovereignty which was a fundamental aspect of international law. However, recognizing that sovereignty had limitations was crucial (Besson, 2011) which was most evident in a nation's interactions with other countries. States further established relationships through the implementation of various agreements comprising both bilateral and multilateral accords.

In the global context of diverse worldwide interests, each nation forged connections and relations with other countries. Consequently, the application of the secrecy principle and tax justice took on significance at the domestic level. Recognizing that different countries could not maintain the same equilibrium between the principles during interactions. A network for justice provided extensive data including the financial secrecy index percentage which ranked jurisdictions most implicated in assisting individuals to obscure financial assets within the bounds of the law. (Tax Justice Network, 2022) The presentation further showed that each nation had a different percentage. The FSI also showed the existence of financial secrecy which fostered tax evasion, supported illicit financial transactions, and eroded the fundamental human rights of individuals. This index emphasized the primary sources of financial secrecy across the globe and the legal measures that governments could modify to diminish the role in promoting financial secrecy. (Tax Justice Network, 2022)

In terms of the FSI, the USA held a value of 1,951. Switzerland and Singapore both shared an FSI value of 1,167. However, Spain was represented by an FSI value of 346, and Indonesia had a value of 170. (Tax Justice Network, 2022) The analysis observed that while exceptions existed in every nation, the secrecy principle was not absolute and varied in the application. Furthermore, this observation was not uniform across all countries leading to varying degrees of enforcement and differing legal interpretations of bank secrecy principles. These indices represent the level of secrecy in each country's banking activities, as there is no data on each country's participation

in network secrecy. This leads to a conclusion; bank secrecy depends on the regulatory framework of each country. However, this is not the case with secrecy on the internet, as it is a technological feature.

5.2 Methods that Each Country Follows in Addressing Secrecy Internationally

Different levels of application of the secrecy principle in each nation lead to varying interpretations of the standard of tax justice. Consequently, when addressing cases including foreign nationals or multiple jurisdictions, an international approach became essential. There were several methods for exchanging information between countries, including on-request, spontaneous, and automatic exchanges.

The international action aimed to strike a balance between domestic needs and the resolution of discrepancies in applicable laws while accommodating global interests. In the international arena, this was often realized through agreements between countries based on membership in international organizations or through bilateral agreements with specific countries. Therefore, there were diverse mechanisms used by countries in handling bank secrecy with other states. For instance, Switzerland established an agreement known as the Rubik Agreement. Starting in 2011, Switzerland initiated examination to extend the cooperation on tax matters with Germany and the United Kingdom. An initial agreement with the United Kingdom was reached in August 2011, followed by the formal signing of an agreement with Germany in September 2011 which were further expanded in early 2012. The primary objective of the negotiations was to address previously untaxed assets and establish a clear withholding tax structure for future investment income. The agreements were crafted to protect bank clients' confidentiality while ensuring that both countries' legitimate tax claims were met. Switzerland remained open to considering similar arrangements with other interested countries. In April 2012, the state also entered into a withholding tax agreement with Austria. The implementation of the three agreements was initially set during the start of 2013, pending ratification by the respective national legislatures. (Colombus Group, 2022)

The United State entered treaty relationships with other countries to protect the tax revenues generated by the citizens abroad. FATCA further comprised a total of 113 Agreements and Understandings by Jurisdiction, which aimed to compile a list of Model Intergovernmental Agreements and assorted additional statements related to

FATCA and the implementation. (US Department of The Treasury, n.d) However, not every nation engaged in the negotiations to establish similar agreements in the matters.

Countries with mutual interests in addressing the principles of bank secrecy and preserving the revenue streams located outside the jurisdiction often collaborate as an international organization. This organization aimed to safeguard the interests of countries that could not wield substantial influence globally with the UN playing the significant role. (Yakupitiyage, 2016) The UN had the specific approach for addressing issues related to tax fraud originating from the principle of bank secrecy. (Trepelkov, et.all., 2013, 343)

The OECD functioned as a global organization where governments collaborated to address common challenges, establish global standards, share experiences, and identify best practices to enhance policies improving overall quality of life. The harmful tax practices initiative prompted by member countries of the OECD was designed to combat international tax evasion by promoting transparency and information exchange. (OECD, n.d k, 4) Currently, 35 jurisdictions have pledged to implement transparency and information exchange standards for tax purposes, earning recognition as cooperative jurisdictions by the OECD's Committee on Fiscal Affairs. (OECD, n.d l)

The reason bank secrecy should be relative rather than absolute on the international stage was associated with tax justice, which would be addressed in the subsequent chapter. Taxation served as a fundamental basis for agreements between countries to protect the national revenue. Therefore, the principle of tax justice could be undermined when tax evasion occurred due to the principle of bank secrecy. The motivation behind this originated from the growth of the digital world, especially with the increasing global prominence of crypto transactions. The confidentiality features of cryptocurrency should also be addressed in a law that mandated every crypto user to transparently and voluntarily declare the wealth, ensuring taxes to be paid in accordance with the established calculations. Essentially, individuals also possessed the right to accumulate wealth and maintain privacy without causing harm to others and also fulfill tax obligations.

The challenges for countries in addressing international confidentiality were increasingly widespread due to the evolution of cryptocurrency. Cryptocurrency which was existing within the expansive domain of the Internet transcended beyond traditional borders. The digital currency originated from individual creations and did not have direct tiles to any specific nation. Due to its decentralized nature, cryptocurrency was not subject to centralized government control allowing individuals unrestricted ownership and circulation rights. As virtual and digitally stored entities, cryptocurrency raised questions about the transition between the tangible world and the virtual expanse of the internet. Essentially functioning similarly to traditional currency, digital money served as recognized mediums of exchange and storage accessible to individuals worldwide. Consequently, individual could carry equivalent financial obligations including taxation for certain entity who possess the currency

CHAPTER 2: CONSTRUCTION OF INTERNATIONAL PRINCIPLE OF TAX JUSTICE

1. Introduction; 2 Law Justice Principle: 2.1 Aristotle; 2.2 Saint Augustine; 2.3 Thomas Aquinas; 2.4 Jeremy Bentham; 2.5 John Rawls; 2.6 Alf Ross; 2.7 Paul Scholten; 2.8 Immanuel Kant; 2.9 Justice in Islamic Views; 3. Tax Justice Principle: 3.1 Principal Tax of Justice Through The Era; 4. Principle of Tax Justice in Some Countries: 4.1 Indonesia; 4.2 Singapore; 4.3 Spain; 5. International Tax Principle: 5.1 League of Nations; 5.2 United Nations (UN); 5.3 European Union; 5.4 Organization for Economic Co-operation and Development (OECD); 6. Global Tax Justice: 6.1 What does International Tax Justice Principle Mean?; 6.2 Why Does Principle of International Tax Justice Need to be Upheld?; 6.3 Economic Inequality; 6.4 Global Competition for Capital; 6.5 Fair Cooperation; 6.6 Good governance; 6.7 Formulation of International Tax Equity.

1. Introduction

Tax and principle of justice are naturally inseparable, and every tax collection raises an opportunity for questioning the sustenance of justice, whether at the individual, corporate, national or international levels. Previous international practices were studied and analyzed in respect to the concept of justice, seeking solutions through agreements. In the past, it mainly focused on addressing double taxation across countries, leading to the conception of international agreements and laws for participating states. (Avi-Yonah, 2004, 483) Consequently, this led to the establishment of customary international law, where treaties were widely accepted. (Avi-Yonah, 2004, 484)

International tax practices derived from the double taxation convention is presently perceived as outdated. There is a global shift towards viewing this practice in terms of dealing with double taxation and promoting justice in international tax cooperation. This was motivated by the need of developing, developed, and

cooperation. This was motivated by the need of developing, developed, and underdeveloped countries to establish economic cooperation, supported by advancements in technologies. Therefore, tax justice principle could be supported and made more effective.

The main focus is on acquiring financial information for tax purposes, specifically in countries with diverse legal frameworks. Besides legal disparities, the impact of digitalization is a critical concern. Digitalization is reshaping human interactions and societal dynamics, introducing a host of new challenges across multiple domains such as employment, education, healthcare, privacy, and security. (OECD, 2018) This disruption is exemplified in the economic sector by the introduction of cryptocurrencies, which are increasingly used and gaining widespread recognition, globally. The interest in cryptocurrencies was attributed to the potential profitability, and the ability to facilitate borderless and international transactions without the need for intermediaries such as banks. This capability effectively reduces transaction costs and time, particularly in the context of cross-border payments. However, concerns about privacy and security are highest, with differing consequences for implementing global financial information exchange.

Principle of bank secrecy poses certain challenges to the taxation system, such as protecting property information stored by taxpayers, and the inaccessibility of assets deposited in the bank. However, the advent of digitalization and globalization in the last decade have provided easy access for taxpayers to store assets abroad. This offers certain benefits, such as providing avenues for deliberate tax evasion. Meanwhile, diverse nations apply different tax laws, and the taxpayer country of origin cannot automatically collect tax from assets held in another country.

The collection of tax, constrained by both bank secrecy and online secrecy, raises concerns of injustice. On the national scope, this was due to the conflict associated with human right to privacy, including bank secrecy, and principle of tax justice. However, in accordance with the international scope, the advent of cryptocurrency, with inherent secrecy further worsened the injustice. The challenge lies in establishing and safeguarding international tax justice principle while respecting the right to privacy. The current solution included international cooperation and information exchange.

This sub-chapter, focused on tax justice principle based on the international scope, and the basic objectives of the law. In addition, justice was analysed from the perspective of both western and eastern scholars to determine the basic principle that guides the diverse cultural frameworks. Through this comparative method, an agreement in line with the respective standards of justice prevalent at the time, specifically tax agreement, was established. The study analysed the basic principle of international tax justice, assessing the inherent consistency with justice. It further examined principle of justice in respect to taxation. Acknowledging the prior existence of tax justice principle provided the basis for understanding this sector. Finally, the analyses which focused on global tax justice, explored the necessity, implications and potential realization methods.

2. Law Justice Principle

Radbruch, stated that law comprised three elements namely justice, expediency or suitability for a purpose, and legal certainty. (Brian Bix, 2011, 14) According to Radbruch, the fundamental purpose of the law was to uphold justice, without which it would become arbitrary. Law is a regulatory framework of civil behaviour mandated by the highest authority within a State, directing actions considered right and prohibiting those perceived as wrong. (Bigelow, 1905, 1) Justice refers to the boundaries and reconciliation of conflicting demands, and interests of diverse individuals, ensuring communal existence. (Ross, 2019, 349) As populations grow, this guide becomes relevant in complementing competing interests as well as upholding rights and obligations. Therefore, it is important to study the principle of legal justice put forward by legal figures, from various perspectives providing lawmakers with valuable insights.

2.1 Aristotle

Aristotle proposed a theory focused on the importance of balance, with all aspects of the state directed towards noble ideals, namely goodness and justice. It was further stated that justice and truth manifested through goodness. The significance of balance or proportion was reflected in the fact that the equality of rights must be upheld among the same people. Furthermore, Aristotle distinguished justice into distributive and commutative. Distributive justice focuses on ensuring that every individual receives due share, in proportion to respective merit. (Sadurski, 2009, 16) This form of justice pertains to the equitable distribution of rights between the

community and the state, ensuring the citizens received ideal shares. Meanwhile, commutative justice concerns fair treatment regardless of the services rendered. (Admin Univ., 2022) This concept applied to all workers based on diverse roles, including equal access to health insurance, although with differences in coverage levels. Additionally, the differences reflected distributive justice.

Aristotle perspective on legal justice focused on proportionality and balance in social interactions. This view does not explicitly address government participation, it implied that the theory of justice is in line with the principle applied in tax collection and served as the foundational aspect of tax justice.

2.2 Saint Augustine

The theory of justice proposed by Augustine was widely recognized, and influenced by the moral views of Christianity, both the Old and New Testaments. (Social Philosophy and Policy Foundation, 2015) The assumption on law and justice, in respect to the theory of state law, focused on *lex aeterna* and *lex humana*. (Social Philosophy and Policy Foundation, 2015) *Lex aeterna* is the universal plan of God, and the origin of all rules, governed by the incomprehensible law of ratio. It is also an eternal law originating from the ratio of God. (Hukum101, n.d.) Additionally, Augustine studied natural law or *lex naturalis* proposed by God as perceived through human reasoning and understanding. *Lex aeterna*, (Thomas, 2016) enabled individuals to benefit from the concept of justice. (Hukum101, n.d.) According to Augustine, *lex naturalis* is the natural law of God as understood by the human mind. It was believed that the eternal plan of God for the operation of the universe, called *lex aeterna* exists in nature as *lex naturalis*. Meanwhile, this natural law represents the demand for justice. Augustine stated that laws are naturally validated and enforced assuming it reflects a sense of justice. The validity depended on state approval, depicting (Hukum101, n.d.) the sole authority to realize principle of justice in the form of laws to maintain peace and order. (Social Philosophy and Policy Foundation, 2015)

Augustine had an abstract perspective of justice, which contradicted the view of Aristotle, who focused on observable social dynamics readily understood through reason. Furthermore, Augustine views were deeply rooted in divine law, reflecting religious teachings. These views served as a link between religious principle and practical applications in daily life. According to Augustine, for a rule to be enforced, it

must be sanctioned by the state. In a democratic system, regulations are ratified by the state after approval by the representatives of the people. Therefore, principle of tax collection must be governed by legal regulations, and any collection without such regulation would be considered illegal, reflecting the philosophy of Augustine.

2.3 Thomas Aquinas

Aquinas defined law as a rule of reason for the common good, made by authorities who govern the society. (Cullen, 2015,3) Justice, cardinal virtue, was defined as the consistent habit of according to rightful shares to every individual. This principle of good deeds, inherent to rational beings (Cullen, 2015, 7) is crucial for regulating human interactions, signifying fairness and equality. (Cullen, 2015, 8) Aquinas distinguished between two types of justice namely commutative, which pertains to matters between individuals, and distributive referring to the allocation of public goods in proportion to the diverse needs of community members. Therefore, the essence of justice is according to each individual the due rights. Aquinas stated that all virtuous acts contribute to the common good and are linked to justice. Since law is the effort of rational beings to promote the common good, Aquinas maintains the congruity of justice and law as a distinct virtue. (Cullen, 2015, 11)

Aquinas and Aristotle both adopted the notion that distributive and commutative justice mainly focused on objectivity, ensuring that every individual received rightful entitlements. This concept of objective justice is relevant, particularly in the context of tax payments in the digital era. Currently, property owners are able to store personal assets across borders easily, resulting in the need for transparency. To achieve objective justice, all taxpayers must disclose assets stored abroad, whether in conventional currency or cryptocurrency, including hot and cold wallets, to ensure fairness for individuals who dutifully pay tax.

2.4 Immanuel Kant

Kant, a distinguished German philosopher, made significant contributions to various branches of philosophy, particularly in ethics and politics. However, the exploration of justice in the works of Kant lacked the depth found in some other philosophical writings. Justice was defined as a universal and objective principle, positing that it is realized when individuals are treated as ends to a means. Kant also formulated the basis for categorical ethics, asserting that actions are perceived as right

when based on universal moral obligations, independent of personal desires or consequences. (Jensen, 2018)

In the field of justice, Kant stated that universal moral obligations guiding both laws and ethical principle, ensured fair treatment to all individuals. However, no specific theory outlined social or distributive justice, it was assumed that a just society prioritized the cultivation of respectful and reciprocal relations among free and equal citizens, while solely promoting material well-being. (Johnston, 2011, 115) Therefore, Kant views justice in respect to shaping social relations within society, prompting reflection on the dynamics between compliant and non-compliant taxpayers, including the broader principle at play.

2.5 Jeremy Bentham

Bentham, one of the founding figures of classical utilitarianism, a consequentialist ethical theory, developed in the late 18th and early 19th centuries (Britannica, 2024), studied the principle of maximizing overall happiness or utility as the fundamental basis for determining what is morally right or wrong. In addition, every law enforcer must always be aware of the importance of punishment that reflects humanist values, ethical morals, and principle of usefulness or benefits. His theory of just punishment for convicted individuals remains relevant, emphasizing utility or principle of benefit in shaping the future behaviour of the offender. The theory proposed by Bentham in respect to just punishment for convicted subjects remained relevant and meaningful, focusing on principle of utility or benefit. It was further stated that every form of just punishment should offer the greatest benefit to the lawbreaker in the future. (DeNicola, 2022) Bentham legal theory was founded on the psycho-humanist element, the moral ethical and utility dimensions for the convicted subject. It was further stated that punishments failing to heed the three factors are unfair, illogical and need to be rejected. Therefore, a just punishment can be realized only when the law enforcers pay attention to humanism, moral ethical, and utility dimensions during the process of punishing law violators. Without these three factors, the punishment is perceived as unjust and, undeserving for the condemned subject, and leads to a contradiction between just and unjust punishment. (DeNicola, 2022)

Bentham mainly investigated criminal law, and taxation, in respect to conflicts. In these cases, Bentham conception of justice remained applicable, focusing on the

need for punishment that takes ethical and moral considerations into account. The theory suggested that laws are just when it offers improved solutions and advantages for society or individuals amidst conflicts.

2.6 John Rawls

The concept of justice must be analyzed in accordance with the theory proposed by Rawls, an esteemed American philosopher widely regarded as one of the foremost political logicians of the 20th century. It was stated that (Rawls, 2020)

(1) According to principle of greatest equal liberty, every individual should enjoy equal rights to basic liberty, ensuring the most extensive freedom possible while respecting the similar freedoms of others.
(2) Rawls formulated the difference principle, stating that social and economic inequalities should serve (a) the common good, while (b) associated to positions and opportunities accessible to all.
(3) Principle of fair equality of opportunity guaranteed that all individuals have the same access to opportunities, free from any form of discrimination or unfair treatment.

Based on this perspective, justice served as the foundation for addressing inequality. Every individual has the basic right to develop full potential, depicting the significance of equal opportunities. In this context, justice extends beyond mere distribution of outcomes, focusing on the provision of equal opportunities for all members of the society to progress. Therefore, individual freedom becomes essential in ensuring equal opportunities. In a just society, individuals can actively participate without being constrained by inequalities in access to resources or opportunities, resulting in the foundation for shared progress and sustainable social prosperity.

2.7 Alf Ross

According to Ross, justice can be evaluated based on numerous contexts. Several groups have proposed distinct formulations of justice to address specific needs and situations in diverse settings. (Ross, 2019, 359)

a. To each according to individual merit

Justice based on individual services is often perceived as abstract because it relies on the proportionality of personal moral values. In addition, this concept is further complicated by the intangible nature of morality. (Ross, 2019, 359)

b. To each according to individual contribution

The criterion for evaluation is based on the contribution of individuals to the social product. For example, justice is realized when salaries are equalized regardless of gender, ensuring equal pay for the same job among men and women. This clearly reflects the notion that job performance determines entitlement to equal treatment within a class. Therefore, all members of this class, regardless of gender, deserve equal pay. (Ross, 2019, 360)

c. To each according to individual need

Alf Ross defined justice according to individual need and this definition can be viewed from two perspectives, namely socialist communist theory and modern, socialist and capitalist society. (Ross, 2019, 360) In socialist communist ideology, equality is based on need rather than contribution, where individuals contribute and receive according to respective abilities and needs. (Ross, 2019, 360) For example, a sick individual may contribute less but requires more support, such as a COVID-19 patient requiring artificial oxygen. This contrasts with a healthy individual who has not been exposed to the virus and requires less assistance. Sick individuals also need more rest without actively contributing during this time.

In accordance with the modern, socialist and capitalist society, the third point is based on the theory of equal pay, and an increasing application of the need principle to diverse services, particularly social welfare. (Ross, 2019, 360) For example, this principle affects the establishment of a decent salary system, including implementing minimum wages and addressing differences in benefits between genders. Another example includes considering the needs of aging civil servants, ensuring certain requirements are met within the framework of this principle.

d. From each according to individual ability

Ross stated that justice needed to be applied during the distribution of benefits, (Ross, 2019, 360) particularly in the assessment of income tax. This is evident in policies such as minimum income tax exemptions, progressive tax tables, and tax deductions for parents with children. (Ross, 2019, 351)

e. To each according to rank and station

This interpretation is in line with principle of aristocratic justice, often used to justify class differences. It logically correlates equality with unequal treatment of differences according to previous assessment criteria, (Ross, 2019, 351) including membership in a certain class, determined by birth, race, skin color, creed, language, patriotism, ethnic characteristics, social status, etc. (Ross, 2019, 351) The differences manifest in various forms, such as distinctions between masters and slaves, whites and blacks, aristocrats and peasants, superior and inferior races, etc.

In essence, Ross stated that these illustrations do not solely focus on equality demands. The practical applications of justice rely heavily on presuppositions beyond principle of equality. These considerations determine which categories should adhere to principle of equality. For example, assuming an individual receives equal wages, then tax will be assessed the same. Meanwhile, the focus is on establishing the criteria that determines these equations. For example, should wages be based on equal contribution, or needs? Similarly, should tax be assessed based on the same income, or ability to pay? The focus is on establishing objective criteria for distribution, such as merit, contribution, need, ability or rank and station.

Ross indirectly stated that by enforcing a set of rules within a group, results in equality among the members. In a formal sense, justice is defined as a demand for rationality, where the treatment accorded to an individual must be based on predetermined objective criteria. (Ross, 2019, 364) These criteria, determined by common linguistic norms within a specific community, ensure decisions are not arbitrary or solely subjective. (Ross, 2019, 364) According to Ross, decisions are based on objective considerations, that does not discount alternative viewpoints.

2.8 Paul Scholten

The perspective of Scholten, a Dutch philosopher advocating decisions based on general norms and principle, had significantly influenced legal development in Indonesia. Furthermore, Indonesian societal foundation largely shaped by Dutch colonial legacy and religious teachings embraced by majority, had adapted to diverse cultural landscape. This adaptation was best exemplified in Pancasila, the foundational ideology of the nation, formed by the founding fathers. The present study explored justice based on the theory proposed by Scholten, followed by an

examination of Islamic perspectives, prevalent among Indonesians. It also examined principle of Pancasila, believed to comprise the most fitting values for the unique cultural, personal, and situational contexts.

Scholten greatly influenced the legal development in the country having co-founded the inaugural law school, the Law Faculty of the University of Indonesia. Scholten was also one of the founders of the *Rechtshoogeschool*, the precursor to the Faculty of Law, at the University of Indonesia, in former Batavia in 1924, is particularly significant. (UI, n.d.) The University of Indonesia holds a prestigious reputation and ranks highly among other universities in the country.

As the pioneer of legal philosophy, Scholten stated that the ability of a judge to make sound judgments is enhanced by embracing overarching norms and principle. These principles include aspects of justice *(gerechtigheid)*, morality *(zedelijkheid)*, and the concepts of fairness and equity *(redelijkheid en bilijkheid)*. *Gerechtigheid* in Dutch translates to justice before the law. (Mulyadi, n.d.) Scholten perspective focused on the importance of a judge to consider these fundamental guiding norms, in reaching decisions that benefit both the legal community and society at large. (Mulyadi, n.d.) Meanwhile, Scholten had a significant and profound influence on the perspectives concerning *rechtsvinding*, where jurisprudence was considered relatively important, and categorized within the discretion of the judge. Furthermore, judges are bound by the law, but possess a degree of bounded freedom (*gebonden Vrijheid)* or freedom within bounds (*Vrije Gebondenheid*), allowing for refined interpretation and application of legal principle.

Judges are responsible for carrying out *Rechtsvinding* the process of harmonizing the law in accordance with the demands of the changing times. (Mulyadi, n.d.) Philosophically, principle of legal justice (*gerechtigheid*) signifies equal rights for all within court proceedings, regardless of wealth or occupation.

In 2015, a symposium was organized by several Indonesian legal experts. It was held in November 2015, and featured papers with the theme of Scholten new perspective. Additionally, certain deliberations were translated by Arief Shidarta[1] and

[1] According to Sidharta, Scholten emphasized the distinction between legal discovery (*rechtsvinding*), the creation of law (*rechtsschepping*), and the application of law (*rechtstoepassing*). However, Sidharta

Sudikno Mertokusumo[2]. The study by Marjanne Termorshuizen-Arts, (Termorshuizen-Arts, 2015) stated that the deliberations made by Scholten on *rechtsvinding* declined with the changing governmental regimes in Indonesia. While the ideas were marginalized during the guided democracy regime, it received attention during the reform period. This renewed interest is evident in the government reform initiatives, specifically in revising longstanding regulations such as the civil law code which had been adhered to for almost 350 years since the Dutch colonial era. Marjanne Termorshuizen-Arts stated that despite these changes, there appears to be a neglect of the role of judges in interpreting the law, as proven during the hearing of the People Representative Council sessions where invited experts provided insights. During the hearings at the House of Representatives, the judges stated the need for clear guidelines to assist in decision-making. The adjudicators pointed out the challenge posed by the absence of a comprehensive case law publication system, which made it difficult for judges to access relevant precedents. (Termorshuizen-Arts, 2015) Scholten legal philosophy focused on the significance of justice in case adjudication, as it was reported to be the basis of legal decision-making.

2.9 Justice in Islamic Views

Islam significantly influences the lives and decision-making processes of Indonesians, hence it is essential to focus on the concept of justice from the perspective of Muslim scholars. With approximately 87% of the population adhering to this religion, Islamic principle infiltrate societal norms and values. (Pew Research Center, n.d.) Therefore, incorporating the insights of Muslim experts is necessary for the absolute comprehension of justice in the Indonesian context.

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also noted that judges in Indonesia disregarded these three distinctions, leading legal experts to question the nuances between legal discovery, legal creation, and legal application.
Shidarta. (2015). Mengenang Kembali "Algemeen Deel" Karya Paul Scholten, www.business-law.binus.ac.id. https://business-law.binus.ac.id/2015/05/12/mengenang-kembali-algemeen-deel-karya-paul-scholten/ Retrieved April 2024

[2] Sudikno Mertokusumo extensively analysed Scholten's book titled *"Mr.C.Asser's Handleiding tot de Studie van het Nederlandsch Burgerlijk Recht: Algemeen Deel"* in the Legal Theory course he taught and highly valued the book.
Shidarta (2015), Mengenang Kembali "Algemeen Deel" Karya Paul Scholten, www.business-law.binus.ac.id. https://business-law.binus.ac.id/2015/05/12/mengenang-kembali-algemeen-deel-karya-paul-scholten/ Retrieved April 2024

A.Sminov stated that Islamic jurists, namely Muhammad Sa'id al-Ashmawi and Ruh al-adala had the following opinions regarding justice according to Islam

> *Political justice is the right (haqq) of an individual to participate in governance. Social justice is the right (haqq) to equal opportunities, protection from exploitation, fair evaluation of labor, and fulfillment of natural and societal needs of each individual in harmony (ff al-I'tidal), without compromising the rights, public affairs, or common values of others. Judicial (qada'iyya) justice is the right (haqq) of an individual to have a clear idea of the legal regulations governing interactions and ensure equality before the law. These ideas of justice had evolved within modern civilization and were nurtured by regeneration."* (Smirnov, 1996, 337)

Social or tax justice ensured fairness in the payment of tax, while preventing exploitation, and based on the ability of an individual to pay, taxation is considered equitable. Meanwhile, an individual has the right to meet certain social needs, including requirements addressed by state obligations such as security. The concept of justice based on equal opportunities for every individual, is in line with both Rawls and Islamic perspectives. Although, the methods differed, Rawls and Islam examined it from a social perspective, and religious texts, respectively. Ross viewed legal justice in terms of equality, providing a more refined framework. It is evident in legal proceedings that judges tend to determine sentences according to the severity of the offense committed. Similarly, in taxation, tax burden is based on the financial obligations of the individual. For example, individuals with more dependents would bear a different tax burden than those with fewer. While every individual is equal before the law and entitled to the same rights, justice mandates proportional judgment according to individual actions.

In this modern era, Islamic scientific experts internationally stated that the theory of justice comprised three critical fields, namely political, social, and judicial. The contemporary perspective of A. Sminov is in line with the views of Muhammad Sa'id Al-Ashmawi. It focused on the importance of individuals having a clear idea of the rules governing relationships and ensuring equality and fairness under the laws. In the banking sector, fairness was realized through active participation, with customers and taxpayers disclosing or submitting personal data. Similarly, in the field of cryptocurrency, fairness entailed transparency, with users disclosing transactions as the characteristics of the privacy differs from principle of bank secrecy.

Shihab,[3] alongside Muhammad Sa'id al-Ashmawi and Ruh al-adala explored the multifaceted concept of justice in Islam. According to Shihab, the four dimensions of justice was derived from the word fair, meaning equal, balanced, attention to individual rights and divine attribution. In this context, the concept of justice originated from religious doctrine, influenced by both Islamic and Western philosophical perspectives, fundamentally focused on equality. Shihab (Dery, 2002) further stated that fairness entailed treating litigants equally, as it is the rightful entitlement. Equality must be given to individuals who have the same property rights. Furthermore, fair means balanced, where justice is synonymous with proportionality. (Dery, 2002) The realization equilibrium does not require uniformity, instead, it focused on fulfilling the function expected of each party. The instructions of the Qur'an, such as the distinctions between genders in some inheritance rights and witnessing - must be understood through the perspective of balance, rather than equality. (Dery, 2002)

This notion of justice reflects a divine understanding attributed to God. (Dery, 2002) Just refers to maintaining the obligation for existence to persist, ensuring there are no hindrances to the continuation and acquisition of grace when ample opportunities arise. Justice of God exemplifies mercy and goodness, a concept supported by the word of Allah contained in the letter Hud (Tafsir Quran online, n.d.) that

“Every creeping creature on this earth is sustained by Allah...”

Social justice defined in respect to the fair allocation of individual rights, ensures that everyone receives rightful shares. For example, bank depositors have the right to a sense of security for both assets and personal data, reflecting (Dery, 2002) ownership rights. Based on a broader perspective, justice is related to taxation, where every individual makes payment in line with acquired wealth to avoid exploitation or unjust deprivation.

The theory of justice had evolved through the contributions of various experts, reflecting unique personal experiences. In the theory of justice proposed by some experts, such as Aristotle, the concept comprised distributive and commutative justice.

[3] Quraish Shihab believes that there are at least three meanings of justice based on Qur’an. First, fairness in the sense of equality. Second, fairness in the sense of balance. Third, fairness in the sense of paying attention to individual rights and ensuring that each owner receives those rights.

This duality roughly corresponded to the modern ideas of substantive and procedural justice. (Hazard, 2002, 1739) Kant reported the significance of adherence to universal principle, (Hazard, 2002, 1739) while Bentham focused on maximizing the overall societal well-being. (Hazard, 2002, 1739) According to Rawls, justice can be realized only by normative choices made behind the veil of ignorance. (Hazard, 2002, 1739) Agustine stated that the plan of God gives rise to an eternal law known as the *lex aeterna*. It is comprehended by humans through the natural law or *lex naturalis*. This understanding enables individuals to benefit from concepts such as justice. (Hukum 101, n.d.) The modern theories of justice, as put forward by John Rawls and Alf Ross, do not conflict with each other but rather complement one another. However, Alf Ross's theory is more specific to particular situations, demonstrating a higher degree of objectivity. In contrast, Paul Scholten's perspective, grounded in his expertise in law, views justice primarily from a legal standpoint. Lastly, the Islamic view of justice, while philosophical in nature, does not contradict other conceptions of justice.

This sub-chapter offered a systematic exploration of legal justice, covering various chronologic and thematic aspects. It examined diverse philosophical, ethical, religious, and legal perspectives to provide a comprehensive understanding of the topic. Additionally, the concept of legal justice represents impartiality, ensuring equal treatment of all parties in relation to personal interests. This perspective was inferred by observations of social dynamics and understanding of religious texts. These ideologies evolved, influenced by both domestic and foreign factors. Despite variations in thoughts, interpretations, and opinions, principle of tax justice inspired a fundamentally similar understanding, as analysed in the following sub-chapter.

3. Tax Justice Principle

Principle of justice generally regards the law as a means to achieve equal treatment. In practical terms, legal justice focuses on the substance of regulations, particularly in the context of taxation, which aims to be realized through the implementation of tax systems. Tax justice is viewed from several perspective, including taxpayers, tax collectors and the distribution of tax revenue. Based on the viewpoint of taxpayers, justice is realized when tax returns are carefully tested for compliance in a comprehensive and structured manner based on specific indicators. Justice is upheld when taxpayers pay tax that correspond with the respective financial capacities. It also ensures the comfort of taxpayers with tax obligations as well as,

addresses several considerations to achieve fairness and equity. However, the abstract and subjective nature of justice poses challenges in devising a formula that fully satisfies all aspects, specifically in taxation. The quest for fair taxation starts with the planning of tax regulations and extends to the distribution of tax among the populace. Therefore, it is essential for various stakeholders to perceive tax system as fair, ensuring that individuals contribute proportionally to the acquired wealth.

3.1 Principal Tax of Justice Through the Era

3.1.1 Four Maxim of Adam Smith

Scottish philosopher and economist Adam Smith is renowned for publishing one of the most historical works titled An Inquiry into the Nature and Causes of the Wealth of Nations". (CIAT Inter-American Center of Tax Administrations, n.d)

Smith stated that the following four principle, balance (equality), legal certainty, accuracy of billing (convenience of payment), and economy (economy in collection), regulate taxation in a country. (Smith, 2007) The principle aims to ensure fairness in tax collection carried out by the state, ensuring it is in accordance with the ability and income of the taxpayer, (Smith, 2007) without discrimination. A fair taxation system treats individuals or entities in similar economic situations equally. (Smith, 2007) Additionally, this is in line with Smith Principle of Taxation (Boettke, 2017, 186)

1. Equity: *The subjects of every state should support the government, according to the respective abilities, in proportion to the revenue enjoyed under the protection of the state.*
2. Transparency: *Tax which each individual is bound to pay, need to be specific, and not arbitrary*.
3. Convenience: *Every tax should be levied at the time, or in a manner, that is most convenient for the contributor*.
4. Efficiency: *Every tax should be contrived to extract as little as possible from individuals beyond what is essential for funding the public treasury.*

In this context, the term equity refers to the notion that individuals or companies should pay tax in accordance with the respective income levels. It suggests that tax should be increased in direct proportion to the income earned and vice versa, referred to as the ability-to-pay premise. Principle was justified based on the fact that

individuals who earn higher income should pay more tax compared to those who earn less. (Cedar, 2020) However, the word equality in this context does not imply that every taxpayer must pay the same exact amount in tax. This means that the wealthy should pay a greater portion while the underprivileged need to pay less. Principle of tax equity is crucial, because it ensures that tax burden is in line with the capacities of taxpayers, serving as the basis for achieving social equality within a nation. According to principle, there should be justice, specifically evident in tax payment. This promotes social justice and also serves as a fundamental means of ensuring the equitable distribution of funds across an economy. (CIAT Inter-American Center of Tax Administrations, n.d)

In the field of tax equity, there are two widely accepted concepts, namely the benefit and ability to pay principle. The benefit principle suggested that tax payments must be in line with the benefits received by individuals from government output, perceived as a strong appeal in terms of equity. Therefore, it is fair for individuals to make contributions based on the benefits received.

When evaluating tax fairness based on the ability to pay principle, horizontal and vertical equities, must be considered. Horizontal equity ensures that individuals with equal means of support pay the same amount of tax. While vertical equity proposed that individuals with greater financial means should pay a proportionally higher amount compared to those with lesser means. The concept of vertical equity plays a crucial role in the development of a fair tax code. (Basu, 2007)

Maxim acknowledges both vertical and horizontal perspectives, in terms of legal justice and equity in tax collection. This differentiation offers an understanding, ensuring that tax law justice is pursued objectively, avoiding subjectivity. It considers factors asides from tax itself that impacts the taxpayers to obtain justice in accordance with the law.

3.1.2 Uniformity (The Term Equality of Taxation)

Edwin RA Seligman developed principle of tax collection similar to the one proposed by Smith. In addition, four main principles including fiscal, administrative, economic, and ethical were identified. (Mehrotra, 2006) In the field of ethical principle, there are two important aspects, namely uniformity and universality. (Mehrotra, 2006) The concept of uniformity, or equality of taxation, is not similar to numerical

calculations such as six divided by two equals three. However, it represents a notion of relatively proportional justice and equality. The term uniformity depicts the idea of treating taxpayers equally. (Mehrotra, 2006)

The differentiation between vertical and horizontal perspectives by Adam Smith, appeared to conflict with the uniformity concept proposed by Seligman. However, on closer examination, the concept of uniformity in tax collection was viewed as just. This is because tax was imposed both on income and the value of goods. The idea of uniformity fostered a sense of justice, as goods subject to tax were determined at the same percentage, ensuring a fixed pay.

3.1.3 Benefit and Ability of Justice in Tax Collection

Musgrave stated that tax justice simply means a fair system where individuals pay tax according to respective abilities. This resulted in similar income commonly called horizontal equity and higher tax for individuals who earn greater incomes known as vertical equity. (Musgrave and Musgrave, 1989) Richard A Musgrave and Peggy B Musgrave, stated that there are two kinds of justice principle, (Musgrave and Musgrave, 1989) in tax collection namely

1. The Benefit Principle stated that taxpayers must pay tax according to the benefits received from government services. This method is also called the Revenue and Expenditure Method.
2. The Ability Principle, stated that taxpayers must pay tax according to income, reflecting the ability to contribute.

Musgrave supported the view of tax justice proposed by Smith that taxpayers should pay tax according to the respective abilities.

3.1.4 Colbertism vs Declaration of the Right of Man 1784

The influence of France on tax collection principles was greatly due to the active role in wartime endeavours, which required substantial funds. Before the French Revolution, Jean-Baptiste Colbert was the Minister of Finance for King Louis XIV. (Tapié, 2024) Colbert is renowned for the formulation of mercantilism, (Siregar, 2019) an economic theory which stated the welfare of a country depends on the amount of assets or capital stored, also known as Colbertism. (Siregar, 2019)

Colbert proposed the mercantilism theory, aimed to improve manufacturing and exports, while restricting imports all in pursuit of enlarging the colony and reversing the trade balance to be positive. The purpose of mercantilism was to increase state revenues, and at the same time Colbert also started the medieval inheritance tax reform. The structure of tax revenues and administration processes were improved. (Siregar, 2019)

As Minister of Finance, Colbert imposed tax on the nobility, as well as relieved peasants of government debts owned. This captured the famous quote, the art of taxation entailed plucking the goose to get the largest possible amount of feathers with the least possible squealing, meaning maximizing revenue while minimizing discontent among taxpayers. (Gianakis and McCue, 1999)

To make tax reforms a success, Colbert propagated the idea that France wealth and economy should be directed at the service of the state. Therefore, state intervention is needed to secure the largest share of the limited economic resources. (Siregar, 2019) Colbert led French economic policy under King Louis XIV from 1661 to 1683. Colbert believed in the doctrine of mercantilism, focusing on the importance trade expansion and the maintenance of a favourable balance to enhance the wealth of the nation. To achieve this, a series of policies known as Colbertism was implemented. These included establishing a chamber of commerce, diverting capital to export and import substitution industries, implementing tariff and duty protection, as well as preventing foreigners from trading in the colonies. (Siregar, 2019) However, the domestic trade sector was viewed as less productive in terms of generating national wealth, leading to restrictions and tariffs on the movement of goods and labor between regions. This led to the strengthening of the already robust French tax system. (Siregar, 2019) The economic strategy adopted by Colbert focused on improving exports, specifically the wine industry, where a change in the pattern was initiated as well as the use of dry land. The unintended consequence of Colbert export-oriented method became apparent as changes in agricultural practices aimed at enhancing exports resulted in certain regions of France facing food shortages. This led to the Cobertism paradox where the export-oriented economy progressed, and inadvertently resulted in the stagnation of the domestic economy. The paradox sparked criticism, leading to the need to reform the fiscal and commercial system by Colbert. (Siregar, 2019) Meanwhile, Colbertism continued to survive in France until the

18th century. Significant efforts were made to dismantle the system when the Minister of Finance Anne Robert Jacques Turgot assumed office. The reforms introduced by Turgot were perceived as fee and too late to address the existent tension. The unresolved Colbertism paradox, as well as the inability of Colbert successors to find possible solutions, led to the French Revolution in 1789. (Siregar, 2019) The reforms implemented by Colbert, aimed to achieve equitable taxation across all socioeconomic levels. In addition, a significant portion of tax was embezzled by corrupt individuals rather than reaching the king for public use. Based on this, Colbert prioritized restructuring tax system to address such misuse. (Kurtzleben, 1997, 2) The tax system adopted in France included direct taxation in accordance with personal wealth, which disproportionately felt like a burden on the common people, representing a form of injustice.

The theories of tax justice, proposed by experts throughout history, offer valuable insights into the fair collection and distribution of tax. However, the true measure of this fairness depends on practical application. It is felt when judges base certain decisions on these principle in legal cases, the concept of tax justice becomes tangible. Furthermore, the application of tax justice in a broader scope requires the role of the State in regulating the lives of citizens. This ensured that individuals experience fairness in taxation. The establishment of the French government during the 1789 revolution depicted a form of the State role in promoting fair taxation.

France's commitment to tax justice is articulated in the Declaration of Mans Rights. In 1789 France declared tax justice as a visionary objective of the country, and it was known as the Declaration of the Right of Man 1784. The 13th point of the declaration stated that *a common contribution is essential for the maintenance of public forces and administrative costs. This should be equitably distributed among all the citizens in proportion to respective means.* The 13th point focused on the significance of equitable tax collection and distribution to maintain public facilities. It focused on the awareness of the obligation to fulfill public needs, as well as the importance of fairness and consideration of each citizen to make contribution.

The 13th point, was included in the declaration of the right of man 1789. In the 18th century, France supported 13 British colonies in the war against America, and this resulted in victory. However, the ensuing war severely destroyed the French

economy, leading to widespread debt and bankruptcy. This economic crisis resulted in famine and suffering among the population. To address the financial strain caused by the war, unreasonable tax payment regulation was implemented to compensate for losses. At that time the French feudal government divided the society into three classes, the first comprised kings and nobles, the second included landlords and religious leaders, while the third consisted of commoners. (Aji, n.d)

This class division significantly affected tax policy issued, because the first and second groups were exempted from paying tax, while the third was obliged. Additionally, citizens in this third class were often subjected to pay tax imposed by landlords, increasing social inequality and dissatisfaction among the majority. The disagreement ended when the citizens demanded that all social classes, including the privileged groups one and two should also pay tax. However, the king rejected the proposal, leading to civil unrest among the populace. The people finally held an assembly and declared that things would be more just and better assuming a fairer taxation system was implemented. These events led to riots that caused the downfall of the kingdom, resulting in the establishment of the Declaration of the Right of Man 1784. (Britannica, 2020) The inclusion of the 13th point reflected that tax should be free from the arbitrariness of the rulers and must be in accordance with principle of justice. (Alpha History, n.d)

The theory of tax justice put forward by experts over time, was regulated in the Declaration of the Rights of Man in 1784, which authorized the government to collect tax based on the ability of the citizens to pay. Even though it was enacted a long time ago, principle contained in the declaration are still considered relevant in the current human rights context. Principle is evident in modern state law in the form of income tax regulations, expected to meet the requirements of tax justice both horizontally and vertically. Meanwhile, horizontal justice entails treating taxpayers in similar conditions equally, ensuring that individuals with the same income and dependents bore an equivalent tax burden, regardless of the income type or source. Tax collection is presumed to meet the requirements of vertical justice assuming taxpayers who have varying economic capabilities are treated unequally. (Mansury, 1996, 10) The sub-points under Principal tax of justice through the era explored several aspects, including the Four Maxim, Uniformity (equality of taxation), and the consideration of Benefit and Ability of Justice in Tax Collection. The inclusion of Colbertism and the Declaration of

the Right of Man in 1784 suggested an examination of historical influences on this principle, showing a comprehensive analysis of the evolution and components over time. The comprehension and significance of tax justice, as stated by experts, depend on the temporal context and events experienced during that period. The presence of tax in that era contributed to distinct interpretations of justice by each philosopher.

In the previous sub-chapter, various theories of tax and legal justice were examined, showing a crucial distinction. These focused on the principle of equal treatment before the law, which was perceived as a formal matter. However, the concept of individuals contributing to tax based on acquired wealth pertains to material considerations. The conceptualization of tax justice is fundamentally derived from the understanding of legal justice theory, with varying implementations observed across different countries, as stated in the next subchapter.

4. Principle of Tax Justice in Some Countries

4.1 Indonesia

There are several forms of religious relations, including secular and theocratic. Theocracy, meaning the rule of God, is a country whose system of government is based on the religious principle and teachings, typical examples are Pakistan, Afghanistan, and Iran. (Fortman, 2008) While a secular country maintains a strict separation between the state and religion. It ensured that religious beliefs do not influence governmental decisions. (Martínez-Torrón, 2014, 56) In such states, there is freedom of worship, without state interference, a typical example is the USA. (Kompasiana, 2020)

Indonesia is neither a secular nor a theocratic country, as all official policies are not exclusively based on sharia norms. Despite having the largest Muslim population in the world, Indonesia values religious diversity, offering the citizens the freedom to practice any faith. Legally, various religions, including Islam, Christianity, Catholicism, Buddhism, Hinduism, and Confucianism are recognized in the country. (Kompasiana, 2020) A significant illustration of this religious acknowledgement and tolerance is the observance of national holidays dedicated to the celebration of each faith.

Indonesia is governed by principle of Pancasila, the national ideology. The term Pancasila was derived from panca and sila meaning five, and principle, respectively, and it was introduced by Soekarno, the first President. It comprised five basic

principles, namely belief in God Almighty, nationality, Social Justice, Democracy, and Internationalism or Humanity. Pancasila, guiding the ideology, and way of life was considered an incomparable gift bestowed on the Indonesian nation by God Almighty, as envisioned and established by the founding fathers. It is a unifying tool for the nation uniting individuals from diverse backgrounds with the birth of these five precepts. Meanwhile, through the practice of Pancasila values, such as inclusiveness, tolerance, mutual respect and cooperation, individuals express love for the country and work towards building a better nation. This adherence to principle of Pancasila enabled Indonesia to embrace the existing diversity as a blessing, influencing the national identity captured in the motto *Bhinneka Tunggal Ika*. (Hellen, 2020) The laws and regulations are established based on Pancasila and the Constitution, ensuring unity and tolerance across various ethnicity, culture, and religion.

The Pancasila ideology is the foundation of Indonesian justice principle, providing theoretical framework for the birth of legal products in the country. Furthermore, contained in the Pancasila is a commitment to social justice for all Indonesians, stated in the fifth principle. The vision of social justice seeks to strike a balance between the distinct roles of humans as social beings. It focuses on the importance of fulfilling civil, political, economic, social and cultural rights. (Morfit, 1981, 838)

The notion of social justice for all Indonesians contains values of justice related to mutual welfare. In the national scope, this concept is realized through three aspects, often referred to as the triangle of justice. These aspects include (Tim Edukasi Perpajakan Direktorat Jenderal Pajak, 2016)

1. Distributive justice, refers to the fair relationship between the state and citizens. It includes the responsibility of the state to uphold justice by allocating to the citizens what rightfully belongs to them.
2. Obedient or legal justice, is the relationship between citizens and the state. In this context, citizens are the parties responsible for upholding justice by complying with the laws and regulations of the country.
3. Commutative justice, refers to the relations between citizens of one country with another. It focuses on ensuring equity and fairness in the relationship among individuals.

Understanding the values of justice in Pancasila showed the fundamental role as a *staatsfundamentalnorm* [4] for the state. These values manifested in the constitution, known as the *staatgrundgesetz*[5], formed the basis for all legal regulations and judicial decisions. The value of justice explicitly expressed in the fifth principle, served as the foundation for the constitution. While Pancasila and the constitution do not openly address tax justice, Indonesian taxation arrangements were generally regulated within the constitution, particularly in Article 23A. This article stated that tax and other coercive levies for state needs are governed by law.

The fundamental regulations concerning Indonesian taxation are contained in the constitution. However, this constitutional provision was mainly confined to a general directive that tax impositions must be established by law, lacking specific regulatory stipulations pertaining to justice. Previous studies and scholars have analyzed various regulations derived from the constitution, including implementing policies and ministerial decrees. In the context of preserving the integrity of the Indonesian nation, relationships between citizens and the government should be anchored in a framework of values and instruments. Therefore, upholding justice is a fundamental principle in sustaining such relationships, ensuring that citizens are treated equitably while respecting the basic rights and obligations of community members.

Tax justice is perceived as a means to foster prosperity for all Indonesians, as stated in the basic ideology of the nation, Pancasila. The ideology focuses on all part of national life, statehood, and society founded on heavenly principle, humanity, unity, people and justice. (Setiawan, et.all, 2020) Based on this context, tax justice is a distribution system that effectively achieved the intended objectives. Tax justice contained in the Indonesian constitution revolved around a framework, where tax is collected based on legal arrangements ratified by the state. (Art. 23A Indonesia

[4] *Staatsfundamentalnorm* is a norm that serves as the foundation for the formation of a constitution or basic law (*staatsgrundgesetz*) of a country. The legal significance of the *Staatsfundamentalnorm* lies in its role as a prerequisite for the enactment of a constitution. This norm exists prior to the constitution of a country.

[5] Under the state's fundamental norms (*Staatsfundamentalnorm*), there are rules known as state principles (*staatsgrundgesetz*), typically articulated within the framework of a basic law or constitution.

Constitution) It is in accordance with the purpose of the law aimed to promote justice. Therefore, each section on tax law arrangement focused on achieving justice.

In accordance with the perspective of tax justice, there are two fundamental principles, namely distributive and commutative justice, as reported in the preceding section. The principle is contextualized within the framework of Indonesian law, influencing the formation and implementation. Distributive justice, comprising the fair distribution of goods and services *(justitia distributiva*), aimed to ensure equitable access and benefit for all citizens. In accordance with this principle, each citizen exercises certain rights, while also guaranteeing basic entitlement regardless of specific roles and contributions (*justitia cummulativa*). Within this framework, justice operated on a transactional basis, comprising both voluntary and involuntary transactions (*sunallagamat*a). However, distributive justice is a critical metric for evaluating government policies concerning the populace, focusing on the significant responsibility of the state toward the citizens compared to respective obligations. The government is tasked with ensuring the equitable distribution of resources, with the application of distributive justice being of great importance in this context. When citizens are mandated to fulfil civic responsibilities, such as tax obligations, principle of commutative justice takes precedence. (Maftuchan, 2014, 4-5)

Tax justice is a concept analysed from two distinct perspectives, namely horizontal and vertical. Horizontal justice aimed to ensure fairness among individuals with similar economic situations, implying that people in analogous financial circumstances should receive comparable tax treatment and burdens. It is in line with the benefit principle, where individuals contribute levies to the government in proportion to the benefits received. Any deviations from equal treatment and tax burdens for individuals in identical economic situations require strong justifications. However, vertical justice addresses divergences in tax treatment and burdens justified by disparities in relevant economic conditions. It is based on the Ability to Pay principle, which stated tax burdens should be in line with the capacity of individuals to achieve greater welfare. Principle supports a progressive tax system, where the burden increases with income and prosperity. Therefore, vertical justice, forms the basis for progressive taxation. (Wicaksono, 2022)

Tax justice is fundamentally linked to the ideology of the nation, Pancasila, which served as the philosophical basis of Indonesia. Pancasila aids in guiding principle of divinity, humanity, unity, people, and justice permeating all aspects of national, state, and societal life. Within this framework, tax justice is perceived as an equitable distribution of resources that fosters prosperity for all citizens. (Setiawan, et.all., 2020) Despite being a source of revenue for the country, there has been a decreasing trend of tax contributions annually. This trend poses challenges in addressing the needs of the numerous impoverished individuals in Indonesia. (World Bank Group, n.d) The constitutional provisions focused on the importance of tax collection adhering to legal regulations as well as being duly authorized by the state. (Art. 23A of the Indonesian Constitution) Consequently, this is in line with the main objective of establishing justice in the law. To further explore the concept of justice, it is essential to analyze the foundational principle of the Indonesian state contained in Pancasila. The exploration provided more insight on how this principle contributed to the understanding and pursuit of tax justice in the Indonesian context.

The ideals of justice include all human elements and are non-plural in essence. It is characteristic of humans to seek fulfilment in various aspects of life, both physically and psychologically, for oneself and others. These elements collectively contributed to the realization of complete human relationships, namely with oneself, other individuals and God. The manifestation of justice in respect to the Pancasila is reflected in every decision of the Constitutional Court, as exemplified by the following case.

Political changes in the Indonesian government during the big bang decentralization era, supported the transfer of power. This extended to fiscal issues, granting local governments autonomy over financial management, including tax collection under strict restrictions. Local governments were permitted to collect tax only with delegation from the national legislator or mandated by the constitution. Several interpretations of tax objects by local governments led to the imposition of double taxation, where both the local and central tax objects, were levied on certain activities, such as the golf tax. The decision of the Constitutional Court on such matters has implications for the legitimacy of tax laws and regulations in Indonesia. Despite this, challenges persist in the preparation and interpretation of tax laws, such as conceptual confusion, undemocratic tendencies, tortuous processes and overlapping regulations.

These factors contributed to the heightened risk of double taxation in the country, prompting taxpayers to seek relief through filing of cases in the Constitutional Court as an alternative method to lessen tax burdens. (Ardiansyah, 2017, 1)

Regional governments have been empowered with broader authority to regulate economic and development affairs on the basis of implementing regional autonomy. (Art. 1 number 2 Act Number 32/ 2004 of Region Government) This includes the ability to enact regional revenue policies to finance governance, namely implementing regional tax and levies. (Art. 21.e Act Number 32/ 2004 of Region Government) The division of tax collection authority (taxing power) is a closed-list system, (Noviyanti and Zen, 2022, 90) where local governments are prohibited from collecting tax other than predetermined. Even the specified types of tax cannot be collected if deemed inadequate or not in line with Regional Regulations.

Several local governments have imposed tax on golf as a form of entertainment, following the guidelines outlined in Law number 28 of 2009 concerning Regional Tax and Regional Levies. (Art.42.2.g) Act number 28/ 2009 of Region Tax and Region Retribution) Based on Law Number 42 of 2009 concerning Value Added Tax and Sales Tax on Luxury Goods, golf is categorized as an object of central tax, being considered a taxable service. Consequently, this results in double taxation on the same object.

The Association of Indonesian Golf Course Owners and entrepreneurs objected and submitted a review of Article 42 paragraph (2) letter g of the PDRD Law, citing inconsistencies with the 1945 Constitution of the Republic of Indonesia. (Harian Kontan, 2021) The objection focused on the classification of billiards, golf and bowling as objects of entertainment tax, which arguably resulted in unequal treatment of players in the sports industry. It was contended that the imposition of an entertainment tax would increase the cost of renting golf infrastructure.

The Constitutional Court Decision Number 52/PUUIX/2011 granted a judicial review of Article 42 paragraph (2) letter g, regarding Regional Tax and Levies.The inclusion of the word golf in this provision was reported to violate the 1945 Constitution, thereby rendering it legally invalid. (Verdict Number 52/PUU-IX/2011 of Constitutional

Court of Indonesia Republic) This decision made a number of regions cancel local regulations that included golf tax as part of the local tax schemes.

According to Article 42 paragraph (2) letter g of the Law on Regional Tax and Regional Levies, organizing golf events is an object of regional tax. Golf is classified as an entertainment service subject to taxation. (Article 42.2.g) Act number 28/2009 of Region Tax and Retribution Region) The petitioner proposed that the article contradicted specific provisions of the constitution, namely Articles 28D and I paragraph (1) and (2), of the 1945 Constitution, which stated

Article 28D

"(1) Everyone is entitled to recognition, assurance, protection, and fair legal certainty as well as equal treatment before the law."

Article 28I

"(2) Everyone is entitled to freedom from discrimination on any basis and has the right to protection against such treatment."

According to the judge, the classification of golf under entertainment as stated in Article 42 paragraph (2) letter g, is mainly a question of legality, rather than constitutionality. The petitioners did not adequately elaborate on how Article 42 paragraph (2) letter g, which classified these sports as entertainment, contradicted Articles 28D and I paragraph (1) and (2), respectively of the 1945 Constitution. The decision of the judge was based on the intersection of regional tax and VAT (central tax) in golf-related tax cases, resulting in double taxation on single tax object. Constitutional Court Decision Number 52/PUU-IX/2011 stipulated that the word golf in Article 42 paragraph (2) letter g of the PDRD Law is unconstitutional under the 1945 Constitution, hence it lacks legal binding force. The judge stated that the golf tax violated principle of fairness and non-discriminatory treatment, as golf is a sport and not entertainment. It was reported that tax should be targeted at parties with financial capacity, because the imposition of double taxation contradicted principle of ensuring fair legal certainty and equal treatment before the law, as stated in Article 28D paragraph (1) of the 1945 Constitution. (Ardiansyah, et.all., 2017)

The decision was based on the consideration of the Constitutional Court, as stated in the ruling, that all levies *(belasting)* were derived from the constitution. In

addition, the establishment of norms *(rechtsnorm)* and the implementation of levies by the fiscus must not contradict the constitution *(tegengesteld met de constitutie).* (page 25 Verdict Number 52/PUU-IX/2011 of Constitutional Court of Indonesia Republic) The legal foundation for tax collection was established in the 1945 Constitution, which served as the fundamental law in accordance with the provisions of Article 23A, regulating tax and other coercive levies for state purposes. (page 34 Verdict Number 52/PUU-IX/2011 of Constitutional Court of Indonesia Republic)

Article 23A of the 1945 Constitution, mandated that taxes and other coercive levies for state purposes are governed by law. This provision delegates authority to the law for the regulation of such tax and levies. Although Article 23A does not explicitly outline principle of taxation, it mandates that the authority of the state to collect tax must not contradict principle adopted by the other articles of the Constitution, including justice, legal certainty, and equality under the law. The constitutional principle is in line with those adopted in tax theory, focusing on transparency, discipline, justice or equality, efficiency, and effectiveness in tax collection. (page 79 Verdict Number 52/PUU-IX/2011 of Constitutional Court of Indonesia Republic)

The considerations and decisions of the judge, were aimed at achieving a sense of justice, rooted in the interpretation of Article 23A of the 1945 Constitution. The interpretation is based on the constitutional objective of justice attainment specifically distributive justice. Distributive justice is the fair distribution of resources between the state and citizens, ensuring that these individuals receive due entitlements. As representatives of the state, Constitutional Court judges strive to uphold a sense of justice for taxpayers, including golf entrepreneurs.

The second tax case, centered on a Constitutional Court ruling to uphold social justice in the field of taxation, pertains to the street lighting tax. The levy was imposed to fund expenses associated with street lighting or streetlights in a particular area. Typically implemented by local governments, tax aims to support the maintenance, development, and operation of street lighting systems.

The street lighting tax is aimed to collect funds required for maintaining the availability and quality of street lighting in a given area. These funds were used for installing, maintaining, and replacing streetlights, as well as covering the costs of electrical energy consumption for lighting. Local governments often determine tax

rates based on specific criteria, such as the size of property owned by individuals. street lighting tax is frequently regarded as a form of property tax, as it is commonly applied to property owners in an area.

The Indonesian Employers Association, representing two companies, PT Riau Prima Energi[6] and PT Indah Kiat Pulp and Paper[7], submitted a review to the Constitutional Court regarding the regulation on street lighting tax. It was argued that tax imposed unfairly applied to a wide spectrum, including self-generated electricity from all power plants and energy obtained from other sources. In reality, the electricity generated internally is an integral part of the production process that yielded the final product, and it influences the imposition of other tax.

This caused the two companies to face discrepancies in tax calculations performed by the local tax service office. The significant gap between the internal results (self-assessment) of the company and outcomes determined by the local government (official assessment) showed an imbalance in the street lighting tax imposed on the applicants. Based on reasonable grounds, the incongruity had the potential to impose substantial financial burdens on the sustainability of the company. The disparity in values is shown in the following table:

No.	Company	Local Tax Assessment issued by the Regional Government	Company Calculation on Tax Imposition
1.	PT Riau Prima Energi	Period 2013 to 2016 Rp. 40.000.000.000 (forty billion rupiah)	Period 2013 to 2016 Rp. 9.000.000.000 (Nine billion rupiah)
2.	PT Indah Kiat Pulp and Paper	Period 2014 to 2015 Rp. 2.600.000.000 (two billion six hundred million rupiah)	Period 2014 to 2015 Rp. 260.000.000 (two hundred sixty million rupiah)

[6] PT Riau Prima Energi is a legitimate company engaged in the export and import of paper products, specifically copy paper. The copy paper, known under the brand Paper One, is of high quality and is produced by April Fine Paper Indonesia. https://www.paperindex.com/profile/pt-riau-prima-energi/11071205/10286 retrieved August 2022

[7] PT Indah Kiat is a company that operates within the realms of industry, trade, mining, and forestry. The primary focus of Indah Kiat's business lies in the cultural paper industry and the production of pulp and paper. https://indahkiat.co.id/ retrieved August 2022

The table originated from Decision Number 80/PUU-XV/2017 of the Constitutional Court of the Republic of Indonesia

Tax calculation followed the guidelines in Articles 52, and 55 paragraphs (1), and (2), respectively of Law No. 28 of 2009. The phrase other sources should be interpreted restrictively, applying only to electricity generated by the state, specifically the State Electricity Company. In practice, the State Electricity Company, has been unable to adequately meet the electricity demands for industrial purposes. The initiative of the applicant to independently generate electricity deserves recognition and incentives from the government, including the exemption from the street lighting tax.

The broad application of the lighting tax, comprising self-generated electric power from all power plants, resulted in inequity in the calculation and payment of tax determined by the local government (official assessment). This disparity was evident in the street lighting tax rates charged the Petitioner members. The legal foundation for this argument is outlined in Law Number 28 of 2009, which states (Decision Number 80/PUU-XV/2017 Constitutional Court of the Republic of Indonesia page 8 Point 27)

Article 1 number 28 concerning levies and Regional Taxes:

"*Street Lighting Tax is a levy on the use of electric power, regardless of whether it is self-generated or obtained from other sources"*

Article 52 paragraphs (1) and (2):

Article 52

"(1) *The Street Lighting Tax is the use of electric power, whether self-generated or obtained from other sources.*

(2*) The term self-generated electricity in paragraph (1) comprised all listed power plants."*

Article 55 paragraphs (1) and (2):

Article 55

"(1) The Street Lighting Tax rate shall be determined at a maximum of 10% (ten percent).

(2*) For the use of electric power from sources other than self-generation in industries, oil and natural gas mining, the Street Lighting Tax rate was set at a maximum of 3% (three percent)."*

The content and provisions of this chapter contradicts Article 28D, paragraph (1) of the Constitution.

Article 28D paragraph (1) of the Constitution

"Every individual is entitled to recognition, guarantee, protection, and equitable legal certainty as well as equal treatment before the law."

The lack of guaranteed fair legal certainty in the application of Article 1 point 28, and Article 52 paragraphs (1), and (2), was argued based on the following legal grounds. First, the government should appreciate the efforts of the applicant in providing electricity supply, rather than imposing street lighting tax on these individuals. Second, the terminology of street lighting tax as stipulated in article 1 number 28, is not in line with the intended purpose, which should be limited only to the use of electricity produced by the state, and not within the scope of those produced by the Company for the benefit of the production process. Finally, the judge ruled

> *"Declaring Article 1, number 28, Article 52, paragraphs (1) and (2), as well as Article 55, paragraphs (2) and (3) of Law Number 28 of 2009 concerning Regional Tax and Regional Levies contrary to the Constitution of the Republic of Indonesia Year 1945 and having no binding legal force.*
>
> *The provisions of Article 1, number 28, Article 52, paragraphs (1) and (2), as well as Article 55, paragraphs (2) and (3) of Law Number 28 of 2009 concerning Regional Tax and Regional Levies will remain in effect until changes are made in accordance with the grace period specified in this decision.*
>
> *Ordering the lawmaker to revise Law Number 28 of 2009 concerning Regional Tax and Regional Levies, specifically addressing the imposition of tax on electricity usage, both self-generated and produced from sources other than those produced by the government (State Electricity Company) within a maximum period of three years from the date of this decision."*

In this decision, the judges considered various aspects of the 1945 Constitution, including Article 23A. This article stipulated that tax and other coercive levies for state needs are regulated by law. The phrase regulated by law signifies the importance of precise tax collection and the participation of the populace in formulating tax laws, following principle of no tax without representation. (Decision Number 80/PUU-XV/2017 of the Constitutional Court of the Republic of Indonesia Point 28, page 23) Additionally, Article 23A explicitly stated that tax and other levies conducted by the state are permissible only when regulated by law. This implied that all provisions affecting the populace must be known and formulated through representative

mechanisms, including members of the legislative bodies alongside the President. In a modern democratic state, the government must facilitate public participation in the legislative procedure and also ensure public awareness of the legislative drafting process. This is essential to prevent arbitrary imposition of tax on the populace. (Decision Number 80/PUU-XV/2017 of the Constitutional Court of the Republic of Indonesia Point 28, page 111)

A fundamental philosophical underpinning of the Constitutional Court ruling in this case is that Article 23A provided the legal framework for the state to collect tax from the citizens. This article mandates that tax and other coercive levies required for state purposes must be enacted by law. Therefore, no tax levies can be imposed on citizens without the consent of duly appointed representatives (following principle of no taxation without representation). This principle served as a recognition and assurance of the rights of citizens, particularly taxpayers, to avoid arbitrary taxation or levies by the government. (Decision Number 80/PUU-XV/2017 of the Constitutional Court of the Republic of Indonesia Point 28, page 50)

Article 23A of the 1945 Constitution does not specify which areas are subject to tax and levies. Similarly, it lacked explicit statements regarding exempted areas. This lack of specificity suggested that tax and levies can be imposed on all legal entities and subjects, but only after thorough deliberation and rationalization through the enactment of laws. (Decision Number 80/PUU-XV/2017 of the Constitutional Court of the Republic of Indonesia Point 28, page 111)

The Constitutional Court accepted the objection to the calculation, which led to amendments to Law Number 28 of 2009 on regional levies and tax, in accordance with Article 23A. The judges were mandated to interpret Article 23A in ongoing cases, particularly regarding tax justice, to ensure the realization. (*rechstvinding*) This represented a fair stance for entrepreneurs who had independently managed the electricity used. However, the Bill on Amendments to Law Number 28 of 2009 concerning Regional Tax and Regional Levies until 2023 is still being revised, at both levels I and II stages. Proposed by the Ministry of Finance and the Council of Representatives Committee IV, this law amendment is being deliberated in commission XI. (House of Representatives of the Republic of Indonesia, 2009) The amendment was motivated by the Constitutional Court Decision and the delegation of

central tax management authority to the regions, leading to a decrease in regional revenues. Unfavourable regional tax regulations and inadequate facilities accompany the delegation to regional tax. Moreover, different provincial and district/city tax rate policies contributed to tax imposition gaps between regions. This discrepancy occurred because the local tax rate system, as regulated by Law No. 28 of 2009, failed to establish a maximum rate.

The Constitutional Court case implicating PT Riau Prima Energi including PT Indah Kiat Pulp and Paper focused on the need for a fair application of street lighting tax calculation. The broader legislation on levies and local taxes concerning street lighting taxes, required amendments. Despite the Constitutional Court setting a three-year period for legal adjustments, the House of Representatives had not provided a resolution, as at the time when this study was conducted. Even though the Law on local levies and taxes is no longer valid, government commitment was crucial for achieving social justice. The commitment must surpass judicial decisions, with concrete laws and regulations established over time to ensure people secured the right to justice.

In both tax cases, namely the golf and the street lighting taxes, the Judge examined Article 23A of the 1945 Constitution. Since it contained a relatively broad statement, each case required individual interpretation. Therefore, judges make interpretations to guide the decision-making process according to the specific circumstances of each case. This section is closely related to principle of tax and legal justice. The central theme of this section is justice which has two different meanings, namely justice before the law and as a criterion of social life. Justice as a criterion of social life is a critical aspect of tax justice principle, subsequently analysed in the following section.

4.2 Singapore

Singapore is the third leading financial center globally and a renowned cosmopolitan city that plays an important role in international trade and finance. (Monetary Authority of Singapore, n.d) It has a stable and robust financial status. Additionally, Singapore and Indonesia have similar tax regulatory frameworks, both adhering to a general taxation method. In Singapore, Article 143 of Constitution focused on principle of compulsory tax collection under the following lawful

authorization No tax or rate shall be levied for the purposes of the country except under the authority of the law. The country adopted a forward-thinking method in the evaluation of domestic tax justice, ensuring these finances are aimed at meeting revenue targets as well as directed towards appropriate societal distribution for maximum benefit. Therefore, tax justice is realized through the appropriate use of taxes, while considering the impact on future generations. Taxes should be evaluated based on the ability to achieve distributional results determined by justice. (Pawa and Gee, 2021, 3) While these levies are regulated by law to ensure validity and prevent arbitrariness, fairness in taxation extends beyond constitutional confines. The concept of tax justice is embedded in regulations that rely on constitutional articles, even when not explicitly stated.

In 2020, Singapore experienced a significant decline in household income, approximately 20 per cent. Additionally, inequalities in access to digital transition was further increased, particularly affecting lower-income households and children. This disparity led to the growing consideration to restructure the income and wealth tax system. The rationale was based on the belief that taxes needed to reflect principle of justice. From a conventional perspective, justice criteria were adopted to offer moral guidance on the equity of tax burden, specifically in a libertarian theoretical framework. According to the libertarian theory, individuals inherently have the right to property, and taxation is morally justifiable because it limits this natural entitlement, ensuring fairness. (Pawa and Gee, 2021, 32) Therefore, ownership is bounded by the payment of taxes, a notion considered morally appropriate. Taxes are defined as the most important instrument through which the political system practices the conception of economic or distributive justice. To ensure that the tax system reflects justice, rather than self-interest, it must be based on moral values. Specific policies guided by the moral principle of distribution and economic equity, were adopted to either increase taxes or reduce inequality. (Pawa and Gee, 2021, 4)

Singapore aimed to restructure tax system to overcome economic inequality, specifically due to the pandemic recovery efforts, justifying potential increases in revenues. (Pawa and Gee, 2021, 3) This concept depicted the multifaceted role of taxes as income generators, and regulatory tools. From a moral perspective, taxes are considered as principle of justice. Another point of view is equity, which evaluates how taxes will be spent. Tax justice is an aspect of distributive justice—which seeks fair distribution of economic benefits and burdens in society. Therefore, justice in taxation

is determined by the results of the economic system and distribution after taxes have been imposed. (Pawa and Gee, 2021, 5)

The evaluation of justice in respect to taxation arises from the recognition that the Singaporean government has a moral obligation to both present and future generations. Tax revenues must be increased to ensure future generations are not unfairly burdened with debt. At the same time, there is a need to address the current economic inequality in the country. While principles such as benefits and ability to pay might seem reasonable, it does not ensure tax equity. There is a need to consider how taxes are used to uphold the principle of fair government spending. For example, a progressive tax rate structure cannot be used to determine whether a tax system is fair or unjust. (Pawa and Gee, 2021, 54)

4.3 Spain

The study of legal justice particularly focused on Article 31.1 of the Constitution which stated Everyone shall contribute to sustain public expenditure according to the economic capacity, through a fair tax system based on principle of equality and progressive taxation, while prohibiting any measures perceived as confiscatory. Furthermore, paragraph 3 stated that personal or property contributions for public purposes may only be imposed in accordance with the law.

The principle of tax justice had been incorporated into the legal system, as mandated by the constitution. It stipulated that any taxation, including the allocation must be regulated by law based on principle of justice. This was clearly stated in the first paragraph of Article 31 that everyone must contribute to public spending in accordance with the economic capabilities through an equitable and progressive taxation system. Meanwhile, the recent policy implemented by the Spanish government focused on progressive taxation driven by justice. This reflected the commitment to upholding principle of tax justice and maintaining public expenditure (McMurtry, 2022) The government also conducted a significant policy reform, ensuring that rich bore a greater tax burden, compared to those with lower incomes. (McMurtry, 2022)

Spain reportedly operates a progressive income tax system, (PWC, 2024) characterized by a rise in the overall tax burden as income increases. This ensured that wealthier households bore a larger proportion of tax burden, compared to lower- and middle-income earners, resulting in the fair distribution of tax load. Progressive income taxation enables the collection of equitable funds by the state. (ITEP, 2012)

Several progressive tax rates are applied to general taxable income, combining both rates set by the state and those established by each autonomous community according to the respective scales. Consequently, tax liability may vary from one autonomous community to the other. (ITEP, 2012) The progressive tax principle was observed in the income tax collection policy, which places greater burden on individuals with high-income compared to low-income earners.

Spain, characterized by the rich historical heritage and a member of the European Union, played a crucial role within the EU fiscal framework. The articulation of material principles governing tax fairness within the EU fiscal discipline served as a fundamental foundation. This was essential for the development of EU Tax Law in line with constitutional parameters, both at the European Union level and within each member state. (Espadafor, 2019, 251)

This country has a comprehensive perspective on the principle of tax justice, clearly stated in the Constitution. The provisions mandated the compulsory collection of tax, alongside the European notion that state-imposed levies without legal backing are unjust. While the concept had evolved, it remained relevant, with ongoing efforts to expand, and apply tax justice in real-life scenarios. Spain is renowned for contributing to the development of this evolving concept. The study of Tax Law prioritizes principle outlined in paragraph 1 of Article 31 of the Constitution, particularly focusing on tax justice over material consideration. (Espadafor, 2019, 233)

Principle of tax justice as outlined in the first paragraph of Article 31 of the Spanish Constitution, mandates that everyone is obligated to contribute to government expenditures based on the financial ability. This contribution must be through a fair tax system characterized by equal and progressive principles, while avoiding confiscatory measures. Principle guiding the obligation to contribute, collectively known as principle of tax justice comprised general notions such as the ability to pay, equality, progressivity, and prevention of confiscation. In addition, the third paragraph of Article 31 of the Spanish Constitution established the formal principle of tax justice, stating that taxation on personal or general property can only be carried out in accordance with the law. This principle prevents taxation without proper representation. (López and Marín, 2022, 11)

The principle of tax justice comprised two dimensions, namely the material aspect, which refers to the ability to pay, and formal dimensions concerning the legal

framework governing taxation. Additionally, legislation plays a critical role in ensuring that principle of equity is upheld and guarantees fair treatment for all individuals.

The principle of ability to pay holds a critical position in the context of taxation. It mandates citizens to make contributions supporting the General Treasury, essentially serving as the foundation for tax payments. The practical implementation of taxation ensures payment is consistent with the product or service received. This does not undermine the critical consideration of the taxpayer's ability to pay. (Espadafor, 2019, 249) Article 31.1 of the Spanish Constitution focused on the significance of this principle essential for influencing tax system. Lawmakers have the flexibility to intensify the application of the ability to pay principle to achieve additional constitutional objectives, and values. In the Spanish legal framework, the legitimacy of a taxation system is assessed in terms of the contribution to public service. (Espadafor, 2019, 247) However, taxpayers enjoy specific rights as citizens and regulated entities, which legislators must uphold. (Espadafor, 2019, 250)

In Spain, tax justice relies on several core principle to ensure fairness in the system. This includes distributive principle, material principle of equity, principle of progressivity, and non-confiscation. According to the distributive principle, citizens need to contribute to public expenditure in line with the respective economic capacities, avoiding excessive burdens, and protecting essential needs. Meanwhile, the material principle of equity ensured that tax burdens were distributed fairly among taxpayers. This contribution was further guided by progressive principles within tax system.

Each of the three countries Indonesia, Singapore, and Spain operated as a legal state where the constitution formed the fundamental basis for the regulation of tax collection. However, a significant distinction exists among the nations, as only Spain explicitly incorporated the concept of tax fairness at the core of its constitutional framework. Indonesia and Singapore failed to explicitly mention tax fairness in the respective levies in practice are still supported by interpretations of justice, with some variations.

In the previous section, the principle of tax justice was analyzed from various perspectives, illustrating the multifaceted nature. This contradicts the constitution of Spain, which clearly designates tax justice as the main state objective. The detailed treatment of tax justice in the Spanish constitution holds great significance, particularly within the EU, where views and considerations are heightened due to the interplay

and mutual influence among member countries. This interconnectedness is promoted by complex relationships and reciprocal influences among EU member countries, even extending beyond the union to establish interrelated dynamics in matters of taxation globally.

5. International Tax Principle

Principle of tax justice exceeds beyond national boundaries, interconnecting two or more countries due to shared interests and global development trends. This sub chapter focused on the importance of analyzing principle of tax justice from the viewpoint of international organizations.

Taxation is mainly concerned with individuals and the assets possessed. (Sadowsky, 2021, 14) However, international tax considers the location or origin of both individuals and the acquired wealth. This includes interactions between two or more countries, alongside multiple jurisdictions. Therefore, failure to reach agreements in international tax cases can affect bilateral relations. The concepts of international tax law were formulated as a result of the agreement between these countries.

The economy, politics, and global situations at the time influenced tax both domestically and internationally. Consequently, international tax law principle is in a constant state of evolution to accommodate these dynamic factors. According to Swadosky, international tax law is defined as (Sadowsky, 2021, 14)

1. Construction result of ancient history

2. International tax law is bound to change

3. International tax law adapts to the demands of time

Presently, the transition from the era of double taxation to better cooperation guided by principle of tax justice was observed. This shift reflects the opinion of Swadosky on legal theory regarding change. It was reported that laws are designed to evolve, ensuring changes in legislature are inevitable.

> *"In other words, everyone who supports a specific law also seeks rules for modification, often aimed at preserving existing conditions. Any individual who states otherwise is denying the desire about wanting some legislation."* (Sachs, 2015, 817)

Legal changes tend to occur through both formal and informal means. Initially, substantive rules adapt according to established procedures, while informally, changes may occur outside of these procedures. Law is based on social facts, developing alongside society, despite the lack of adherence to strict rules. (Sachs, 2015, 817)

Social factors faced in international tax law are economic progress, globalization, and technological advancements, which have an impact on taxpayers. (Sachs, 2015, 817) In the past, taxation was simply conducted, mainly based on birthplace, residence and work location, without the need to distinguish between production sites, ownership or consumption areas. (Sachs, 2015, 817)

Recently, individuals and companies operated in different places, leading to the transfer of intangible assets and property to various markets globally. This trend is specifically prominent among e-commerce companies, such as Amazon, YouTube, Google, Instagram, etc which derived economic benefits from countries beyond the physical location. Therefore, a significant challenge arose in distinguishing individuals or groups from wealth, as well as determining the appropriate jurisdiction for taxing income. (Sachs, 2015, 817) In this situation, individuals who receive income were advised to deposit the fund in a bank. However, the accessibility of this income for tax purposes by relevant authorities depended on the flexibility of the bank secrecy principle and regulations. Concerning the confidentiality principle, the advent of cryptocurrency introduced a novel challenge in international relations. It facilitated swift and transparent cross-border transactions, potentially restructuring global trade and financial engagements, as well as reducing dependence on established banking systems. Furthermore, cryptocurrencies have the capacity to extend financial services to individuals with limited or no access to traditional banking, particularly in developing nations. This has the potential to impact socio-economic dynamics and diplomatic ties. The decentralized nature of cryptocurrencies posed challenges to conventional regulatory frameworks, leading to varying national methods and causing diplomatic tensions or collaborative efforts.

Social facts depicted how economic and political developments lead to changes in certain concepts, such as shifts from bilateral to multilateral relations, or transitioning from revenue allocation (double taxation) to the fight against tax evasion. (Sachs,

2015, 817) A typical example lies in changing societal views on tax in countries that had experienced colonialism. In addition, colonial conditions often resulted in deteriorated living standards marked by high tax rates, inadequate remuneration for forced labour, and disregard for wellbeing. (Isa, 2018) There had been a shift in this viewpoint, with tax perceived as a means to alleviate poverty. (Tax Justice Network, 2021) Therefore, the government needs to work hard to change the paradigm of society and raise awareness about the importance of paying tax.

The studies on tax justice reported that the state can fulfil certain responsibilities by assisting residents in exercising basic human rights through equitable taxation and a robust financial system. (Tax Justice Network, 2021) The realization of these objectives requires properly formulated policies and laws. (Tax Justice Network, 2021) Meanwhile, domestic policies are closely related to international regulations, which have a significant impact on tax justice and the fulfilment of personal rights. It is important to evaluate international policies initiated by global organizations in the field of taxation.

In the current global context characterized by various tax polemics including evasion, competition, and avoidance, political philosophers such as Stark tend to engage in debates regarding the scope of distributive justice in international tax law. (Stark, 2022, 160) Therefore, the main theme in this sub-chapter is distributive justice. It refers to the fairness experienced by individuals who pay tax, ensuring an equitable allocation of the benefits and burdens of social collaboration. Critical objections often arise against higher tax rates, or even current levels, citing perceived unfairness. (Farrelly, 2004) Stark studied the complexities surrounding tax payments including multiple countries, investigating whether tax justice operated at an interpersonal or international level. The analysis focused on the importance to including a third party authorized to impose sanctions in international context to uphold the true essence of justice in the event of non-compliance. (Stark, 2022, 160) However, this non-compliance can be reflected in the denial of agreements made by the contracting country. In view of this principle, Stark investigated the concept of justice, specifically in the field of taxation which has international scope. When a dispute occurs, a third party is needed for the resolution. Third parties also include other jurisdictions, international organizations or courts capable of adjudicating such matters. This sub-

chapter focused on international tax principle applied by foreign organizations, illustrating the changes over time to suit evolving needs.

5.1 League of Nations

During the nineteenth century, cross-border income was often subjected to taxation by both the domicile and source countries, resulting in a challenge known as double taxation. (Avi-Yonah, 2019) To address this issue, numerous tax treaties were established during that time. In March 1923, four economists gathered in Geneva, Switzerland, on behalf of the newly founded League of Nations to investigate the issue of double taxation. The formulated concepts were integrated into over 3,000 bilateral tax treaties and international tax legislation of major countries worldwide. The report generated formed the basis of international tax regime. (Avi-Yonah, 2019)

Professors Bruins, Einaudi, Seligman, and Sir Josiah Stamp of the Netherlands, Italy, the US, and the UK, respectively collaborated to tackle the problem of double taxation. It is widely acknowledged that countries have the authority to tax citizens on income earned globally from whatever source generated, as well as non-residents on income obtained within respective boundaries. Avi-Yonah, 2019)

Economists from four countries gathered to represent: (Kemenkeu Learning Centre, n.d)

1. UK as a capital exporting country, seeks to generate income by investing in other nations. Despite the business operations being situated elsewhere, the UK collects tax on the income generated because it provided the capital.

2. Italy and the Netherlands as capital importing countries, obtaining income from foreign investments, a significant revenue source. These countries attract foreign investors to operate within the borders, thereby collecting tax.

3. The US as a capital exporting and importing country. Initially adopting a capital importing stance like the Netherlands and Italy, it later evolved into a capital exporting nation similar to the UK. With experience from both roles, the US bridges the interests of these nations. Following the outcome of the meeting, it is crucial to prevent instances of double taxation. The process ensured that countries are in line with the four distinct matters, stated as follows

1. *First bite of apple rule*: the closest country to the taxpayer or where the business is conducted is the fastest to collects tax. This means that the country where the business operates, being the closest to the source of income, has the fastest claim to tax collection. However, the taxpayer country of origin is not entitled to collect tax in this case.
2. *Benefit principle:* this principle is centred on how capital is used, whether invested in the real sector or held as stationary capital. For example, someone with 1 billion in cash can choose to spend the money on a shop or save it in a bank, determining whether the income generated is active or passive.
3. *Active income:* this income is generated when the owner of the capital invests in opening a shop, thereby taking advantage of the existing resources in the country. Taxation is automatically determined by the regulations of the country where the business is operated. Passive income: the income generated when the owner of the capital deposits the fund. In this case, taxation is imposed based on the origin of the money or economic source, rather than the location of the bank.
4. *Single tax principle:* this principle mandates that all income or capital must be taxed, irrespective of the origin, but only once. It is also stated that income should not go untaxed, aiming to prevent double taxation and non-taxation. Double non taxation, this occurs when wealthy individuals evade tax by placing assets in tax haven countries. To address this, every asset held overseas should be subject to taxation. Many countries implement a control foreign company rule, enabling the imposition of tax on the money or capital within the borders, even when held abroad. This practice ensures tax justice by preventing individuals from completely avoiding tax. As an international organization that preceded the UN, (Khairizka, 2023) the League of Nations initially conceived the idea of tax justice to address the issue of double taxation, where an individual was obligated to pay tax twice. It focused on the importance of paying tax based on actual wealth, without excuses for avoiding payments.

Basically, the League of Nations was established as the first significant effort to foster international peace and cooperation. One of the challenges identified by the League was international double taxation, which posed a threat to global trade and investment. To address this issue, the League of Nations initiated the development of

a model tax treaty for use by its member states. However, following the disbandment of the League due to World War II, the United Nations (UN) assumed many of its responsibilities, including those related to international taxation. The UN continued the League's work by updating and refining model tax treaties and creating comprehensive guidelines and recommendations to prevent double taxation. These efforts aim to establish a fairer and more efficient international tax system, thereby supporting global economic growth and reducing barriers to international trade.

5.2 United Nations

Tax justice centered on addressing double taxation, principle of fairness and equity. It included the protection of taxpayers from exploitation and ensuring transparency, which may entail imposing restrictions on bank secrecy and cryptocurrencies.

The UN regulates the exchange of tax information between developed and developing countries, guided by principle of international law. This double tax avoidance agreement is mainly based on principle of *pacta sunt servanda* and reciprocity

1. Principle of *pacta sunt servanda*

Pacta sunt servanda is a fundamental principle in international agreements. This means that the agreement made is valid and binding for the relevant parties. Principle is the legal and moral force for all countries bond by international treaties. (Lulena, 2019) The UN upheld principle of *pacta sunt servanda,* ensuring that the agreement serve as the basis of legal and moral obligation for all participating nations. This can be seen in the following policies and arrangements implemented by the UN. (Economics and Social Affairs UN, 2019)

a. The information exchanged between countries according to paragraph 1 of article 26 may be used for other purposes assuming both parties responsible for signing the agreement, including the relevant authorities had granted permission based on local legislation. According to the UN, the scope of non-tax information transferred under article 26 is limited by the domestic legislation of the two nations.

b. The UN remained consistent with the treaty arrangement, which prohibited any country from imposing restrictions to prevent the exchange of information held by banks, financial institutions, fiduciary agents etc. or information concerning ownership interest. Therefore, each tax authority in the participating country must ensure it has the requisite competence an powers to obtain such information on requests.
c. The explanation implied a moral foundation for mutual respect among countries. It suggested that both parties were encourage to carry out negotiations regarding the use of non-tax information exchanged under article 26. Each country is given the opportunity to express opinions in accordance with domestic law and interests.
d. The UN strongly encouraged the need to respect and maintain the honor of each country that reached the agreement. This entailed that a country should only provide information to another only when obtained according to the law and customary practices of both nations. Effective exchange of information need to be maintained to eradicate tax evasion, without affecting domestic interests.

2. Principle of reciprocity

Principle of reciprocity mandates that the actions of a country towards others can be reciprocated in kind. (Parisi and Ghei, 2002)

a. Cooperation between tax authorities in each country is increasingly needed to deal with tax evasion loopholes, detrimental to the state. Therefore, mutual cooperation is needed for the exchange of information in respect to collecting unpaid tax. The UN stated that all modern tax treaties include provisions for such information exchange between competent authorities of the participating countries. This cooperation ensured the confidentiality of taxpayer information remained intact.

b. Principle of reciprocity is also reflected in the provision that mandates each country to instruct tax administration to assist other nations in collecting tax owed abroad. This requirement ensured such interests are treated in the same manner as own tax claims. As a result, taxpayers are unable to evade tax by relocating or moving assets to a country that is subject to the agreement.

The UN, like the predecessor, the League of Nations, does not directly manage tax treaties. These agreements are typically negotiated and implemented independently by sovereign nations. Although the UN does not execute these treaties, it served as a platform for international investigation of tax-related issues. The organization had also issued guidelines and model conventions that influence the concept of tax treaties. In line with the League of Nations, the UN stated that individuals should be obligated to pay tax once, with a slight adjustment in the method. Analyzing the initial agreement on double taxation showed that the source country was often favoured over the country of residence or the nation exporting capital. The UN model treaty modified this concept, depicting that taxpayers should not face multiple tax burdens, and the need to promote a fairer distribution among the participating nations. The contemporary idea of tax justice revolved around the equitable sharing of tax responsibilities between nations, addressing the challenge of double taxation. The UN succeeded the League of Nations, and in this context, the concept of Tax Justice retained the original meaning, stating that taxpayers should only be liable to pay tax once, thereby eliminating double taxation.

In the current context, the UN offers guidance to countries on establishing inter-country agreements. Article 23A of the UN outlined several points, (Department of Economic & Social Affairs United Nations, 2017, 33) including the exemption of income or capital from taxation in the second country by the first nation, unless the agreement permits taxation in the second one. Additionally, for income taxed in the second country, the deduction must not exceed the tax paid. The UN also stated that assuming income or capital is exempted from taxation in the first country, it can still compute tax based on the remaining fund earned. These provisions are applicable assuming the second country exempts income from taxation or implements tax reduction provisions in accordance with the agreement, while the first one enables suitable tax deductions.

The UN had established regulations, stated in Article 23B, governing the credit method. (Department of Economic & Social Affairs United Nations, 2017, 34) The regulations typically refer to international agreements between countries regarding tax on the income and capital of citizens residing abroad. For example, supposing an individual earns income or has capital taxed in a country under such agreement, the country of origin may provide a deduction equal to the amount paid in tax to the foreign nation. Likewise, assuming the income or capital earned is not taxed in the country of

residence in accordance with the agreement, it can still calculate tax on the remaining non-exempt income or capital. Even though the UN does not mainly focus on taxation, it provides options and potential solutions for countries facing tax issues.

5.3 European Union

The definition of tax varies depending on the economic or legal point of view. Smith, a prominent figure from Europe, proposed the four-maxim theory, which has had a profound influence and inspiration worldwide. This theory shaped tax laws and regulations across Europe as well as inspired nations on various continents. It is a known fact that the theory of the four maxims was influenced by Catholic social teachings in the 18th century. (Kabinga, 2016)

The regulation of tax policies is strongly influenced by the existence of dynamic economic and social conditions. European countries have realized the need for a new principle to achieve the required objectives, in view of these changes. This recognition arises from the change in the taxation system, driven by factors such as the digital economy, globalization, tax competition, and increased digitalization through the use of ICT. (European Parliament, 2015) Consequently, it is realized that a special tax system is needed to effectively address the challenges posed by tax on the digital economy. In May 2014, the Report of the Commission expert group on taxation of the digital economy stated that there was no need for a special taxation system for digital companies. Instead, it recommended the application or adaptation of general rules to ensure equal treatment of digital and other companies. It was also reported that complexity led to loopholes as well as opportunities for tax evasion and fraud. Therefore, simple, neutral and well-coordinated tax system was perceived as a beneficial method. (European Parliament, 2015)

Digital companies are treated in the same way as other industries through the consistent application of general principle, according to the four-maxim principle proposed by Adam Smith. The principle aimed to uphold principle of justice, particularly fairness in recovering lost tax resources, resulting from evasion and fraud. The aim was to recover unpaid income from taxation, and to restore fiscal justice, benefitting both the public budget and taxpayers. (European Parliament, 2015)

The realization of justice in business operations include the following steps (European Parliament, 2015):

1. fostering compliance with taxpayers,

2. combating tax fraud and evasion,

a. implementing effective tax governance and fostering transparency,

b. increased exchange of information within the EU,

c. strengthening measures to combat VAT fraud, and establishing disincentives against fraudulent activities,

d. coordination of international tax treaties at the EU,

e. and at the global levels.

Cooperation between EU countries and international partners is necessary because unilateral measures to overcome tax competition often prove ineffective. Tax bases can easily move to a location where such measures are not implemented. Therefore, cooperation or working together is essential to achieve mutual optimization. National tax systems cannot monitor every cross-border transaction, leading to the implementation of profitable taxation at the expense of the counterparts. Administrative cooperation among member states aims to support the enforcement of the Union tax laws. (European Parliament, 2015)

Efforts to deal with tax avoidance in the modern era requires international cooperation and formal agreements to adjust basic taxation principle. An important consideration is principle of enforcement, which ensures that regulations are integrated into domestic laws to effectively apply to the citizens. (Kabinga, 2016)

Tax justice within the European Union possesses distinctive features arising from the established cooperation among member states. Through this collaboration, each country wields influence over others, compelling every member state to adhere to and implement agreements or regulations set forth by the EU. The interactions between an EU member country and non-member nations reverberate across other member countries, reflecting the need to maintain the position of the EU in the global market. The internal market plays a significant role in shaping equity in tax law. Furthermore, interdependencies among member countries materialize, as it is no longer capable of addressing challenges independently, resulting in the preservation of the internal market function within the global context. (Vijver, 2012, 2)

The collaboration within the EU internal market is instrumental in achieving tax justice. Meanwhile, the functions of the internal market and tax justice are interconnected, with EU initiatives contributing significantly to enhanced fairness. (Vijver, 2012, 3) Coordination and cooperation at the EU level are crucial to ensuring that each Member State can pursue respective agenda without the risk of tax evasion and other detrimental schemes. (PES Socialists and Democrats, 2022) The objective of tax justice is in line with fostering a cooperative internal market, which the EU can achieve through harmonizing laws and regulations. Additionally, there are opportunities for EU institutions to incentivize Member States to address unfavorable tax competition. (PES Socialists and Democrats, 2022)

Effective coordination and collaboration at the EU level are crucial, enabling each Member State to pursue distinct agenda while reducing risks associated with tax evasion, and avoidance, including other undesirable schemes. (PES Socialists and Democrats, 2022) In accordance with direct taxation, proactively anticipating and addressing tax barriers in the internal market, was aimed at preventing aggressive tax planning. (PES Socialists and Democrats, 2022)

The establishment of a fairer society led to challenges, requiring a unified European method. However, this does not destabilize the national sovereignty of EU member states. Within the framework of international organizational cooperation in the EU for achieving tax justice, two fundamental principle is focused on, namely distributive and procedural justice. According to Aristotle, distributive justice, ensures that a taxpayer pays neither too much nor too little. Procedural fairness, exemplified by principle of no taxation without representation, is increasingly significant. In instances where EU institutions proactively intervene in tax drafting, it becomes crucial to engage democratically elected bodies, such as the European Parliament. The European Commission, in respect to communications on fair and simple taxation, adopted a comprehensive method, integrating policies from various EU institutions into tax proposals. (Vijver, 2012, 2)

Principle of international tax law in European countries experienced significant development driven by the willingness to be able to fend off the losses caused by prevailing circumstances. In addition to the League of Nations, UN, EU and the next is OECD currently published many reports on global conditions, specifically the

economy. These reports are widely recognized and accepted by various countries, both member and non-member states. The OECD will be examined in the next section, highlighting its distinct characteristics compared to previous international organizations.

5.4 Organization for Economic Co-operation and Development (OECD)

The OECD, similar to the League of Nations, is an influential foreign organization that publishes reports and influences the sustainability of international taxation since countries apply the principle. This organization whose member countries cooperate with other global entities and stakeholders address the pressing policies of the time. (OECD, n.d c) Therefore, it served as the main authority for establishing international policies, setting standards adopted by countries worldwide. As the UN focuses on maintaining international peace and security, providing humanitarian aid, protecting human rights, and upholding international law, (UN, n.d a) deliberations naturally revolve around the OECD principle which effective influence global realities.

The OECD consistently published reports on the exchange of tax information. For example, in 1998, an important report entitled Harmful Tax Competition an Emerging Global Issue, (OECD, 1998) which focused on the growing concerns surrounding tax competition was published globally. This phenomenon poses significant risks, potentially distorting investment and trade decisions, while also leading to the erosion of the national tax base. (OECD, 1998)

When countries provide favorable tax rates and incentives to foreign investors, it tends to have a profound impact on the national tax bases of other nations. A country with lower tax base attracts investors seeking to maximize profits, potentially leading to a reduction in tax rates for other countries, which is perceived as detrimental.

The OECD stated that there are two main factors contributing to adverse tax competition. This includes lack of transparency and ineffective exchange of information. (OECD, 1998) The present study focused on evaluating the factors which influenced the shift in principle of international tax law.

a. Lack of transparency

Transparency and disclosure of information are essential for jurisdictions to accurately assess and calculate the actual amount of tax owed on invested funds. (DDTC, 2016) Enhancing tax transparency includes measures such as eliminating bank secrecy and collaborating globally to combat tax evasion. (OECD, n.d d) However, lack of transparency can hinder countries of origin from adopting relevant steps, such as when the details of the rules or applications are unclear or there is inadequate regulatory oversight in the disclosure of financial statements. (DDTC, 2016) In a non-transparent tax system, beneficiaries freely negotiate with tax authorities, leading to unequal treatment of taxpayers in similar circumstances. To ensure fairness, the governing criteria must be published by the decision-making authority and made available to all taxpayers, without discrimination. Conditions perceived as potentially dangerous by the OECD are administrative practices and enforcement that deviate from the law or do not apply the required conditions. Law enforcement in accordance with domestic law is also a requirement for a transparent and secure tax system. (DDTC, 2016)

Transparency in taxation has evolved into a new principle in international relations, called Transparency Principle for Tax Policy and Administration. The principle aimed to address the global need for fiscal transparency, offering policymakers and stakeholders, a strong foundation to construct unique taxation frameworks. (Baker, et.all., 2022) Therefore, transparency aims to reduce the detrimental effects of opacity, mainly by addressing issues such as bank secrecy and tax avoidance. (Baker, et.all., 2022)

b. Lack of effective information exchange

Bank secrecy policies implemented by several countries are commonly used to attract taxpayers who wish to hide assets or profits, resulting in the loss of potential tax revenues in other nations. (Baker, et.all., 2022) The taxation system of a country is considered free from harmful tax competition assuming it has the ability or willingness to share information with other nations. Therefore, a domestic legal product that supports this information exchange activity is needed. Domestic laws governing the exchange of information are necessary because even though there are no formal

confidentiality regulations, it can be hindered by administrative policies or practices. (Baker, et.all., 2022)

The OECD adopted various methods for information exchange, including spontaneous, request-based, and automatic exchanges. In 2014, this organization unveiled a comprehensive framework for global information exchange among jurisdictions. The new standard mandated governments to procure detailed account data from financial institutions and automatically exchange it with other jurisdictions on an annual basis. The annual automatic exchange entailed the transmission of comprehensive financial account details, comprising balances, interest, dividends, and proceeds from financial asset sales. Additionally, financial institutions report this information to governments, covering accounts held by individuals and entities, including trusts and foundations. (OECD, n.d e)

The automatic exchange of information significantly impacts the rights of taxpayers. Conversely, the OECD has released tax guidance series that delineates the rights and responsibilities of taxpayers. This series was based on the entitlement to privacy, confidentiality, and secrecy. (OECD, n.d g)

The OECD took the initiative to address BEPS, which refers to practices intended to decrease or evade corporate tax responsibilities by manipulating taxation, exploiting regulatory loopholes, or shifting profits between countries to reduce payable tax. In addition, this can deprive countries of rightful tax revenue. International efforts were made to address BEPS issues and enhance transparency in the global tax system. The OECD launched a project in 2013 entitled the Action Plan on Base Erosion and Profit Shifting to tackle these issues, with one of the measures outlined in Action 5. (OECD, n.d f) BEPS Action 5 focused on effectively addressing harmful tax practices through transparency and substance, setting a minimum standard for countries participating in the BEPS project. Since its establishment in 1998, the OECD FHTP has been reviewing preferential regimes to ascertain potential negative impact on tax base of other regions. The ongoing efforts of the FHTP focus on three main areas. Firstly, evaluating preferential tax setups to identify aspects that could promote base erosion and profit shifting, potentially disadvantaging tax base of other regions. Secondly, conducting peer reviews and oversight of the Action 5 transparency framework through mandatory, spontaneous sharing of relevant information

concerning taxpayer-specific rulings. The absence of such information exchange raises concerns regarding BEPS. Thirdly, assessing the substantial activities requirements in jurisdictions with minimal or nominal tax to ensure fairness and equity. (OECD, n.d f)

c. The right to privacy

The right to privacy means that tax authority would only interfere in the privacy of taxpayers when absolutely necessary. This includes refraining from conducting house searches, or requesting irrelevant information to determine tax liabilities. While tax authorities have limited influence on the privacy right of the taxpayer, it is authorized to (OECD, n.d g):

1. ask questions about the taxpayer to ensure compliance with tax obligations.
2. respect the privacy rights of taxpayers, by accessing only relevant information
3. treat any information obtained or held as personal and confidential.

d. The right to confidentiality and secrecy

The OECD establishes the fundamental rights of taxpayers, including confidentiality and secrecy. Therefore, tax authorities must keep information regarding the affairs of taxpayers confidential and can only use it for purposes outlined in tax laws. (OECD, n.d g) Principle of confidentiality and secrecy implied that tax authority does not use or divulge any personal or financial information about the taxpayer unless a written consent is provided or permitted by the law. (OECD, n.d g)

The OECD has a formula for protecting the privacy rights of taxpayers, alongside principle of bank secrecy. However, under this framework, the personal information of taxpayers stored in banks must be disclosed for information exchange. While the exchange is important in preventing harmful tax competition, it reduces the bank secrecy function and alters tax rights privacy. This phenomenon raises question about whether justice for taxpayers is compromised, reduced or changed in the field of international tax law.

Given this background, basically the OECD plays a significant role in international taxation, wielding substantial influence as a pioneer in various aspects of global tax policy. (Sarfo, 2020) The organization had formulated a highly influential model of tax conventions. This study aimed to explore various OECD initiatives related

to international tax justice. One critical area of interest is the resolution of double taxation, where conflicting domestic tax laws across multiple countries lead to disputes. The OECD provided a juridical alternative to resolve double taxation, as outlined in Art. 23A and 23 of Model Tax Convention on Income and on Capital: Condensed Version 2017.

Art. 23A regulates method of liberation or exemption with progression, governing how income earned abroad is treated in the taxpayer country of domicile. This method enables the country of domicile to refrain from imposing tax on income sourced abroad (originating from the source country). (OECD, 2017) The method, widely adopted by continental European countries, (DDTCNews Team, n.d a) manifests in two forms, namely the full exemption and the exemption with progress. Meanwhile, the exemption with progress excludes foreign income from tax base of domestic taxpayers (country of domicile). It simply means that income earned abroad (source country) is not considered a taxable object. Meanwhile, global income is retained for tax calculation purposes, ensuring a progressive taxation system based on the overall income of the taxpayer.

Article 23B regulates ordinary credit method, which governs how tax is handled in cross-border income situations. In this method, the country of residence continues to impose tax on all income, including earnings from abroad. However, it permits deductions for tax already paid or withheld abroad (source country). (OECD, 2017) This method is commonly adopted by countries such as the United States, most nations in Asia and Africa, and members of the Commonwealth (DDTCNews Team, n.d a) Referred to as tax credit method, it enabled tax paid in the source country to be credited in the domicile nation.

The credit method comprised two types, namely the full credit and credit method with restrictions, also known as ordinary credit method. Under the full credit method, all tax paid in the source country are fully recognized as tax credits, and deductible in the country of domicile. This prevents double taxation by accounting for the entire tax burden in the source country. Ordinary credits are deductible in the country of domicile but limited to tax calculated at applicable rates.

In its annual report, the OECD does not solely focus on overcoming the problem of double taxation. The OECD also addresses various emerging issues in the

international arena, including detrimental tax competition that can erode countries' tax bases. The BEPS project and the Inclusive Framework are significant initiatives undertaken by the OECD to harmonize international taxation, avoid double taxation, and mitigate the negative effects of harmful tax competition.

The OECD initiative for achieving international tax justice addresses the management of harmful tax competition. This arose as countries competed to attract investors through practices such as offering tax holidays or serving as tax havens. To address this, the OECD provided guidelines that discouraged the implementation of new measures or harmful tax practices. States are encouraged to review existing tax measures and report these to the Harmful Tax Practices Forum, (OECD, 2022) which conducts biennial reviews. Additionally, countries are obligated to eliminate adverse features from preferential tax regimes within five years. These nations can request an examination of certain measures through the Forum on Adverse Tax Practices. Effective coordination of national responses, agreements to prevent harmful tax practices, and active participation of non-member States in adhering to the Code are essential. These solutions require both collective and individual actions, centered on a coordinated method realized through dialogue with non-member States. Enhanced international cooperation is crucial to prevent aggressive competition among countries, while avoiding geographical shifts in activities. Dangerous preferential taxation regimes can distort trade and investment patterns, posing a threat to domestic tax systems and the entire international taxation structure, thereby discouraging fairness.

Moreover, the OECD places a significant focus on addressing BEPS, in the pursuit of international tax justice. With the dynamics of emerging global tax challenges, the OECD is addressing them through various policy solutions. Tax evasion by multinational corporations poses a threat to the system, as these entities employ tactics to minimize respective tax obligations. The main catalysts driving this issue include digitalization, globalization of business, and evolution of complex transaction schemes. These factors provide opportunities for actors engaged in BEPS practices to manipulate profit transfers.

BEPS comprises tax planning strategies that exploit gaps and mismatches in tax rules. These strategies enable companies to artificially transfer profits to

jurisdictions with low or no tax, regardless of minimal economic activity in those locations. Another dimension of BEPS including reducing taxable income through deductible payments, such as interest or royalties. (OECD, n.d h)

Domestic laws and treaty rules governing cross-border profits taxation often produce accurate outcomes, although it showed vulnerabilities over time, resulting in BEPS. Responding to this challenge, the G20 finance ministers called on the OECD to formulate an action plan using a coordinated and comprehensive method to address BEPS issues. Fundamental changes are essential to effectively prevent non-double taxation and cases of low or absent tax due to practices that artificially separate taxable income from generating activities. New international standards should be devised to ensure coherence in corporate income tax at the global level. Success in eradicating BEPS requires enhanced transparency, as well as providing businesses with certainty and predictability. The digital economy introduced specific considerations, with actions implemented to contribute to overcoming challenges associated with BEPS. (OECD, 2013)

The pursuit of transparency was realized through the exchange of information, with the OECD playing a critical role in fostering international cooperation, particularly in information exchange. The OECD had established standards and mechanisms to tackle issues including tax evasion and money laundering through the exchange of tax information. Meanwhile, initiative known as the AEOI, included the development of the CRS. The CRS facilitated the automatic exchange of financial account information between jurisdictions, aiming to identify and counter tax avoidance and evasion.

The OECD is actively developing a framework for the automatic exchange of information on crypto asset transactions between countries, to ensure transparency and prevent global tax evasion. This initiative, known as the CARF, responded to concerns raised by G20 countries regarding the rapid use of crypto assets for various investments and transactions outside traditional financial systems.

The advent of new intermediaries and service providers in the crypto market, led to increased concerns about potential tax avoidance through asset misuse. To address this, CARF mandated that entities or individuals providing the following services, asset exchanges and wallet providers should be reported to the relevant authorities. Meanwhile, CARF in line with the CRS, established an annual framework

for the automatic exchange of information, enhancing transparency in crypto asset transactions.

This organization comprised any digital value representation using cryptographically distributed ledgers or similar technologies to validate and secure transactions. Entities or individuals offering crypto asset exchange transaction services were mandated to comply with reporting obligations. The model rules within CARF were adopted and adapted into domestic legislation for implementation at the country level. Additionally, the OECD had proposed amendments to the CRS to modernize the scope, including digital financial products, namely crypto assets. The proposed amendments focused on updating legal and operational mechanisms for automatic information exchange, alongside establishing a coordinated schedule for implementation. (OECD, 2022)

The concept of tax justice ensures a fair distribution of taxation responsibilities among countries. Both the League of Nations and the UN share the view that individuals should not be subjected to double taxation, stating the importance of paying only once. The preference might vary between the country of residence and the capital exporting state.

The European Union expanded the notion of tax justice beyond double taxation issues, focusing on principle such as fair competition and freedom of circulation and establishment. From the perspective of the EU, tax fraud is perceived as a violation of these fundamental rights and freedoms, revolving on a broader understanding of tax justice extending beyond individual liabilities.

The OECD consolidated these ideas by fighting against double taxation, practices affecting fair competition, and tax fraud. It also introduced a new dimension by focusing on the importance of taxpayers paying fair share within the domicile country according to respective real wealth, extending beyond the concept of paying tax only once.

International organizations, stated that tax justice ensured the avoidance of double taxation, promoting fair competition, and fighting against tax fraud. This multifaceted method aimed to establish a comprehensive and equitable taxation system on a global scale. The objectives were achieved by address bank secrecy and online confidentiality, that facilitate cryptocurrency transactions.

6. Global Tax Justice

Previously, we examined the principle of international tax justice from the perspective of various international organizations. Each organization has its own foundational basis for implementing this principle. However, the essence of international tax justice fundamentally derives from the principles of international law. The principles of international law are different from the domestic due to a broader scope of application, which led to different recognition. Bank secrecy principles in each state are also different, indicating international law principles need to be recognized globally. Source is the origin and rationale of international law (Eggett, et al., 2024, 156) which is regulated in Article 38 ICJ paragraph 1. (Greenwood, n.d, 3) The law states that international conventions and customs are generally recognized principles of law and court decision. (Art. 38.1 ILC) Furthermore, the general principles of law recognized by states are widely accepted in the national legal system. (Greenwood, n.d, 3) Nationally, each country upholds the principle of tax justice, some of which is explicitly mentioned in the constitution and applied in every law. In recognizing general principles as international law, particularly for the principle of international tax justice, the approach is based on national legal systems. (Eggett, et al., 2024, 195) Every modern legal state is founded on human rights and considers regulation based on a sense of justice. Additionally, states cooperate in this area, as reflected in the principles of international organizations governing fair tax.

In the past, international taxation mainly aimed to prevent either double taxation or non-taxation. Furthermore, technological developments, and increased economic cooperation between countries, including the ease of capital mobility across borders led to the evolution. It presently extends beyond addressing only double taxation. Initially based on bilateral relationship between two countries, it had expanded to comprise several nations forming groups based on territorial area or shared political economy interests. This evolution transformed international taxation into a global or universal framework including various countries.

Global cooperation refers to collaboration among various countries with different economic interests, including taxation. Broekhuijsen and Vording further stated that the economic condition of a country determined the method of cooperation. (Broekhuijsen and Vording, 2020, 17) While differences exist, cross-border

investments entail fair cooperation ensuring all parties are entitled to equitable benefits from cooperating. This fosters mutual respect and fairness in international interactions.

Tax is essential for the survival of a country, (Thuronyi, n.d, 22) specifically for developing nations requiring urgent state financing. However, with some of the limitations that exist in developing or poor countries, this leads to injustice. One such injustice arises in international tax cooperation, when a nation tries to collect tax from the citizens, but the money is deposited in another country. This challenge is aggravated by principle of bank secrecy, in some countries, where banks are required to protect customer privacy rights. However, a country has the right to collect tax from citizens regardless of where the funds are deposited. (Bagian Teknologi dan Informasi, n.d) Presently, challenges associated with storing assets abroad go beyond conventional currency usage, due to the increasing prevalence of digitalization. The advancement of cryptocurrency technology, with distinct features compared to conventional currencies, adds further complexity for governments attempting to collect tax on assets held overseas. This presents an additional challenge in achieving tax justice.

A critical factor to study when examining cryptocurrencies from the perspective of tax justice is transparency. The concept of transparency in taxation is evolving beyond mere government disclosure of tax receipts and allocation to the public or transparency during the formulation of tax laws and regulations. In the digital age, transparency takes on new significance as advancing technology empowers information to reshape society. Transparent information about tax system in this technological era is relevant in realizing tax justice.

Personal data concealed by principle of bank secrecy, is a significant aspect. It must be upheld by bank customers and institutions, including tax authorities, specifically when sharing data internationally. Principle also applies to transparency in cryptocurrency transactions. Given the ease with which cryptocurrency transactions can traverse international borders, transparency between jurisdictions is important. However, addressing related issues in cryptocurrency transactions is complex due to the unique characteristics of cryptocurrency, where data holds significant value mainly because of the exclusive access. Addressing this challenge is important for achieving tax justice and combating tax avoidance.

The importance of assessing the risks of tax avoidance associated with virtual currencies was explicitly stated in the communiqués of the G20 Finance Ministers meetings held on March 3 and July 4, 2018. (Bagian Teknologi dan Informasi, n.d, 7) The 2015 BEPS Action 1 Report recognized virtual currencies as a factor contributing to the digitalization of the global economy. It urged policymakers to closely monitor this development to address any additional tax policy challenges that may arise. Consequently, there is an urgent need to comprehensively evaluate and address the risks posed by the taxation of virtual currencies. (Bagian Teknologi dan Informasi, n.d, 7)

Fundamentally, achieving tax justice through transparency in cryptocurrencies includes two perspectives. First, ensuring transparency of information provided by taxpayers to tax authorities, and second, the facilitation in sharing information between countries. This reflects the transparency practices applied to fiat currencies. However, cryptocurrency transparency efforts are distinguished by unique characteristics. Based on these distinctive features, transparency measures for cryptocurrencies take on a different form.

The issue of injustice has raised debates among experts, with the OECD acknowledging the varying treatment between developing and developed countries. (Broekhuijsen, 2020, 248) This difference revolves around how developing nations can adjust to existing tax regulations or policies. The OECD proposed the concept, termed the duty of sovereignty (Broekhuijsen, 2020, 248) which aimed to prevent implementation of excessive tax policies that weaken tax sovereignty of other countries.

In the realization of tax justice globally, fairness is critical based on the theory of justice proposed by Ross and Article 22 of the Universal Declaration of Human Rights. According to Ross, there are two formulations of justice. (Ross, Alf*,* 2019, 359) First, the substantive criteria consisting of several factors, namely 1) Economic inequality, 2) Global capital competition, and 3) Fair cooperation. Second, the analysis of Article 22 specifically refers to funding sources for social security, the economy, and national security. In addition, inferences were derived from these analyses.

6.1 What does International Tax Justice Principle Mean?

Hongler, adopted a multifaceted method to investigate justice in international tax law. This entailed the consideration in individual states, termed interstate justice, as well as taking into account the broader concept. Additionally, principle of international distributive justice must be factored in when assessing the fairness of tax framework, particularly in terms of the impact on the most economically disadvantaged communities in the world. (Hongler, 2019, 14)

It is important that citizens who fulfill tax obligations should be entitled to fair treatment. Meanwhile, fair taxation occurs when citizens pay tax in accordance with the original income. Tax is an integral part of human rights, and lack of revenue causes citizens to be unable to access essential public services, which is the responsibility of the state. These services, including education, and healthcare, are fundamental human rights that contribute to improving standard of living. Consequently, any failure to fulfill tax obligations is perceived as a violation of human rights. However, theoretical principle and ideas are futile without practical implementation. Strict regulations are crucial to ensure the realization of human right to fair taxation, considering the various facets dependent on equitable tax burdens. While progress can be achieved within each country, such as the incorporation of tax fairness in the Spanish constitution, this concept needs to be promoted globally, particularly in regions where awareness is lacking. By focusing on the concept of fair taxation as a universal human right on international platform, the significance can be acknowledged globally.

In the context of information exchange agreements, the incorporation of enforceable consequences for states or parties failing to adhere to the arrangement, constituted a form of human rights violation. The phenomenon of information disclosure causes anxiety, resulting in the urgency for a resolution, to address this concern:

1. Human rights violations occur when states resist principle of bank secrecy and are obliged to exchange information with other countries bound by the same agreement. This issue is common in countries that engage in information exchange practices.

2. It also occurs when countries do not adhere to the agreements for exchanging information. This non-compliance hinders the tax-collecting ability of the state to fulfill the obligations to meet public needs effectively. Such instances typically occur in countries that refuse to participate in information exchange practices.

Based on the two reasons, the established regulations on human rights in the tax sector is essential to achieve justice. This arrangement should be based on principle of international tax justice, addressing global taxation issues. It needs to be established by respected international organizations, namely the UN, which introduced the concept in the human rights charter. Therefore, based on a solid legal basis for international tax justice regulation, law enforcement can be implemented to address violations effectively.

The complex field of international taxation is evaluated from two distinct perspectives. The first perspective states that a nation possesses the prerogative to impose tax equitably on the populace, while the second maintained individuals have the right to be taxed commensurate with personal wealth. Consequently, a synthesis of these perspectives is feasible, in terms of defining international tax justice. This entailed nations collecting tax impartially, and citizens remitting the fund in accordance with individual economic status. The concept of international tax justice is supported by various organizations addressing instances such as double taxation (which accrued benefits for both taxpayers and nations) and tax fraud (which offered advantages for taxpayers by precluding undue financial burden).

6.2 Why Does Principle of International Tax Justice Need to be Upheld?

To answer this question, there is need to analyze the welfare of the state in respect to achieving justice. The realization of human rights, which are inseparable from taxation, is a fundamental aspect of achieving justice.

6.2.1 Welfare State and Justice

The welfare state is considered the most appropriate answer to the state participation in promoting societal well-being. Therefore, countries realize certain development objectives through economic growth, as well as meeting basic social needs of citizens to achieve a minimum standard of living. The government are tasked with implementing policies and programs directed at maximizing the happiness and

welfare of the people. The idea of Bentham (Crimmins, 2021) to realize a welfare (Elviandri, 2019, 252) state is directly related to legal reform, the role of the constitution and the development of social policies.

To achieve welfare, the affluent members of society play a significant role in shaping state policies. This process is closely related to the applicable law, comprising both the constitution and social policies. The idea of Bentham was supported by Bagir Manan, focusing on the indispensable rule of law needed in realizing a prosperous country.[8] According to Manan the conception of a modern legal or welfare state comprised three aspects, namely political, legal and socio-economic. The political aspect required the limitation of state power in related affairs. The legal aspect required improving the rule of law, legality and due process in the enforcement procedure. Meanwhile, the social aspect included fostering social justice and improving the general welfare of the populace. (Elviandri, 2019, 259)

It was deduced that the achievement of objectives in a welfare state required the enforcement of justice, a fundamental aspect of the legal system. The legal aspect of the enforcement is reflected in the existence of fair judicial procedures and decisions, depicting the significance of the process. (Nafiatul, 2023) A country can uphold justice for the citizens if in the global scope it had obtained a fair position. Information exchange must comply with the terms of the various countries. For example, assuming a country finds itself facing injustice due to the failure of another nation to honour the agreement, it reserves the right to seek redress. Additionally, establishing a forum for submitting a judicial embodiment process is needed when dispute occurs between the countries of the promising parties.

In accordance with information disclosure, justice must be upheld assuming there is fraud in the implementation of the agreement mutually agreed on by the nations. This included engaging in deliberations between the parties through mediation, or arbitration. However, assuming an agreement is not reached at the

[8] State welfare law, according to Bagir Manan, positions the state or government not only as a guardian of security or societal order but also as having the responsibility to realize social welfare and the common well-being of the people.

deliberation level, the case can be taken to court. In principle, the aim is that both countries or parties are bound by the agreement obtain fair rights and treatment.

6.2.2 Justice and Human Rights

To achieve a welfare state, it is essential to ensure global justice, to enable fairness for the citizens. The embodiment of the welfare state and justice is a fundamental aspect of upholding human rights.

The UN declaration of human rights stated that every individual has the right to a guaranteed standard of living, namely access to healthcare, housing and basic necessities for themselves and family members. Every individual is also entitled to social services, guaranteeing support when unemployed, sick, disabled, widowed, old age or other challenging circumstances. Additionally, mothers are entitled to special care, and assistance, with equal social protection extended to children regardless of the marital status of the parents. (Art. 25 UDHR)

Education is a fundamental human right, and it was mandated by the UN to freely accessible at the basic and primary levels. (Art. 26 UDHR) Therefore, the implementation is the full responsibility of the state, requiring the allocation of funds for adequate educational facilities. This focused on the responsibilities of the state, to provide various public amenities, ensuring the maintenance. Tax serves as the main revenue source for various countries in the world, supporting diverse operations and the provision of public facilities. (Heij, 2001, 77)

At the local and national levels, tax plays a critical role in realizing human right needs, making any disturbance perceived as an issue. In a global scope, tax justice complexly linked with human rights, (Tax Justice Network, 2021, 8) particularly concerning the right of a country gaining access to information exchange for tax purposes. As subjects of international law in the global community states are afforded legal protection, reflected by the provision of judicial remedies in cases where personal rights are infringed.

In achieving global tax justice, economic inequality is a fundamental and critical aspect that needed to be addressed. Given the diverse economic statuses, it can be mitigated through fair collaboration among developed and developing countries. This

is particularly crucial in tax cooperation, stating the importance of information exchange.

6.3 Economic Inequality

Economic inequality greatly affects international relations between countries. Preliminary studies reported the need for sufficient human capital in the local economy, specifically in low-income countries, to drive technological advancement and growth. (Borensztein and Lee, 1998, 35) However, many low-income countries lack adequate expertise among the workforce regarding technology and the regulatory frameworks governing cross-border economies. (Borensztein and Lee, 1998, 35) To ensure that these nations get a fair share of profits from foreign investment depends on the capacity to tax capital outflows. For foreign direct investment to contribute positively to the accumulation of capital and economic growth, the repatriation of profits must remain lower than investment inflows. (Dutt, 1998, 91) This is specifically important when foreign investment outflows, exceed domestic inflows. (Reis, 2001, 27)

The UN conference on trade and development stated that it is important for least developed countries to withhold tax on dividends, royalties and interest payments. The nations receive a fair share of tax revenues arising from the activities of transnational corporations, (UN, 2011, ii) thereby, addressing economic inequality among countries.

6.4 Global Competition for Capital

Countries are increasingly using diverse macroeconomic and industrial policy tools, including tax systems, to seek profit and offset structural challenges, as global capital flows become more complicated. This intensified competition for capital leading to pressure on state tax systems, as taxation is viewed as a direct cost for individual firms. The reduction potentially increases profits or long-term value. For firms considering cross-border expansion, the level of taxation plays a crucial role in evaluating the relative costs and benefits of locating production facilities overseas. (Devereux and Griffith, 2003, 126)

Considering the declining corporate tax rates and a shift in the base, poor countries face challenges in maintaining competitiveness. Withholding tax can also lead investment outflows to jurisdictions with lower tax burden, worsening the situation (Genschel, 2001), specifically for low-income countries. Consequently, there is a

global trend toward decreasing tax rate on capital income. Both developed and undeveloped states, (OECD, 2000) had experienced reductions in mandatory tariffs, with stable corporate tax revenues as a share of GDP remaining stable over time. However, poor or low-income countries struggle to cope with this tax competition. The implementation of uniform tax rates was proposed to address this issue and ensure fair treatment for capital owners across different jurisdiction.

6.5 Fair Cooperation

Fair cooperation refers to collaboration among countries, considering the differing economic conditions, that significantly impacted international relations. International tax cooperation played a significant role in overcoming double and non-double taxation. It would be considered fair if double taxation is prevented, to safeguard the rights of taxpayers to the single tax principle. Similarly, fairness is considered assuming non-double taxation can be avoided to ensure the state or jurisdiction receive due tax revenues. International tax cooperation should also prioritize distributive justice by equitably allocating profits among participating countries. The main aim is to facilitate fair and mutually beneficial cooperation in international tax matters. (Dagan, 2017)

Legitimacy role is the acceptance and acknowledgment of the authority entrusted to leaders by the community. In tax sector, legitimacy ensures that all countries are recognized, granting each the right to exercise legislative, executive, judicial and tax jurisdictions. (Van Thiel, 2011) The instrumental role is evident as international tax regulations use agreements to establish conflicting rules. Furthermore, it relies on international law to interpret these treaties. (Van Thiel, 2011) The normative role regulates the temporal, personal, and territorial boundaries for tax jurisdiction exercise, with basic principle of international economic law limiting the exercise substantively. (Van Thiel, 2011)

Based on these three roles, international law has a significant influence on countries that applied the treaties to the domestic law. However, states often face challenges in realizing tax justice domestically due to taxpayers evading tax by moving assets abroad. There is need for international solution to address these issues thereby raising the question: Is there a possibility of realizing human rights justice in the taxation sector, specifically on a global scale?

The need to exchange tax information to tackle tax avoidance often includes overriding principle of bank secrecy and confidentiality. Meanwhile, the breach of bank secrecy principle is considered a violation of human rights aimed at protecting customer data. Legalizing such breaches for taxation purposes deemed it legitimate under the law. This raises the question can breaching principle of bank secrecy for taxation uphold legal protection of customer data, thereby respecting human rights?

The exchange of information for tax purposes comprised both conventional currency holdings and cryptocurrencies. This is in line with principle of bank secrecy, where safeguarding personal information stored online is a governmental responsibility. Effective government protection of personal data reflects the state ability to fulfill certain duties. This prompted the question: Does accessing personal cryptocurrency information also constitute a violation of human rights?

To enforce laws effectively, an arrangement is needed in advance, thereby forming the legal basis for international regulation. This requirement arises from instances where individuals avoid paying tax by moving assets abroad, across different jurisdictions. Moreover, cryptocurrency offers the advantage of easy storage abroad and presents significant possibilities, enabling global usage without the need for third parties.

Some African countries have legislation that explicitly links tax to the protection of human rights. For example, Article 29 point 6 states *Work to the best of one's ability and competence, and pay tax determined by law for the benefit of the people.* (African Commission, n.d) However, this arrangement is limited to African nations, while tax evasion occurs globally across all continents.

Indonesian nationals with substantial savings in Singapore, are an example of Asian with a large sum of money abroad. To address this issue comprehensively, global regulations regarding human rights in the taxation sector should be established, ensuring consistent application across all jurisdictions. The establishment of these regulations enable effective law enforcement in cases of violations, provided countries comply with or are bound by the arrangement. This framework enables the enforcement of human rights in the field of taxation whenever there is a breach.

6.6 Good governance

Good governance, often considered a soft law by the UN, tends to gain stronger influence by promoting international tax justice law. Despite discussions at the national level, the lack of clear definitions and enforcement mechanisms for international tax justice still prevents efforts to build good governance. The two underlying principles of international tax justice are in accordance with the UN's good governance principles of performance and fairness.

Graham and Bruhn stated that performance requires collective institutions to serve stakeholders effectively. The quality of services provided and responsiveness to the needs of people should also be considered. (Graham and Bruhn, 2010, 57) Therefore, a fair tax system is needed in pursuing the interests and needs of society as people rely heavily on taxes as a source of funding for health, education, clothing, food, and shelter. The transition from a fair tax system within the domestic to international sphere of a state provides stability and acts as a path of resolution when disputes arise.

The principle of justice (fairness), which is part of the realization of good governance by the UN, complements the elaboration of this principle in Chapter 2 by emphasizing efforts towards equality. The principle strives for equality of opportunity and the impartial application of the rule of law. This is achieved through a strong legal and regulatory framework, independence of the judicial function from political leaders, due process, and adequate dispute resolution mechanisms. (Graham and Bruhn, 2010, 57) The disputes include criminal and administration tax, which are naturally resolved through ADR and the enforcement of an effective judicial system. Therefore, because fairness is a principle of good governance, although not explicitly mentioned in the tax-related context, there is an urgent need for specialized tax courts in the international arena.

The EU provides a detailed understanding of good governance, especially tax-related ones. The EU also aims to curb harmful tax competition, aggressive planning, and the presence of tax havens. These efforts aim to establish fairer and more effective tax principles while reducing the risk of money laundering.[9] (European

[9] See: Communication from The Commission to The European Parliament and The Council on Tax Good Governance in the EU and beyond .COM/2020/313final https://eurlex.europa.eu/legalcontent/EN/TXT/?uri=CELEX%3A52020DC0313

Commission, 2020) Essentially, the EU prioritizes improving governance standards and ensuring fair taxes. (European Commission, 2020) A push to progress exists within the framework towards a fair tax system to address recent examples of disruption. Transparency serves as a powerful tool to combat tax evasion, alongside the introduction of new mechanisms to resolve disputes. (European Commission, 2020) Furthermore, the EU stated that good tax governance forms the foundation of fair tax. (European Commission, 2020) Effective law enforcement in EU members reported the importance of upholding tax justice, as the EU provides the facilities and legal framework to support these efforts. Moreover, upholding tax is in the interests of EU member states, as the interconnected economies benefit from strong cooperation within a free market. In essence, achieving consistent international tax justice and effectiveness is important for global governance.

Moreover, the UN has provided a perspective on the principles of good governance internationally without specifically mentioning tax. This general approach is also applied in Indonesia, where tax interpretation is conducted independently and explicitly stated in the legislation. (Law Number 30 of 2014 concerning Government Administration) However, the principles of public interest and good service, (Prawiranegara, 2021, 598) are widely analysed at the government and regional levels, which are realized with sufficient funding.

Furthermore, the EU views good governance and tax justice, as a fair tax system where everyone contributes as expressed by President von der Leyen. (European Commission, 2020) In Indonesia, tax justice consists of several aspects, namely fairness in drafting tax laws and regulations, fairness in tax collection by ensuring the tax burden is appropriately distributed among taxpayers, fairness in redistributing taxes for public welfare, and fairness in government transparency on tax matters to the public. Indonesia does not strictly adhere to the good governance model implemented by the UN and does not explicitly adopt the concrete approach by the EU.

The concept of good governance as promoted by international bodies such as the UN and the EU is essentially non-binding for countries. Nonetheless, individual nations are inclined to adopt these principles, adapting them to their specific contexts. The implementation of good governance principles can be observed in the national

practices of countries like Indonesia and Singapore. Although these principles are considered soft law, their realization necessitates the enforcement of tax justice principles, starting at the national level. In the meantime, the contemporary idea of tax justice, where each taxpayer pays fairly, has not been widely analysed in Indonesia. However, since the reform era after 1998, Indonesia has embraced the principles of good governance. The development of these principles was influenced by the monetary crisis and historical conditions of the state in that year. (Handayani and Nur, 2019, 6) After the reform period, the restructuring of regional government took place, which introduced the concept of regional autonomy and has been the concept of government in Indonesia for the last 20 years. This regional autonomy concept made tax a focal point at the central and regional levels, closely related to the concept of tax justice.

Indonesia still faces numerous problems in implementing good governance, such as bureaucratic cases, collusion, corruption and nepotism practices. Other problems include requests for the application of good governance principles that are not appropriate to the local characteristics of Indonesians and low participation in implementing good governance. (Handayani and Nur, 2019, 1) The approach used by Singapore to achieve good governance emphasizes attention to human resources, as opposed to Indonesia. Singapore aims to build public trust in government officials, and the effectiveness of the policies is assessed through eight governance indicators. The eight indicators are the competence of public officials in the GCR, World Bank indicators on government effectiveness, PERC's survey on bureaucratic effectiveness, Transparency International Corruption Perception Index, PERC survey on corruption, World Bank indicators on controlling corruption, World Bank ease of doing business survey, and GCR survey of public trust in politicians. (Quah, 2013, 401) These indicators are more specific than the principles of good governance that guide the Indonesian government. The approach presently used by Singapore is influenced by the previous history as the third poorest country in the world in 1959. Over the past 65 years, the country has managed to solve the problems including housing, food shortages (half the population lived in illegal shacks), unemployment rate of 14 percent, political instability, labor unrest, corruption, and high crime rates. (Quah, 2013, 401) Irrespective of the significant efforts in economic growth, corruption has remained a shared problem in both Singapore and Indonesia. Both require the

enforcement of tax justice to realize good governance at the national level, even though they are motivated by different economic factors.

Nevertheless, Lee Kwan Yew[10] stated that the quality of people running the government is a determining factor for the success of a government. (Quah, 2013, 419) The keys to success in governance include institutional and attitudinal reform of civil servants, zero tolerance for corruption, merit-based civil service appointments and promotions, and competitive salaries to attract the most talented citizens to government roles. (Quah, 2013, 419) Singapore reduced corruption by increasing employee salaries, in addition to the trust system. The payment of civil servant salaries is a routine state expenditure that is taken from tax revenues each year. Since Singapore relies on tax as a source of income, fair tax payments should be ensured. Indonesia and Singapore do not have a specific concept of good governance for the principle of tax justice. Both countries implemented the principles of good governance through the interpretation of tax justice according to needs, which is regulated in the constitution as a legitimate levy with a legal basis.

6.7 Formulation of International Tax Equity

Efforts to improve the economy are needed in order to overcome economic inequality globally. Developed economies accommodate the interests of social security, economic stability, security, and public amenities. These crucial services are funded by state revenue sourced from tax, depicting the need for tax justice domestically.

Tax rates play a significant role in the global competition for capital, with lower rates often attracting more foreign investors. Setting low tax rates mainly for competitive reasons between countries may affect principle of fairness. Therefore, there is need for external tax justice, which considers the interest of other countries. Each country should prioritize personal interests without having an adverse impact on others.

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[10] Lee Kuan Yew wrote a book entitled "One Man's View of the World" (2013). This book contains his views on various global issues and the challenges facing the world in the 21st century. Lee Kuan Yew's perspectives on good governance and tax justice reflect his pragmatic approach to leadership, emphasizing efficiency, transparency, and integrity to achieve general welfare.

The concept of fair cooperation proposed by Ross focused on the need for a balanced and reciprocal collaboration in international tax affairs. This entailed fostering mutual cooperation between countries, particularly regarding the exchange of tax-related information and the protection of personal data. In addition, upholding tax justice on a global scale relies on establishing fair and mutually advantageous cooperation among countries.

Tax justice, whether applied internally, externally and globally is interrelated with the economic dynamics of other countries. Therefore, it is crucial to establish universal regulations. Clear and universally accepted arrangements are essential to ascertain that tax justice principle is included in the legal system of each country in the world.

Tax justice should be part of universal human rights, as stated in Tax Justice & Human Rights, comprising principle namely the four Rs Revenue, Redistribution, Repricing, and Representation. These principles address the issue of economic inequality, which manifests in disparity in income and wealth distribution within and between countries. Such inequality reflects a systemic failure of the wider tax and fiscal framework to fulfill human rights, by failing to ensure fair socio-economic conditions for the global community (Nelson, 2021) This concept dates back to the 18th century and was incorporated in the Universal Declaration of Human Rights in France, which stated Joint contribution is important for the maintenance of public power and administrative expenses. It should be distributed equitably among all citizens according to respective abilities. (Art. 13 Declaration of the Rights of Man – 1789) In addition to the French people, the declaration was also mentioned by Africans stating that every individual must possess the right of access to public property and services in strict equality of all persons before the law." (Art. 13.3 African Charter on People and Human's Rights)

It means that equal access to public facilities is a basic human right linked to principle of fairness. The UN human rights declaration served as a universal guide, depicting the importance of social, economic, fiscal and security protections. However, the declaration does not explicitly mandate that these guarantees rely on the existence of tax justice.

Article 22 of the UN Charter of Human Rights, is stated in the following paragraph

> *"Every member of the society, has the right to social security, realized through collaborative efforts, using the resources and structure within each State. Economic, social and cultural rights are crucial for preserving human dignity and enabling the development of individual personality."*[11] (UN, n.d)

According to the OECD, social security guarantees are sustained through tax revenue. It includes unemployment insurance benefits and supplements, healthcare coverage, old-age, disability and survivor pensions, including family support, funded by compulsory payments to government agencies. The contributions imposed on both employees and employers, serve to finance various social programs and are measured as a percentage of GDP and total taxation. (OECD, n.d i) Ensuring social security derived from tax, as detailed in the book written by Turonyi, focused on the constitution and the laws governing each the country. (Williams, 1996, 6) Therefore, decisions concerning the provisions of social security were influenced by the policies and resolutions made by the authorities in the respective countries.

Bank secrecy principle is currently circumvented by government regulations for control. Conversely, fiat currencies are easily accessible and trackable. These two factors led to gaps between countries worldwide to collaborate in exchanging information. In the field of cryptocurrency, these two factors contradict one another. Cryptocurrencies pose significant challenges for government access without assistance from third parties such as banks. It also exists in virtual forms where transparency and government reporting are essential. Without these two factors, embracing cryptocurrencies presents challenges in achieving tax fairness. In this context, achieving international tax justice on cryptocurrencies will be attainable assuming each jurisdiction addresses internal issues.

Each of the countries previously analysed holds distinct philosophical perspectives on justice. Indonesia and Singapore viewed it from a moral or religious perspective, while Spain focused on human rights and societal welfare. Therefore, the nations share a common view on international tax justice, aiming to develop a

[11] United Nations, Universal Declaration of Human Rights https://www.un.org/en/about-us/universal-declaration-of-human-rights Retrieved October 2022

framework that restricts privacy, including bank secrecy principle and challenges posed by the virtual field.

Nevertheless, as explained in the first chapter, the secrecy feature of both fiat and cryptocurrency conflicts with the principle of tax justice, which was discussed in the second chapter. This conflict arises from the increasing interest in using currencies, supported by advancing technology. However, neither principle can be eliminated or replaced by the other; instead, they must be balanced to avoid negative consequences. The following chapter will explain these limitations within an international framework.

CHAPTER 3.- INTERNATIONAL FRAMEWORK RESTRICTING THE RIGHT TO PRIVACY

1. Introduction; 2.- The Exchange Information of OECD: 2.1.- Information Exchange Clause OECD; 2.2.- Objectives and Targets of the OECD; 2.3.- The Scope of the OECD's Information Exchange; 2.4.- How does the OECD affect the application of the bank secrecy principle?; 3.- Information Exchange of UN: 3.1.- UN Information Exchange Clause; 3.2.- Targets and Objectives of the OECD Information Exchange of UN; 3.3.- The Scope of UN Information Exchange; 3.4.- United Nations Information Exchange Tools/Methods; 3.5.- Influence of the UN on the Application of the Bank Secrecy Principle; 4.- The Exchange of Information of EU: 4.1.- Information Exchange Clause of EU; 4.2.- Targets and Purpose of the Information Exchange of the EU; 4.3.- The Scope of Information Exchange in the EU; 4.4.- Method of EU Information Exchange; 4.5.- Impact of the EU on the Application of the Bank Secrecy Principle; 5.- The Exchange Information of Rubik's Agreement: 5.1.- Information Exchange Clause in the Rubik Agreement; 5.2.- Targets and Purpose of the Information Exchange of Rubik's Agreement; 5.3.- Scope of Information in the Exchange Rubik's Agreement; 5.4.- Tools and Methods for Exchanging Information Rubik Agreement; 5.5.- Influence of the Rubik's Agreement on the Application of the Principle of Bank Secrecy; 6.- Exchange of Tax Information by FATCA: 6.1.- The Information Exchange Clause FATCA; 6.2.- Targets and Purpose of FATCA; 6.3.- Scope of Information Exchange FATCA; 6.4.- The Exchanging Information Method of FATCA; 6.5.- How does the FATCA Affect the Application of the Bank Secrecy Principle?; 7.- Enforcing the Principle of International Tax Equity: 7.1 General Considerations: 7.1.1 International Responsibility of A Country; 7.1.2 Agreements; 7.1.3 Alternative dispute resolution; 7.1.3. Litigation; 7.1.4. Parties Engaged in Upholding the Principles of International Justice; 7.1.5.- Identifying the Competent Authority for Enforcing International Tax Equity Principles; 7.2 Special Mechanism to Solve Disputes Between Nations in the Frame: 7.2.1 The Enforcement of the Principle of Tax Justice in the Rubik's Agreement; 7.2.2 Enforcement of the Principle of Tax Justice in the FATCA Procedure; 7.2.3 Enforcement of the principle of Tax Justice in the OECD Procedure; 7.2.4 Enforcement of Tax Equity Principles in Procedures Articles of the UN Model Double Taxation Convention Between Developed and Developing Nations; 7.2.5 Enforcement of the Principle of Tax Justice in EU Procedures; 7.3 Proposed Enforcement of International Tax Justice Principles.

1. Introduction

Privacy is significant in the present landscape due to a spectrum of safeguarded concerns in various aspects, such as personal data, individual space, decisions, liberty, and self-governance, making collaboration between jurisdictions. (Adams, and Almahmoud, 2023, 4)The intersection of tax justice and human rights is also important in the present landscape as analysed in the preceding chapter, due to the inherent conflict between tax obligations and the protection of privacy rights. In an era characterized by globalization and the ever-advancing digital domain, the ease of transferring assets across borders has aided taxpayers in evading taxation or concealing assets without detection by the tax authorities of the home country. The right to privacy further poses a challenge to the ability of the country to evaluate assets held by citizens abroad. International cooperation between nations is then essential and formalized through legal agreements that provide a legitimate framework for accessing and exchanging information. Furthermore, the existence of a legal framework legitimizes the information exchange process. The evolution of banking privacy has also been significantly influenced by various factors, particularly the socioeconomic circumstances surrounding the storage of assets in the country.

These advantages will not impose any adverse consequences on the concerned country or others, provided there is no detrimental effect. However, various essential legal mechanisms have been established to facilitate information exchange, either unilaterally, bilaterally, or multilaterally. (Darussalam dan Debora, 2016, 614) This chapter focused on specific agreements concerning the exchange of tax-related information alongside the exploration of the remedial actions available in cases where a party breaches the signed contract. It further explores how law enforcement initiatives operate within international tax agreements, with a key focus on promoting tax justice. Additionally, the chapter emphasizes certain disadvantages associated with depositing funds in foreign jurisdictions instead of domestic accounts.

Property owners further bear fundamental tax responsibilities underscoring the significance of adopting a societal perspective. This responsibility extends beyond national boundaries to necessitate international collaboration. To facilitate this cooperation, international organizations have been established to focus on the economic aspects of individual nations. Consequently, these initiatives give rise to the

formulation of various policies including regulations governing the exchange of financial information for taxation purposes. The exchange of information further serves two primary purposes namely (1) facilitating the verification of facts pertaining to the application of income tax convention rules (OECD, 2006, 4) and (2) assisting a party to the agreement in enforcing tax laws within the jurisdiction. (OECD, 2006, 4) The initial objective arises exclusively in the context of information exchange based on bilateral income tax agreements while the latter purpose is present in bilateral income tax conventions or multilateral agreements related to mutual assistance in information exchange. (OECD, 2006, 4)

The exchange of financial information for tax purposes can occur through spontaneous, on-demand, and automatic mechanisms such as the Automatic Exchange of Financial Accounts. In the process of exchanging financial information on-demand, the competent authority from a partner jurisdiction directly sends a formal request to the country where the required financial data is held for tax-related matters. (Sharma, 2020) However, automatic exchange refers to the sharing of data by the partner country considered pertinent for the tax authorities of the country requiring the information without the need for a specific request. (Ghana Revenue Authority, 2024) The exchange is initiated by a country when supporting evidence is identified in connection with audits, investigations, objections, or examinations of taxpayers from other nations. (Darussalam and Septriadi, 2017, 590) Under the Automatic Exchange of Financial Accounts, the tax authorities in the identifying country are obligated to transmit the data to the concerned jurisdiction without requiring a formal request. (Darussalam and Septriadi, 2017, 590) This process for tax purposes between countries also extends to cryptocurrency asset which assumes a unique form, necessitating special treatment as well as cooperation between the nations. Furthermore, the exchange of cryptocurrency information is facilitated through an automated process known as CARF, which standardizes tax information reporting on crypto-asset transactions.

The circulation of cryptocurrency requires special attention due to the significant potential for committing tax crimes and money laundering. This issue extends to legal fields including the adaptation of laws and the protection of personal data given the unique characteristics. While relatively new, the practice of keeping assets abroad through cryptocurrency underscores the necessity of collaboration with other

countries. In the context of exchanging information, this has been exemplified by saving conventional currency hideouts with different challenges. These differences require compromise between countries, as cryptocurrency operates outside traditional banking institutions and beyond the authority or knowledge of the state government. Therefore, agreements between countries are needed to overcome the diverse challenges.

Research conducted by Barreix emphasizes the evolution of financial information exchange due to the global community's lack of awareness that taxation is inherently a global phenomenon. Consequently, there is a growing need for transparency in financial information to combat tax avoidance. (Barreix, et. all., 2016, 3) To foster the transparency of financial information, the FATF on Money Laundering is actively pursuing the abolition of banking privacy while advocating for the registration and oversight of beneficial ownership in businesses.

The government has the responsibility of upholding agreements as a legal entity forming part of the international obligations particularly those related to sharing financial information for tax purposes. According to the research, rejecting or violating the agreements undermines tax justice which is considered a fundamental human right. The violations also prompt questions about how individuals can ensure tax justice while complying with the law. Taxes are also connected to the public interest, necessitating the state to address tax injustice inherently. However, the international perspective and practice of upholding bank privacy rights and cryptocurrency can challenge the principle of justice. This is particular for nations aiming to fund essential social services, fundamentally tied to human rights. Therefore, addressing the concept of global tax justice or effective governance in taxation becomes essential.

Following the exploration of privacy concerns in the first chapter and the principle of tax justice in the second, the subsequent chapter will examine the potential solutions to the challenges. Specifically, the section will examine the international framework imposing limitations on the bank privacy principle along with several agreements related to the exchange of information for tax purposes. The chapter will also explore the actions that can be taken in case of a breach by a party with the enforcement efforts falling under the scope of international taxation agreements, particularly focusing on the principles of international tax justice. Subsequent sections

will assess topics such as the methods of information exchange and the roles of organizations including OECD, UN, and EU. Additionally, the chapter will examine agreements such as the Rubik's Agreement initiated by Switzerland and FATCA initiated by the US. It will also explore the influence of each organization in the context of both bank privacy principles and cryptocurrency. Finally, the chapter will conclude with an analysis of the enforcement of principles related to international tax justice, providing insight into the global importance of upholding the ideas.

2. The Exchange Information of OECD

In the 1990s, the issue of transparency and exchange of financial information was frequently addressed in several countries worldwide. (Darussalam and Septriadi, 2017, 596) This led to the OECD taking the initiative regarding tax havens and harmful tax competition by issuing the OECD Harmful Tax Competition in 1998. The outputs were reports specifically proposing guidelines related to harmful tax practices, the establishment of a global forum to manage transparency issues, and recommendations for domestic provisions as well as double tax avoidance. An issue addressed in the report was the effective exchange of information and transparency. (Deborah, 2013, 62-63)

The Global Forum on Transparency and Exchange of Information (Global Forum) was established in 2000 through cooperation between the OECD and non-OECD countries. (Neve, 2017) The primary objective of the Global Forum was to serve as a common platform for setting standards for transparency and information exchange and managing related issues to develop fair competition among countries worldwide. (Darussalam and Septriadi, 2017, 597)

The information standard was governed by the OECD Model Agreement on Exchange of Information (2002) and amendments to Article 26 of the OECD Model. The 2002 Model Agreement on Exchange of Information on Tax Matters and the Explanations aimed to increase international cooperation in tax law enforcement through information exchange. This agreement was developed by the OECD Global Working Group in response to the need for a more effective exchange of information to address harmful tax practices. Although non-binding, this agreement provided a model for bilateral and multilateral agreements between countries committed to improving tax cooperation. It also included comprehensive details for each article

aiding in the interpretation and application within the context of international and bilateral law. (OECD, 2002) The 2017 OECD Model Agreement served as a template for information exchange agreements between countries lacking a tax treaty. The TIEA represented an information exchange mechanism based on the 2017 OECD Model Agreement. In contrast to the 2002 version, the 2017 OECD Model Agreement not only initially regulated the exchange of information on request but also comprised provisions for the automatic and spontaneous exchange of information based on Article 26 of the OECD Model. (OECD, 2002, 615)

The OECD and the Council of Europe jointly initiated the "Convention on Mutual Administrative Assistance in Tax Matters", a significant project aimed at developing a multilateral convention to enhance administrative cooperation among member states in combatting global tax avoidance and other forms of non-compliance. This convention marked a new milestone in the global campaign against tax avoidance due to the openness to all countries and the correlation with modern international standards for exchanging tax information. The project stood as the foremost global instrument for tax cooperation covering not only information exchange but also recovery assistance, documentation services, and joint audits. (OECD and Council of Europe, 2011, 3)

The objective of the Convention was to promote international collaboration to implement the enforcement of national tax laws while upholding the fundamental rights of taxpayers. Various collaboration mechanisms ranging from bilateral to multilateral offered well-known benefits. With increasingly concentrated and diverse commercial as well as economic relations, there was a need for more general and multilateral instruments that offered diverse forms of assistance and covered various types of taxes. The instrument enabled more effective international cooperation among numerous countries, ensuring uniform application and interpretation of the provisions.

Designed to facilitate administrative cooperation between countries in combating tax evasion and avoidance, the collaboration included exchanging information for tax recovery from abroad. The Convention was also open for signature by OECD member states and the Council of Europe, facilitating streamlined cooperation among the countries due to the similar legal systems and shared principles of justice and law. The balancing of the legitimate interests of all parties was

also an objective of the Convention including the need for mutual assistance in tax assessment and enforcement, respect for differences in national legal systems, and the protection of confidentiality between tax authorities and the basic rights of taxpayers. Tax authorities under this convention should also further operate within the country's national laws while ensuring the full protection of taxpayers' rights as recognized by the constitution. However, national laws should not be interpreted or applied contrary to the Convention's objectives. The parties were also not expected to delay effective administrative assistance. (OECD and Council of Europe, 2011, 14) The OECD should consistently take action to address current challenges experienced by nations such as double taxation, harmful tax practices, and tax avoidance correlating with the objectives.

Ministers of Finance and Central Bank Governors from G20 and OECD member states in April 2013 provided support for the automatic exchange of information as a global standard for exchanging information for tax purposes. (Darussalam and Septriadi, 2017, 615) Furthermore, the G20 and OECD member states agreed in February 2014 on the CRS for the exchange of information and continued with the preparation of timelines for the implementation of automatic information exchange standards in each country. The OECD subsequently published the full version of the automatic exchange of information standards in July 2014. (Darussalam and Septriadi, 2017, 615)

The OECD facilitated various methods of information exchange including upon request, spontaneous, and automatic exchange. When information was requested with consideration of specific circumstances, it was expected that the standard information sources within the internal taxation system would be consulted before seeking information from the other State. (OECD, 2017, 7) Exchange on request allowed tax authorities of a treaty partner country to ask for information from the counterparts in another state. (OECD, n.d j) This process included the requesting country submitting a financial information request form in accordance with the domestic regulations, and the requested state was obliged to provide the information in the specified format. (Art. 26.10.2 of Update to Art. 26 of the OECD MTC and Its Commentary)

The exchange could naturally occur when a State possesses information valuable to another, acquired through specific investigation. (Update to Art. 26 of the OECD MTC and Its Commentary, 2) Spontaneous information exchange originated from the outcomes of tax audits conducted by the country providing the information. (Darussalam dan Debora, 2016, 610) This method provided several benefits, as the receiving country could unexpectedly acquire data that improved the tax data collection efforts. (Darussalam dan Debora, 2016, 610)

Automatic exchange by default only occurred when information related to a single or more revenue type originating in a single Contracting State and received in another Contracting State was regularly transmitted to the latter. (OECD, 2017, 7) Globally, the practice of exchanging information upon request was considered insufficient for eliminating the growing issue of tax avoidance. This was due to the requirement for administrative processes in information exchange on demand, leading to significant delays. (OECD, 2012)

The OECD served as an international organization dedicated to shaping global economic policies and further placed significant emphasis on tax matters, contributing solutions to global issues. Consequently, the concept of tax justice was significantly influenced by the OECD. Since all member states typically participated in formulating OECD agreements, no country was left disadvantaged by the engagement. Unknown to many, the OECD's implementation initiatives infused new dimensions into legal principles. Therefore, subsequent points would further address the specifics of the OECD's framework for exchanging tax-related information. Especially regarding cryptocurrency information exchanges, apart from the EU, which has a specific framework for cryptocurrency, the OECD is an organization with a broader scope and also has its own specific design concerning cryptocurrency.

The reporting of cryptocurrency user data information to tax authorities necessitated the participation of a government-appointed body designated as the official entity responsible for recording transaction reports. (Bappebti, 2022) This was essential due to the decentralized and anonymous nature of cryptocurrency, requiring government access to transaction details. Additionally, the tax obligations associated with cryptocurrency usage depended on the adopted tax collection system. In the self-assessment system, the accuracy of reported data depended heavily on the honesty

of the taxpayer. A cryptocurrency user and compliant taxpayer were obligated to report a specific amount of assets for taxation based on calculations. (Setyawan, 2022) However, the official assessment system included taxpayers receiving tax bills from tax authorities which were subsequently confirmed or contested with supporting documents on the tax data form. (European Commission, 2023) In essence, taxpayers were required to voluntarily and honestly declare the cryptocurrency wealth with government-appointed bodies overseeing cryptocurrency operations. This pertained to the responsibility of the taxpayer to acknowledge and declare the status.

The second transparency effort included the exchange of information data between jurisdictions, driven by the distinctive characteristics of cryptocurrency. A different form of cooperation was essential with the rapid and location-independent nature of cryptocurrency transactions. In principle, tax justice in the cryptocurrency system included ensuring transparency through declarations made by the users to tax authorities and the exchange of information between collaborating countries. This transparency effort was further explored in the subsequent sub-chapter.

2.1 Information Exchange Clause OECD

Global tax avoidance posed a significant challenge for tax authorities worldwide, leading to the OECD's effort over more than 20 years to promote cooperation on transparency and information sharing for tax purposes. The exchange of information could be carried out using the Tax Treaty as a legal basis because the contracts were generally made to address double taxation resulting from two nations imposing a *global income.* (Darussalam and Debora, 2016, 615) Information exchange in the double tax avoidance agreement was based on either the OECD or UN Model and regulated in Art. 26. Since 1963, the Model Tax Convention on Income and on Capital by OCDE has experienced several changes. Its last version is from 2017 whose article 26.2 and Commentaries are useful in this research. (OECD, 2017)

The clause governing the exchange of information by the OECD was contained in Art. 26, which consisted of five paragraphs. In Art. 26.1 of the OECD Model, the system for exchanging information for tax purposes was regulated covering both the administration and enforcement of domestic law. This suggested open access to exchange information between nations to prevent international tax avoidance and evasion practices.

The OECD regulated the specificity of exchanged information protection in paragraph 2. Art. 26.2 of the OECD stated that such information was to be treated as confidential. Subsequently, the exchanged information would be disclosed to competent parties or agencies including the participatory courts in the interpretation, collection, enforcement, or prosecution in respect of taxes. It would also be used to determine the decision of appeals relating to the taxes and parties to which the information pertained.

The exchange of information and the treatment of information provided in paragraphs 1 and 2 were limited by the subsequent paragraph, namely Art. 26.3 of the OECD. The Convention States were not obliged to exchange information under certain circumstances such as when the exchange contravened the legislation or administrative practices of the partner country. Additionally, information exchange could be withheld when it was impossible to obtain the data under the law or in administrative practice prevalent in that country. Confidentiality considerations were also applied to information related to commerce, business, industry, or expertise, or any information whose disclosure would contradict public policy.

Paragraph 4 further regulated the refusal to exchange information as outlined in Art. 26.3. It specified that refusal to provide information based on the reasons stated in Art. 26.3 would not be permissible because the country requesting the information did not have any domestic interest in the data exchange process. Additionally, Paragraph (5) as the final paragraph of Article 26 of the OECD stated that the provisions of Article 26, paragraph (3) could not be used by a convention State to refuse providing information solely because the information was held by banks or other financial institutions.

Another interesting analysis was understanding the relevant clauses' significance on the exchanged information, crucial for safeguarding data privacy. Further clarification on the definition of relevant information was necessary due to variations in each nation's standards, despite all parties to the agreement being obligated to exchange information. Additionally, the concept of "predictable relevance" was also subject to interpretation based on the stringency with which a country adhered to the idea. To prevent inconsistent interpretations, as described in the commentary to Article 26 (Basque,et.all., 2020, 32) of the OECD MTC 2017,

paragraph 5 explained that the intended exchange of information should be as comprehensive as possible provided there was a reasonable possibility showing the requested information was relevant. Furthermore, exchange of information could not be refused in cases where the relevant nature of the information was verified after the requesting country received the data.

The next comment in Commentaries to Article 26 OECD MTC 2017 paragraph 5 was also inferred from the drafting of certain DTCs, such as the Chile-Switzerland or the Uruguay-Ecuador treaties. This implied that the requested State could not refuse a request for information even when the previously estimated relevance criteria were not met presuming the relevance was justifiable. The Tax Authority conducting the investigation and giving rise to the request would assess the relevance of the information. (Commentaries to Art. 26.5 OECD MTC 2017) However, the provisions of Article 26 did not apply to speculative fishing expeditions such as requests unrelated to ongoing inquiries. (Basque,et.all., 2020, 32)

The requested State was further expected to provide information presuming the country had strong suspicions of tax fraud. Procedural requirements would also be demanded by the requested State to ensure that a public inquiry was not conducted while the requesting state would be responsible for the assessment of relevance requirements. These requirements included providing certain additional information such as the identity of the person under examination or investigation, the purpose of taxation for which the information was needed, and the belief that the required information was stored in the requested country. The competent authority of the applicant State was also required to provide the information to the competent authority in the requested State when submitting a request under the Treaty to show the relevance of the foreseeable information to the request. The exchange of relevant information considered necessary for the administration and enforcement of domestic tax laws by the Parties was mandated to be assisted by the competent authorities. (Basque,et.all., 2020, 32)

Article 26 of the MTC of the OECD regulated the exchange of information between the tax authorities of different nations. The purpose of this exchange was to facilitate the administration and enforcement of domestic tax laws. According to the commentary, the exchange of information was not limited to law enforcement matters

but also included cases where the information was relevant for the broader implementation of domestic laws including civil matters, such as tax assessments and audits. While the exchange of information under Article 26 was generally focused on tax affairs, it was not intended as a mechanism for the exchange of information for criminal law purposes. The primary objective was to combat tax evasion and ensure compliance with the legislation. The comments further stressed the need for the information to be relevant to the administration or enforcement of domestic tax laws. Article 26 was not solely focused on law enforcement and the administration of domestic tax laws, but also more oriented towards tax cases than criminal law issues. Specific concerns related to criminal law were typically addressed through other international cooperation mechanisms or agreements. (Basque,et.all., 2020, 32)

As analysed in Chapter 1, each country provided different levels of protection for information data despite adhering to the principle of bank privacy. Article 26 in the commentary described the level of confidentiality, emphasizing the importance of protecting sensitive information exchanged between countries. While the exchange of information under Article 26 was generally treated as confidential, the degree of confidentiality varied between signatory nations based on domestic laws with exceptions outlined in the convention. In terms of the level of confidentiality, information exchanged between signatory nations was generally treated as confidential. This confidentiality was affirmed in Art. 26.2 stating that any information received by a country under a treaty would be treated as confidential in the same manner as data obtained under the nation's domestic law. Furthermore, confidentiality requirements were not absolute, and exceptions were outlined in Art. 26.3 of the OECD MTC. The information could be disclosed to certain individuals or authorities such as courts and administrative bodies following the domestic laws of the receiving country. Additionally, the information could be used for purposes other than taxation when permitted by the laws of both nations. (Basque,et.all., 2020, 32)

The purpose of using information should be clear and only used for a single objective to safeguard the data. Generally, when addressing the principle of using information for a "single purpose" in the context of data protection or privacy laws, the implication was that personal information had to be collected and processed for specific, lawful, and clearly defined purposes. This principle was often associated with

the concept of the limitation of purpose which was a common element in numerous data protection frameworks.

In simple terms, the organization or individual collecting personal information should communicate the purpose for which the data was collected and could not use the data for any other purpose incompatible with the original stated objective. This helped to ensure transparency, fairness, and respect for individuals' privacy rights. When there was a need to use the data for other purposes, additional consent or a legal basis should be required. Article 26 of the OECD MTC further addressed the exchange of information between nations for tax purposes. Specifically, the article established the framework for the exchange of information between tax authorities of different nations to prevent tax evasion and ensure the proper enforcement of tax laws.

The phrase "information shall be used only for the purposes referred to in Article 1" in Article 26 implied that the information exchanged between the tax authorities should be used solely for the purposes outlined in Article 1 of the Model Tax Convention. Article 1 generally defined the scope of the Convention, which was to eliminate double taxation and prevent fiscal evasion concerning taxes on income. In practical terms, this provision ensured that the information shared between the tax authorities was not misused for purposes other than those related to taxation. It further emphasized the importance of confidentiality and restricted the use of the exchanged information to the specific tax-related purposes outlined in the Model Tax Convention. Therefore, the provision helped in protecting the privacy and rights of individuals as well as entities engaged in the exchange of information.

The OECD's provisions on information exchange were highly detailed, offering explanations to facilitate interpretation and application customized to each country's circumstances. This effort aimed to prevent biased interpretations, recognizing that information exchange examined private domains but was essential for mitigating and eradicating losses. Essentially, the OECD swiftly developed regulations for information exchange and continuously refined the implementation over time. These adjustments were typically prompted by challenges encountered by the nations or state organizations such as the EU. Nations unaffected by the challenges or capable of pre-emptive measures also adhered to OECD policies, thereby achieving global significance.

2.2 Objectives and Targets of the OECD

The purpose of the exchange of information in the OECD Model was to have transparency and the sharing of data, aiming to facilitate the detection of taxpayers' wealth by the tax authorities of the domicile country. (OECD, 2012) Additionally, this OECD model aimed to fight the very strict principle of bank privacy that facilitates tax evasion and hiding of assets by taxpayers. (OECD, 2012)

On the other hand, the OECD proposed solutions to address the concealment of financial information data aimed at tax avoidance in cryptocurrency transactions. The OECD paid attention to exchanging information on cryptocurrency transactions, which had distinct characteristics compared to concealing assets in traditional currency. However, this method of information exchange was highly efficient and well-suited for automated systems. Similar protocols initially developed for conventional currencies were also used for exchanging cryptocurrency information through automated systems.

2.3 The Scope of the OECD's Information Exchange

The scope of the OECD Model was aimed at fighting the principle of bank privacy, detecting and combating tax evasion. The scope was the openness or transparency of financial information and the exchange of information. Within this agreement, all taxpayers' financial information was considered relevant to determine, assess, and collect taxes for tax audits, investigations, as well as litigation. This scope was not limited to income and assets but also comprised information on property, gifts, and others in partner nations. (OECD, 2012)

Commentaries on Article 26 of the OECD MTC 2017, paragraph 29.5, stated that information should be provided promptly unless the delay was caused by legal obstacles. This was applicable when there was no agreement among the tax authorities regarding the deadline for sending information, which was set at two months from the receipt of the request for information. (Basque,et.all., 2020, 55) However, the period would be extended to six months when the tax authority in the requested State did not possess the information.

Basque further explained that the establishment of a specific time limit aimed to determine the consequences of non-compliance with the deadline. Although the

OECD did not explicitly mention the possibility of sanctioning non-compliant States, the provision clearly stated that requests for information cannot be refused when other requirements outlined in Article 26 had been met. (Basque,et.all., 2020, 55) Participation in the OECD by member states was voluntary and not compulsory. Each country joined based on discretion and to safeguard the economy. Therefore, there were no legal consequences when a country decided not to join. Legal action could only be pursued when a country that had voluntarily committed to an agreement failed to fulfill obligations, thereby harming the rights of another state. However, the OECD lacked a forum to address issues leading to gaps in the resolution process.

2.4 How does the OECD affect the application of the secrecy?

Long before online privacy systems were discovered in the virtual world, the OECD had already developed methods for managing privacy in the banking sector. Therefore, the existing and operational banking system served as a model and inspiration for managing privacy in the online domain.

a. Bank Privacy

Regarding Article 26, the principle of bank privacy did not hinder the exchange of information because the receiving country for tax purposes could not refuse on grounds of confidentiality. However, Paragraph (2) maintained confidentiality by restricting the use for only tax purposes. In 2012, Article 26 was amended allowing for exchanged information to be used beyond the interests observed in the article with the agreement of the country sharing the data.

Banking principles were highly restricted, particularly for countries bound by OECD-based agreements as suggested by Article 26. It further formed the foundation for information exchange, requiring practical methods for the implementation. The OECD model used a phased method, starting with information requests, followed by spontaneous, and eventually automated exchanges. This automated information exchange served as the fundamental concept for sharing cryptocurrency-related information as well.

AEOI system was originated from a plan by the G20 members and initiated by the OECD. The system included exchanging financial data of foreign nationals residing in a country. The exchange of financial data was carried out between the competent

tax authorities across nations. (Asmarani, 2020) The OECD further developed an automated information exchange system known as CRS. AEOI also referred to "information exchange carried out at a certain interval, periodically, systematically, and continuously on financial information prepared based on CRS". General Reporting Standards were further outlined in body part II.B and *commentaries* part III.B of the *Standard for Automatic Exchange of Financial Account Information in Tax Matters*, including any subsequent amendments. (Art. 1.3 PMK No. 70/PMK.03/2017 on About Technical Instructions Regarding Access to Financial Information for Taxation Interest)

The CRS outlined the timing, procedures, and recipients for information exchange, grounded in a multinational framework agreement. A specific bilateral relationship under the standard only came into effect when both jurisdictions had the Convention in force. (OECD, 2024) In summary, CRS established rules regarding data collection and reporting of financial information. The standard was developed in response to a request by the G20 and was approved by the OECD Council on 15 July 2014. It further delineated the financial account information to exchange, the reporting obligations of financial institutions, covered account types and taxpayers, as well as procedural guidelines for financial institutions. (Asmarani, 2020) CRS served as a defined global standard for the automatic exchange of information on financial accounts between jurisdictions for tax purposes. It also aimed to help tackle tax evasion, increase transparency, and protect the integrity of government taxation systems worldwide. Based on the published system, financial institutions in each country were required to collect and report domicile taxes on account holders subject to personal or corporate income tax. (Bank Danamon, 2018)

Taxpayer personal data related to economic information was mandatory by the tax authorities of each country to be collected and shared with other nations based on an agreement. Furthermore, the Multilateral Convention on Mutual Administrative Assistance in Tax Matters evolved as a new legal framework alongside treaties in international tax law. Following the provisions of Chapter IV, this convention provided for administrative assistance in tax matters, potentially including judiciary actions. Administrative assistance included information exchange, recovery aid, simultaneous tax audits, participation in overseas tax audits, and document services. (Art. 1 CMAA) Additionally, the OECD influenced the application of bank privacy principles regarding confidential data reports.

The OECD further influenced the application of bank privacy principles regarding access to confidential data. Furthermore, the CMAA played a significant role in determining how private confidential data was accessed. Article 22 further stipulated that any information obtained by a Party under this Convention should be treated as confidential and protected similarly to information collected under national law. (Art. 22.1 CMAA) The information could only be disclosed to specified individuals or authorities including courts and administrative or supervisory bodies and solely for designated purposes. (Art. 22.2 CMAA) However, the information could be used for other purposes only when permitted by the laws of the supplying Party and the competent authority. (Art. 22.4 CMAA)

The CMAA further provided a legal framework for nations that signed and enforced the convention to provide tax assistance. However, concerns arose regarding assistance related to documents containing taxpayer's confidential data which could also be subject to information exchange. As emphasized, confidentiality was maintained according to applicable domestic law and used based on the agreement. In addition to the evolving legal basis for information exchange, the implemented information exchange system adapted to changing needs. The automatic exchange of information evolved as the most efficient method, thanks to technological advancements that eliminated barriers of distance and time. However, the effectiveness depended on mutual agreement among parties regarding the implementation and consequences. This necessitated careful considerations of how bank privacy principles would be applied in the context of automatic information exchange.

b. Privacy on the Net.

The OECD facilitated a specific exchange of information concerning cryptocurrencies. At the request of the G20, the OECD collaborated with the member states to develop the CARF. This framework addressed concerns about the swift use of crypto assets in various investments and financial transactions, bypassing traditional financial system intermediaries such as banks. (MUC Consulting, 2022)

In response to this necessity, the OECD developed a pre-existing CRS to accommodate reporting on crypto holdings. The model was distinguished by recognizing the reporting of crypto holdings and accepting the absence of financial

institutions in the transaction process. The CARF represented a novel global tax transparency policy designed to facilitate reporting and information exchange regarding crypto assets. It ensured transparency in cryptocurrency transactions by automatically exchanging information with the taxpayer's country of residence annually, using a standard methodology similar to the CRS. Essentially, any entity or individual engaged in providing cryptocurrency exchange transactions for clients should be reported to the authorities. (Vinash, 2023)

The CARF further comprised model rules that could be transposed into domestic law, along with explanations to aid governments in the implementation. The OECD also formulated legal and operational instruments to facilitate the international exchange of information collected under CARF, ensuring the effective and extensive application including the timing for initiating exchanges under the framework. Additionally, the OECD submitted to the G20 a set of further amendments to the CRS which was aimed at modernizing the scope to comprehensively cover digital financial products and improving the operations, considering the experience gained by countries and businesses. Similar to the CARF, this initiative would be complemented by the updating of international legal and operational mechanisms for automated information exchange correlated with the CRS amendments alongside a coordinated timetable for the agreed-upon amendments to be implemented. (OECD, 2022)

The CRS was designed to stimulate tax transparency concerning financial accounts held overseas. Adopted in 2014, more than 100 jurisdictions have implemented CRS and financial markets have continued to evolve giving rise to new investment and payment practices. The OECD with G20 nations conducted the first comprehensive review of CRS in consultation with participating jurisdictions, financial institutions, and other stakeholders. This produced two outcomes, firstly, there was a fresh tax transparency framework that facilitated the automated exchange of tax information in a standardized format with the taxpayer's residence jurisdiction known as the CARF. Secondly, there were modifications proposed for the CRS to enhance the effectiveness and address evolving challenges in tax reporting. A primary focus of the OECD was to tackle significant changes in the advent of Crypto Assets which could be transferred and stored without engagement with conventional financial intermediaries. Additionally, there was no central administrator with complete visibility over the transactions or the whereabouts of Crypto Asset holdings. (OECD, 2022, 6)

To ensure fairness in international taxation concerning cryptocurrencies, the global community was geared up to strengthen collaboration among nations.

Reports based on both CRS and CARF were accepted and processed by the OECD in the arrangements and implementation. (OECD, 2022, 3) Overlaps still existed in the digital era as it was easy to confuse the currency with cryptocurrency, despite the fundamental differences. Therefore, the OECD provided regulations regarding the reporting objects ensuring consistency and clarity in reporting practices. (OECD, 2022, 13) Relevant Crypto Assets not covered by CARF included specific Electronic Money Products and Central Bank Digital Currencies since the transactions were already reported through CRS. Additionally, certain assets such as crypto-form shares fell under both CARF as Relevant Crypto Assets and CRS as Financial Assets. When reported through CARF, CRS reporting could be turned off ensuring flexibility in the reporting process. CRS also covered indirect investments in Relevant Crypto Assets through traditional financial products. CARF's due diligence procedures correlated with CRS rules to ease the burden on Crypto Asset Reporting Service Providers, specifically when also subjected to CRS obligations as Reporting Financial Institutions. CARF further permitted the providers under CRS to use due diligence procedures when opening New Accounts for CRS purposes. With the evolution of cryptocurrencies, implementing information exchange through automatic systems was considered a solution to address the concealment of assets that could not be reported by the owners internationally.

The OECD remained steadfast in the vision and mission to enact policies that promoted prosperity, equality, opportunity, and well-being for all. Consequently, neither the privacy of bank accounts nor online privacy could be endorsed. This did not undermine the privacy rights of individuals as the aim was to ensure the benefit.

Addressing taxation issues related to the distinctive nature of cryptocurrency, countries consider both national and international perspectives. Globally, consensus among countries was crucial for understanding and regulation leading to binding treaties. Domestically, adherence to OECD-initiated criteria for automatic information exchange was essential. Four essential prerequisites pillars represented the foundation for establishing international obligations, impacting a nation’s domestic system by correlating with others engaged in information exchange. The pillars comprised (1) incorporating reporting and due diligence regulations into domestic laws

ensuring effective implementation, (2) selecting legal bases for cryptocurrency, (3) providing necessary information technology and administrative resources, and (4) ensuring confidentiality protection and data safeguarding. (Marlinda and Darmawan, 2020, 112)

A comprehensive legal framework was essential to conduct the exchange of information effectively. This included the implementation of domestic laws and regulations that enabled the collection and reporting of financial information. The foundational step established the necessary structure for a systematic approach to information exchange. Simultaneously, attention should be directed toward establishing robust data collection and reporting systems. Financial institutions needed systems capable of identifying and collecting relevant information about account holders. Ensuring the availability of accurate and up-to-date information was crucial for reporting to tax authorities. Data security and confidentiality were also an important aspect of the process. Implementing stringent security measures to protect sensitive financial information from unauthorized access was crucial. Additionally, there should be a commitment to maintaining the confidentiality of exchanged information and restricting the use solely for tax-related purposes. On the international front, forging agreements with other countries for the exchange of information was a crucial requirement. This included not only entering into the agreements but also developing the necessary infrastructure to facilitate secure information exchange between tax authorities. Building strong bilateral relationships was also essential for fostering a cooperative environment that strengthened the global exchange network, promoting transparency and effective collaboration in combating financial malpractices.

The essential step toward actualizing information exchange was the voluntary and transparent declaration of wealth in the form of cryptocurrency once the proponents of the aforementioned concept have coalesced. Every taxpayer was required to input data comprising personal information and assets into a declaration agreement, recognizing that the provided data could be used within the context of information exchange for the public good. However, government oversight remained essential. Given the decentralized nature of cryptocurrency, mandatory reporting to government-appointed agencies was necessary within the transaction framework. (Legalitas.org, 2024) As stipulated by the FATF Standards, it was mandated that

VASPs should obtain a license or registration in the jurisdiction established. In the case of individual VASPs, the provider was required to be licensed or registered in the jurisdiction where the business operates. (Goldbarsht and Koker, 2023, 151)

Another aspect that needed to be emphasized was the taxpayer's reluctance to declare the cryptocurrency wealth. Failure to comply was considered a violation of the law similar to committing tax crimes in traditional currencies. The only distinction was in the form of supervision and reporting. The difference originated from each nation designating an agency responsible for the registration and reporting of cryptocurrency.

The platform functioning as a crypto asset reporting service provider was an individual or entity that provided services or engages in exchange transactions for or on behalf of customers, serving as a counterparty or intermediary. (OECD, 2023, 24) The term 'platform' referred to the infrastructure, devices, locations, or digital markets that comprised a cryptocurrency exchange. (Caliskan, 2020, 70) Reported data included the name, address, jurisdiction of residence, TIN, date, and place of birth for individuals of each Reported User. For entities, post due diligence, identified Controllers considered as Reportable Parties contained the entity's name, address, jurisdiction of residence, and TIN. Additionally, the name, address, jurisdiction of residence, TIN, as well as date and place of birth of each Reported Party were included, outlining the role of each Reported Party as the Controlling Party to the Entity. (Caliskan, 2020, 70)

Commitment from jurisdictions was essential to ensure effective transparency in cryptocurrency transaction information data consisting of regulations, administrative procedures, and adherence to reporting procedures and tests. The CARF was built on key elements, including the scope of Crypto Assets coverage, Entities and individuals subject to data collection and reporting, transactions and related information to be reported, due diligence procedures to identify Crypto Asset Users as well as relevant tax jurisdictions for reporting and exchange purposes. For the CARF to meet the objectives, jurisdictions should ensure the correct application of the basic elements, ensuring adherence and preventing disregard.

According to the OECD, a jurisdiction should establish a comprehensive, proportionate, and risk-based compliance strategy to effectively implement due diligence and reporting obligations within the specific domestic context. This strategy

should focus on three key areas to ensure comprehensive and effective implementation. First, jurisdictions implementing the CARF should identify all Entities and individuals associated with the jurisdiction serving as Reporting Crypto Asset Service Providers. Second, the authorities should ensure accurate adherence to CARF's reporting procedures and due diligence by Crypto Asset Reporting Service Providers. Lastly, jurisdictions should promote awareness and enforce CARF compliance, comprising a punitive framework for non-compliance, proactive motivation of adherence, and verification strategies to identify high-risk practices. (Caliskan, 2020, 30)

The exchange of information occurred automatically in a bilateral method, assuming the jurisdiction had (i) appropriate safeguards to maintain confidentiality and use information solely for Convention-defined purposes, and (ii) the necessary infrastructure for effective exchange relations, ensuring timely, accurate, and confidential information exchange with reliable communication and prompt resolution of concerns. (Caliskan, 2020, 72) The Competent Authority would conduct automatic information exchange using the OECD Common Transmission System, following relevant encryption and file preparation standards, or using other specified transmission methods. (Caliskan, 2020, 74)

Jurisdictions established a legal foundation for tax information exchange through the Convention on Joint Administrative Assistance in Tax Affairs. According to Article 6 of the Convention, two or more Parties should agree to automatically exchange predetermined relevant information following mutually agreed-upon procedures. The multilateral approach proved efficient in building an extensive network of exchange relations, allowing jurisdictions to activate bilateral exchange efficiently. Administrative agreements were also necessary to determine the information for automatic exchange, along with the time and method of exchange. In the case of the CARF, the CARF MCAA facilitated annual automatic exchanges. (Caliskan, 2020, 78)

Ensuring current compliance with confidentiality and data protection requirements was essential for annual automated systems. Three crucial pillars for adequate safeguards included (i) a legal framework ensuring confidentiality and proper use of exchanged information associated with international legal instruments, (ii) an

ISM adhering to internationally recognized standards or best practices, and (iii) law enforcement provisions as well as processes to address confidentiality violations and information misuse. (Caliskan, 2020, 85)

Internet access was essential for use in cryptocurrency and users control the money through private keys. To send money to someone else, the owner of the money signs a new transaction. This private key became an attractive target for attacks as there were two types of wallets namely hot and cold. Hot wallets were always connected to the internet and were easy to use for transferring money. Cold wallets stored private keys without an internet connection. It was recommended to store small amounts of cryptocurrency in hot wallets for ease of use, while larger amounts were best moved to cold wallets which were more secured and rarely connected to the network. (Das, et.all., 2019, 651)

The evolution of various new intermediaries and service providers, such as exchanges and wallet providers, was led by the Crypto Asset Market. Currently, the majority were only subject to limited regulatory oversight. Crypto Asset Exchanges served as facilitators for the purchase, sale, and exchange of the assets with others or Fiat Currencies. However, wallet providers offered digital "wallet" solutions that enabled individuals to store Crypto Assets through public and private keys. This service was provided online and referred to as "hot" or through products that allowed offline storage of Crypto Assets in downloaded wallets known as "cold". Both hot and cold wallets were relevant in the context of tax authorities. (OECD, 2022, 9)

Crypto Assets could be owned directly by individuals through cold wallets or through exchanges that did not have to report tax information, especially when not Financial Institutions. This implied that it was not possible that the asset would be reported to tax authorities in a definite approach. (OECD, 2022, 10) Therefore, voluntary compliance in reporting crypto tax payments was a highly reliable practice.

The primary hurdle to disclosing information concerning the confidentiality of cryptocurrency depended on the lack of government control over the data. The method contrasted with the concept of bank secrecy, where access to personal data for tax collection purposes could be legally justified in the public interest. This was possible because assets were only stored in banking institutions, which were regulated and

accountable under government oversight. Additionally, money circulation and production fell under the purview of state finances.

Achieving transparency regarding cryptocurrency characteristics required strong cooperation from cryptocurrency users to provide accurate data to the government. Essentially, this posed a challenge for countries to match the competence, or capabilities outlined in agreements. Standardizing information disclosure on confidentiality characteristics fundamentally depended on voluntary compliance by users, particularly those who operated independently and stored assets in cold wallets.

The OECD developed measures addressing confidentiality characteristics to fulfill international obligations regarding taxpayers and cryptocurrency users as well as realize tax justice. OECD mandated the participation of a third party which was the government in transactions. Platforms were tasked with monitoring and recording cryptocurrency transactions which served as the frontline in managing information disclosure and facilitating exchanges with collaborating countries. Additionally, the Union established a dedicated commission tasked with overseeing the participation of relevant stakeholders and ensuring the effective implementation of the new regulation.

3. Information exchange of UN

The UN universally developed the Model UN tax treaty to establish a tax treaty model between developed and developing countries. (OECD, 2012) The model was published in 1980 and also followed the OECD Framework 1977 in several rules. However, the articles in the UN Model granted more rights to developing nation's investment, technology, and human resources for wider taxation. The new UN Model experienced two changes known as the UN Model 2001 and UN Model 2011 in 2001 and 2011 respectively. (Darussalam and Danny, 2017, 437) As the UN was an international organization dedicated to objectives spanning various fields beyond economics and law, there was concern about the exchange of information. In principle, the UN aimed to provide protection or other treaty options to nations that would benefit more from the arrangement of the treaty.

3.1 UN Information Exchange Clause

Since 2011, Article 26 of the UN Model correlated with the OECD Model version with two significant differences. First, Article 26, Paragraph 1 of the UN Model explicitly

specified that the exchanged information aided a treaty partner country in preventing tax evasion or avoidance. (UN, 2021, 773) Second, Article 26 Paragraph 6 mandated that the competent authority should through consultation develop appropriate methods regarding matters relating to the exchange of information to be carried out. (UN, 2021, 773)

Article 26 of the same framework further regulated the exchange of Information between the competent authorities of the two contracting nations. (UN, 2021, 773) It stipulated that the authorities would exchange information considered "foreseeably relevant" to implement the provisions of the convention or for administrative provisions or to enforce the law of the treaty states. (UN, 2021, 773) Therefore, this treaty aimed to provide the widest possible exchange of information on tax matters, and the treaty partner nations could not freely request information about certain taxpayers that was highly improbable to be relevant to the tax affairs. (UN, 2021, 773) The convention added a sub-exchange of information within the scope related to all types of taxes imposed on behalf of the nation's bound by the treaty, as well as taxes imposed by the competent authorities of the country of origin provided that the taxation under it does not conflict with the convention. (UN, 2021, 773) The main purpose of Article 26 was as a tool for assisting nations bound by treaties in preventing tax avoidance or evasion. (UN, 2021, 773) Article 26 Paragraph 6 further stated that the competent authority of the state bound by the agreement should develop the methods of exchanging information following Paragraph 1. (UN, 2021, 773)

The exchange of information in the UN Model primarily aimed to overcome double taxation, prevent tax avoidance and evasion, as well as facilitate the tax authorities of each contracting country to obtain information regarding the taxpayer concerned. Therefore, the exchange of information in the UN Model indirectly showed resistance to the principle of bank privacy which had been an obstacle and a reason for tax evaders not to provide information related to assets stored in banks. (UN, 2021, 773)

3.2 Targets and Objectives of the Information Exchange of UN

The purpose of the UN Model was to serve as a reference for each country seeking to enter agreements aimed at avoiding double taxation and exchanging financial information related to taxation to achieve tax transparency. This objective was

closely correlated with the UN Model similar to the OECD Model. (Darussalam and Danny, 2017, 437)

The purpose of the exchange of information in the UN Model is to increase cooperation between tax officials who are authorized to carry out their functions. This included exchanging information to prevent tax evasion and avoidance as well as to facilitate tax collection. (UN, 2021, 773) Both the OECD and the UN shared a commitment to combating global tax evasion through different methods. Despite the UN being established earlier than the OECD, the latter tended to offer more contemporary ideas and programs in this regard. In terms of cryptocurrency, the OECD introduces new concepts in the realm of information exchange for tax purposes through the implementation of CARF.

3.3 The Scope of UN Information Exchange

Broadly, the term “information exchange” comprised various aspects including the exchange of documents unrelated to specific taxpayer and the provision of timely data by the treaty State. (Art. 26 United Nations Model Double Taxation Convention Between Developed and Developing Countries 2017) The scope of information exchange extended to cover all tax-related problems, exceeding general rules and legal provisions governing the rights of defendants and witnesses in the judicial process. (Darussalam and Danny, 2017, 437) The UN Model’s scope was delineated in Articles 1 and 2 of Chapter 1 regarding the Scope of the agreement. (Department of Economic and Social Affairs, 2001)

The exchange of information under a UN agreement was applied to residents of both nations engaged in the agreement. (Department of Economic and Social Affairs, 2001) Regarding the scope of tax, the UN convention stipulated the applicability to income and capital taxes imposed by any of the participating nations, including regional governments regardless of the method. (Department of Economic and Social Affairs, 2001)

The UN information exchange comprised a broad range of taxes, including those on income and capital. The taxes could be levied on total income, capital, or specific elements of income or capital including taxes on profits arising from the sale of movable or immovable assets, wages or salaries disbursed by the company, and capital appreciation. It clarified that the provisions applied to taxes were substantially

identical to those applicable in the participating nations. In summary, the specific tax under consideration was detailed in preceding articles and paragraphs, ensuring adherence to the legal frameworks of the participating nations with appropriate notifications communicated to all.

3.4 United Nations Information Exchange Tools/Methods

Exchange of information for matters of tax criminal interest could be carried out based on bilateral or multilateral agreements related to mutual legal assistance provided it applied to tax crimes. (UN, 2017) While the method of exchanging information in the UN Model could be done on-demand or automatically, the approach still allowed each country bound by the agreement to determine nations' procedures for exchanging information. (UN, 2017)

In this context, the term "Exchange of information for tax criminal purposes" pertained to sharing data or information related to tax crimes. These exchanges could occur through bilateral agreements which were between two nations or multilateral agreements including more than two states related to mutual legal assistance. The method of information exchange in the "UN Model" comprised two primary stages namely on-demand and automatic. In an on-demand exchange, a country could request specific information from other States. Furthermore, automatic exchange denoted the routine and pre-programmed sharing of information between nations without the need for special requests. Following the UN Model, nations participating in the agreement have the flexibility to determine the specific methods selected for information exchange correlating with the respective national laws and policies.

3.5 Influence of the UN on the Application of the Secrecy

a. Bank Privacy

The UN Model did not contradict the OECD Model because only the framework could provide more tolerance for developing nations. The framework also provided space for opinion for parties who desire to enter into an information exchange agreement because an additional paragraph distinguished the method from the OECD Model. The paragraph stated that “The competent authorities should through consultation develop appropriate methods regarding matters relating to the exchange of information under Paragraph 1 to be carried out.” (Revised Article 26 (Exchange of

Information) and Revised (2008) Commentary on Article 26 – for Inclusion in the Next Version of the United Nations Model Double Taxation Convention between Developed and Developing Countries, page 11) This implied that the UN Model did not conflict with the OECD Model fundamentally. However, the Model offered more flexibility for developing nations and allowed room for parties interested in entering an information exchange agreement. The distinction arose from an additional paragraph stating that competent authorities should collaborate through consultation to develop suitable methods for matters related to the exchange of information, as described in Paragraph 1.

The commentary further stated that from the perspective of many developing nations, Article 26 (Revised Article 26 (Exchange of Information) and Revised (2008) Commentary on Article 26 – for Inclusion in the Next Version of the United Nations Model Double Taxation Convention between Developed and Developing Countries, page 11) was essential not only to limit cross-border tax avoidance and evasion but also to reduce frequent capital flight through avoidance and evasion. Paragraphs 1 and 2 consisted of provisions that mandated the exchange of information, while the limitations on the exchanged information were delineated in Paragraph 3. A country should not be obligated to undertake administrative actions inconsistent with the laws, furnish information unattainable under the legal framework, or disclose data that could unveil trade, business, industrial, commercial, or professional secrets, including trade processes. Furthermore, disclosure of information contrary to public policy (order public) was also prohibited. Paragraph 5 explicitly stated that a contracting party could not withhold information based on the argument the requested information was performed by a bank or another financial institution when connected to individual ownership interests. The obligation to exchange information persisted without imposing constraints as outlined in Paragraph 3. However, this rationale could not serve as grounds for refusing information exchange. Regarding the effect of Article 26 of the UN Model on the application of the bank privacy principle was that the implementation of the Model should provide more support for developing nations in exchanging information for tax purposes. This was due to the importance of preventing capital from being deposited abroad for developing nations.

b. Privacy on the Net

The UN had not issued a policy or regulation for nations regarding the handling of cryptocurrencies to combat privacy related to tax evasion with no more specific than bank privacy regulation. However, several UN institutions addressed the presence of cryptocurrencies acknowledging the impact on global financial systems and regulatory frameworks. The IMF acknowledged the significance of cryptocurrencies and provided strategies for development. (Rahimi and Sharifian, 2020, 89) Furthermore, UNCTAD assessed the impact of cryptocurrencies on domestic resource mobilization in developing nations. The act further cautioned that the use of cryptocurrencies could foster illicit financial flows and jeopardize economic stability. While cryptocurrencies could facilitate remittances, the assets also increase the risk of tax avoidance and evasion, resembling practices observed in tax havens. Therefore, implementing suitable measures to mitigate the adverse effects of cryptocurrency usage was crucial. (UN, 2022) UN paid attention to cryptocurrency development but not to tackling privacy on the internet with some kind of rules.

4. The exchange of information of EU

The EU was a regional organization on the European continent such as other regional organizations including ASEAN and AU. However, the union stood as the strongest regional organization in the field of cooperation and each of the member states had high cohesiveness and commitment in implementing the agreements made. The economic conditions of certain member states were strengthened by the European Economic Community market and featured uniform currency as well as taxation policies. (Kementerian Luar Negeri Repulik Indonesia, n.d) Tax policy in the EU was known for tax harmonization including managing tax competition and defending against the policy. The union argued that tax harmonization also facilitated coordination and cooperation by getting rid of differences or inconsistencies. (Eko, 2011, 33) Regulations regarding the exchange of tax information were also developed in 2005, namely the Savings Directive. (Wöhrer, 2018, 403) Since 2005, the union has imposed regulations on member states to exchange information for tax purposes. However, it was easier to be circumvented by the jurisdiction because the scope was relatively small. Agreements between nations regarding the automatic exchange of information at that time were not considered easy. (Wöhrer, 2018, 403)

The focus of the EU had always been on good governance standards in the field of taxation, suggesting the emphasis on the principles of transparency, exchange of information, and fair tax competition. The member states of the EU reached a mutual agreement on several methods to address the erosion of the tax base and distortion of investment allocations. The treaty states also recognized individual national and bilateral measures to address the problem of tax erosion and cooperation for the entire EU was essential. The European nations agreeing to the treaty also decided on several measures designed to promote better tax governance within the EU as follows. (Darussalam and Septriadi, 2017, 335)

1. Administrative cooperation including information exchange,
2. Adverse tax competition,
3. State aid, and
4. Transparency.

Regarding international tax cooperation, the EU's efforts reflected the basic principles that have driven the OECD's activities against adverse tax competition in recent years. To fight money laundering, the EU provided several directives over the years to avoid tax evasion and the transfer of assets by taxpayers. (Darussalam and Septriadi, 2017, 335) The EU served as the initiator of international policies, setting global standards in various domains. The dynamics experienced by EU citizens fostered governments to seek solutions that eventually became policy products. Therefore, the EU was observed to indirectly contribute greatly to the formation of international law.

4.1 Information Exchange Clause of the EU

Within the EU, there are two primary types of rules governing tax cooperation: directives and conventions. Directives on tax cooperation are binding on all member states and must be transposed into national law. In addition to EU-specific directives, European countries also adhere to conventions regulated by the OECD, as they are members of this international organization and have ratified its conventions. These conventions facilitate international cooperation on tax matters, ensuring consistency and collaboration beyond the EU.

The clause on the exchange of information with the EU was found in DAC in Art. 1. 1 and 2 stating that "Member states should cooperate and exchange information that could be relevant to the EU". Where in Paragraph 2, "The exchange of information as referred to in Paragraph 1 was carried out by avenue of electronic devices". The majority of the nations in the EU had entered into an agreement known as a Double Taxation Treaty. (European Commission, n.d b) This treaty was designed to prevent individuals or businesses from being taxed on the same income in two different nations. As part of this agreement, the participating nations agreed to exchange information about taxpayers to ensure that taxes were appropriately applied and to avoid double taxation.

4.2 The Scope of Information Exchange and Purpose of the Information Exchange of the EU

The purpose of information exchange within the EU was to fight the principle of bank privacy for tax purposes, (Art. 1. 1 and 2 DAC) exchange tax information with other nations and eliminate confidentiality covering taxpayer assets and financial transactions to create transparency and fair tax competition. (DAC, 2011) Bank privacy was observed to be highly contested in the EU environment, mirroring the scrutiny now placed on data storage in cryptocurrencies.

Furthermore, regarding the scope of the information exchange law, Article 2 Paragraph 1 was confirmed in Paragraph 4 DAC stating that.

> *"(1) This Directive should apply to all taxes of any kind levied by, or on behalf of a Member State or the Member State's territorial or administrative subdivisions, including the local authorities. (2) Despite Paragraph 1, this Directive should not apply to value-added tax and customs duties or to excise duties covered by other Union legislation on administrative cooperation between Member States. This Directive should also not apply to compulsory social security contributions payable to the Member State or a subdivision of the Member State or to social security institutions established under public law. (3) In no case shall the taxes referred to in Paragraph 1 be construed as including (a) fees, such as for certificates and other documents issued by public authorities, or (b) dues of a contractual nature, including consideration for public utilities. (4) This Directive should apply to the taxes referred to in Paragraph 1 levied within the territory to which the Treaties apply by Article 52 of the Treaty on the European Union."*

The EU was observed to govern the taxation parameters for the exchange of tax information, ensuring enforcement by each member state. In regulatory terms, both data protection and information exchange by the EU had a strong foundation and did not conflict with each other, as the protection of human rights was implemented concretely. This was evidenced in the subsequent analysis of information exchange standards with FATCA which was mandated to comply with EU standards.

4.3 Method of EU Information Exchange

EU information exchange used three methods namely on-demand, spontaneous, and automatic. 'Exchange of information on-demand' suggested the exchange of information based on a request submitted by the seeking Member State to the requested country in a specific circumstance, as defined in Article 3 Number 8. (Art. 3.8 DAC) 'Spontaneous exchange' referred to the non-systematic transfer of information to another Member State at any time and without previous request. (Art. 3.8 DAC) 'Automatic' exchange of information was used to accommodate new initiatives in the field of tax transparency at the Union level, introducing the CRS developed by the OECD for financial account information within the Union. (Art. 3.9 DAC)

The revocation of the Savings Directive was part of the tax transparency implemented by the OECD as a global standard for the automatic exchange of information. (Art. 3.9 DAC) The member states originally in 2005 avoided exchanging information for tax purposes on the grounds of applying the principle of bank privacy (Wöhrer, 2018, 403) but with the global development nations decided to implement the model. The Directive issued by the EU greatly influenced the implementation of the principle of bank privacy in European nations. However, the Directive that applied within the EU member states was binding and the enforcement correlated with the domestic law of the respective nations. (Wöhrer, 2018, 403)

The European Union further regulated information arrangements with third nations, where the term "third country" referred to a state outside the sender and receiver of information. This setup ensured that when a country receives information, the state does not directly obtain the data from the state initially sending the information. The exchange of information with third nations was permissible provided that it was based on an agreement with the respective third country. In the European

Union organization, when an authorized official from a member country receives information from a third state considered relevant to the administration and enforcement of the member country's domestic tax laws, the official could share the information with the competent authorities in the member states. This sharing was beneficial both for information purposes and for the requesting authority. (Art. 24.1 DAC)

The policy was subject to several conditions that required careful consideration and evaluation. First, the exchange should be approved by the competent authority in the member country where the information originated from. (Art. 24.2.a) DAC) Second, third nations committed to providing necessary cooperation to obtain evidence concerning the irregular or illegal nature of transactions that could conflict with or constitute an abuse of tax laws. (Art. 24.2.b) DAC) In terms of cooperation among the member states, the EU was evident to offer opportunities for third-party states to access information as the parties were either members or bound by legal agreements or treaties with the union. Furthermore, EU nations were extending cooperation to non-EU members and engaging with broader international organizations. From this perspective, global cooperation could not be avoided. Despite multiple agreements with similar objectives, the exchange of tax-related information by the EU nations seamlessly provided that the information exchange meets EU standards.

4.4 Impact of the EU on the Application of the Secrecy

The EU served as an international organization that consistently updates the policies implemented which was similar to the OECD. The union also showed a significant influence on the implementation of both bank principles and online privacy. What distinguishes the union from the OECD was the judicial body with the authority to address violations of agreed regulations and agreements by the member states. Additionally, the EU explicitly addressed tax justice, the protection of privacy rights, and regulations regarding privacy.

a. Bank Privacy

The European Union exerted considerable influence on the application of the principle of bank privacy. This was due to various factors that contributed to the complexity of the situation. First, since 2011 the European Union had a tax-sharing system and exchange of financial account information among the member states. This

information exchange aimed to fight tax fraud and evasion, enhancing transparency and compliance across borders. (European Court of Auditor, 2019, 4)

Second, the European Union had a major role in the Declaration of Automatic Exchange of Information in Tax Matters represented by ministers and the representatives agreeing and participating in the declaration. Furthermore, the European Union served as an international organization whose members were developed European nations. This thought had a great influence, specifically before the formation of the OECD. (OECD, 2014, 3) Therefore, the European Union was the initiator of the information exchange policy.

Data protection was highly prioritized and received special attention due to the emphasis on human rights. Each member country was obligated to manage personal information to ensure the use was solely for the public interest and maintained confidentiality without harming the owner. Personal data was further restricted within the domain of public interest to prevent harm to the data owner. In response to the rapidly evolving digital age, the EU acknowledged the desire of the residents for consistent data protection rights across the EU and wherever the information was processed. Therefore, the GDPR was considered a crucial step in strengthening individuals' fundamental rights in the digital era. It also provided clarity on rules for both companies and public bodies operating in the digital single market. (European Commission, n.d c) Digitalization became inevitable in the context of the automatic exchange of information for tax purposes. Every country has adopted the use of digital information technology to accomplish their objectives.

The application of banking privacy principles within the European Union was limited. This limitation was evident in Art. 18.2 DAC stipulating that a member country was not allowed to refuse information solely because it was held by a bank, another financial institution, a nominee, or an individual acting in an institutional or fiduciary capacity. Similarly, refusal could not be based on the information's connection to an individual’s ownership interests. The European Union firmly stipulated that tax interests could not be hindered solely based on privacy. However, access to information data was still necessary according to the relevant interests.

b. Privacy on the Net

The EU essentially further exerted influence globally by imposing restrictions on the confidentiality aspect of cryptocurrencies, as outlined in Article 8ad of Directive

2023/2226. Each Member State of the European Union was mandated to compel Crypto Asset Service Providers to report specific information automatically. This included data concerning individuals or entities using crypto asset services for reportable transactions. Additionally, the document delineated the reporting obligations incumbent upon member states and Crypto Asset Service Providers. The reported information comprised the identity of the reporter, the transactions executed, and the market value of the crypto assets engaged. Procedures and standards for the exchange of this information were also stipulated in the document. (Art. 8ad DAC)

The EU Commission would ascertain how the requisite information for exchange was automated, either upon requests from Member States or through personal initiative. Requests should be submitted to the Commission with clear justifications. When the Commission considered additional information necessary, the data would be requested from the concerned Member State. Upon acquiring all pertinent information, the Commission would notify the requesting Member State and furnish the relevant data. When acting on personal initiative, the Commission's engagement would pertain solely to agreements mandating the automatic exchange of information regarding a Reporting Crypto Asset Service Provider's clientele. The Commission would evaluate the extent to which the information regime adhered to established provisions, comprising the definition of a reporter, user identification protocols, reporting requisites, and requisite administrative procedures. This procedure also extended to determining how the information no longer complied with applicable regulations. (Art. 8ad DAC)

The regulation regarding cryptocurrency was a form of cooperation highly anticipated by European Union member states because the assets were closely related to the impact of economic conditions. With cooperation between member states, it would be strengthened because the information exchange could not be carried out by a single or double countries, considering the geographically and physically unlimited access to cryptocurrency circulation. This form of cooperation also influenced nations outside EU membership when aiming to obtain related data. Therefore, the criteria should conform to EU standards and the principle of reciprocity could be applied when not harming either party.

The EU represented an international organization that spearheaded global initiatives and policy proposals. As a member of the G20, the EU actively contributed to addressing global challenges and proposed innovative solutions. These ideas were subsequently implemented worldwide, including nations beyond the EU. The union exerted significant influence over international policies, driven by the dynamic and multifaceted challenges faced by the member states.

A challenge addressed by the EU was the storage of cryptocurrency assets, which necessitated cooperation among member states to exchange information. While nations outside the EU could not face identical challenges, this divergence underscored the unique role of the union in addressing common issues faced by the members. The legal framework of the EU outlined the dispute resolution among member states through a predefined structured process.

In contrast to other international organizations such as the OECD or the UN, the EU possessed a strong judiciary system capable of resolving conflicts that may arise from information exchange agreements. These agreements on both conventional currency and cryptocurrency were crucial for ensuring tax justice and upholding human rights. While global cooperation correlated to the EU's model could not be explicitly articulated, technological advancements were compelling entities worldwide to foster communication and collaboration. The EU's collaborative method served as a potential blueprint for global cooperation despite nations growing in capacity and geographical conditions. Therefore, the EU indirectly evolved as a model for fostering cooperation among nations worldwide. This is also known as the Brussels Effect.

As an international/regional organization, the EU possessed the flexibility to enact measures presuming a consensus was carried out among the member states. In the era of digitalization, the EU also addressed the challenges posed by digital currency through innovative agreements and ideas that were previously considered distant or inconceivable due to being within the private domain of each nation’s legal jurisdiction. The exchange of information among EU countries further aimed to address and prevent tax avoidance, money laundering, and financial crimes that negatively impacted state finances. This initiative originated from the background of financial transactions conducted by residents between nations, including the storage

of money/assets abroad or beyond the jurisdiction of the competent government. Consequently, cross-border cooperation was essential to safeguard state revenues.

The collaboration did not conclude there but was further motivated by the evolution of cryptocurrencies, necessitating a collective method to address the challenges spanning multiple nations. Consequently, the international organization should foster cooperation to scrutinize exchanged information. In this context, a country could grant full authority to other nations to conduct examinations on taxpayers and/or the data within the jurisdiction being examined. This collaborative effort was not without purpose but served to stimulate taxpayers to fulfill tax obligations rather than engage in avoidance. Based on these developments, new agreements were developed essentially to delineate the jurisdictional authority within the legal framework (European Parliament, 2023) namely.

1. Crypto service providers were required to obtain permission from member state authorities to operate in the EU.
2. The EU agreed to impose penalties in case of offenses that should be effective, proportional, and preventive. However, the nature and extent of the punishment, as well as its implementation were to be handled by the member states with each having different punishment systems.
3. Even for cross-checking, the TIN of taxpayers was also information subject to inspection. Other EU member states have the authority to access TIN data when tax authorities exchange information with each other. This was because the use of TINs enabled the examination of information, such as cross-border revenue streams.

The commission further proposed to develop a new digital tool that allowed member states to automatically verify the authenticity of TIN. Certain new authorities delegated or given to other countries needed to be anticipated with equal or even reporting. Common views or standards should be established, implemented, and applied by all EU member states. Certain member states also considered electronic money as an essential part of an individual's financial income, making the transaction subject to reporting requirements under DAC, while other countries did not leading to uneven reporting. The establishment of a standard was also essential to bring clarity to reporting entities, addressing the vagueness and lack of definition presented in the

directives. Furthermore, allegations of non-compliance would surface due to imitation or evasion.

The interesting aspect was that the EU indirectly initiated cooperation with nations outside the union. The EU was motivated to also obtain and report information on transactions conducted by crypto customers who were not union residents, and subsequently share the data with relevant third countries. This initiative aimed to assist low- and middle-income countries in enhancing tax compliance. (European Parliament, 2023)

The forward-thinking decision was driven by a strong desire to find solutions to the current challenges. However, the decision did not exclude the possibility of the system being globally adopted. The concept of exchanging information between countries originated from the collaborative efforts of EU member states. Eventually, all jurisdictions worldwide would be correlated with individual interests. Privacy was also considered a facilitator of tax avoidance, thereby leading to injustice which was a concern that the EU paid critical attention to. Therefore, the EU prepared measures to combat both principles of bank and online privacy to achieve tax justice by leveraging authority and legal power.

5. The exchange information of Rubik's Agreement

The tax haven known generally was Switzerland due to the strict bank privacy the institution possessed. Strict bank privacy in Switzerland was often used as a destination country for placing the financial assets of world entrepreneurs. The tax authorities of each country worldwide also considered bank privacy in Switzerland as a facility for preventing *tax evasion*. Since the global crisis, bank privacy has been criticized intensively as money-strapped governments tried to crack down on tax fraud, despite helping Switzerland become the largest offshore center with $2 trillion in assets. (Thomasson and Bart, 2013) The privacy element of the Swiss bank which served as the attractiveness of banking for international customers was threatened. This was because the US demanded UBS to open accounts for US tax evaders. The US increased the pressure on the Swiss bank to show the identities of 52,000 account holders who were US customers suspected of tax evasion. (Zurich, 2009) UBS claimed responsibility but was forced by Swiss financial regulatory agencies to show the identities of 250 to 300 US customers in what the US Department of Justice

described as a highly unusual move. However, UBS vowed to face the lawsuit in the US court in Florida as a preventive measure. This decision increased a similar dispute between Switzerland which represented a haven for illicit money owners and the European neighbours who were resenting the actions of Swiss banking. (Zurich, 2009)

Switzerland's collaboration with the global trend of promoting administrative assistance across borders made significant efforts to enhance international cooperation in the tax sector. A significant effort observed was the application of OECD standards in the exchange of information leading to the abolition of the Swiss reservation on Article 26 of the OECD Model on March 13, 2009. (Rivolta, 2012, 139) The Exchange of Information for Tax Purposes stating that the influence of an international perspective was intensive in eradicating bank privacy for tax purposes was triggered by the global economic crisis, thereby prompting Switzerland to enter into Rubik's Agreements with several related countries to analyse assets stored in Swiss accounts. (Darussalam and Septriadi, 2017, 603)

Through this agreement, access to information exchange for tax purposes with Switzerland was originated but did not remove banking privacy in Switzerland. For tax purposes, Switzerland opened access to the exchange of information between countries. (Darussalam and Septriadi, 2017, 603) To uphold the commitment to banking confidentiality, Switzerland placed a premium on providing excellent customer service to avoid any disruptions. Consequently, Switzerland adopted unique perspectives and strategies for information exchange. Effective communication further played a crucial role in customer retention services. The initial organizational step for any bank included identifying the relevant individuals, specifically taxable customers such as residents of Germany, Austria, and the United Kingdom, including the Continental Shelf and Northern Ireland. The term "relevant individual" under the "Rubik's Agreement" comprised people with direct or indirect investments deposited with Swiss paying agents. Recognizing citizens living abroad and outside Switzerland as "in coverage" was also essential, as the resident could face taxation without a valid residence certificate. (Franceschetti, 2012, 1) Furthermore, Switzerland emphasized the significance of adequate communication and fair treatment of clients as essential conditions for upholding the positive reputation of the Swiss financial market. While it was a disadvantage when certain clients were unwilling to address the situation and

opted to leave, complicating the issues would even be more detrimental to Swiss banks. (Franceschetti, 2012, 2)

5.1 Information exchange clause in the Rubik Agreement

The clause of information exchange was found in the agreement signed by the countries. The Rubik's agreements were all built on the same model, with some differences due to the tax laws of the Contracting States such as the contracts between the United Kingdom and Austria. The agreements were built on the following three pillars namely (i) a regularization mechanism protecting privacy, (ii) a withholding tax collected by a Swiss paying agent which allowed tax on assets to be paid anonymously in the future, and (iii) special treatment for Switzerland. (Oberson, 2018, 153) Furthermore, the system appeared to have some allies in the early stages of adoption which included several key developments. The initial phase focused on the formation of agreements, with significant milestones including. (Colombus Group, 2022)

1. Germany signed on September 21, 2011, and changed on April 5, 2012,
2. The UK signed on October 6, 2011, and changed on March 20, 2012, and
3. Austria signed on 13 April 2012.

The next step included the respective countries' decisions in accordance with the national laws. Therefore, the following agreements were approved by the Swiss Federal Parliament in May 2012. (Colombus Group, 2022)

1. In December 2012, the German Parliament did not endorse the agreement leading to the Rubik's Agreement with Germany not being implemented. It appeared that the development of the "Rubik" model ceased after the German Parliament's rejection.
2. However, the agreements with the UK and Austria came into effect on January 1, 2013. Switzerland also enacted the Federal Act on International Withholding Tax in the same year to regulate the implementation of the agreements.
3. Negotiations were underway with Greece, Italy, and Spain. The countries transitioned towards automatic information exchange as a global standard, which commenced in 2012 but became effective in 2013. Although Rubik still seemed intriguing, the longevity remained uncertain.

Switzerland fostered collaboration through the Rubik's Agreement with neighbouring European nations, constituting a bilateral arrangement operating within the region. This initiative aimed to streamline tax matters and enhance financial transparency among participating nations.

5.2 Targets and purpose of the information exchange of Rubik's Agreement.

The Rubik's Agreement accommodated the obligation of the customer banks to safeguard clients' money while providing tax jurisdiction rights. It ensured that the right to privacy of foreign clients was not infringed upon. Therefore, the Rubik's Agreement comprised two main components namely.

1. Regularization of the Past

   A single regularization payment would be charged for past transactions. (Franceschetti, 2012, 1) Foreigners who had utilized Swiss banking services before the agreement's signing, specifically within five months after signing with Germany, were given two options. The agreement permitted instructing the Swiss payment agent to either make a single regularization payment regarding the relevant assets or proceed with disclosures. Once the respective instructions were provided, individuals had to inform the payment agent in writing of the selected option for each existing account or deposit and this decision was irreversible. (Urinov, 2015, 245)
2. Future Treatment of Capital Investment Income

   Starting January 1, 2013, income, capital gains, and other forms of income would be subject to taxation. (Franceschetti, 2012, 1) Based on the Agreement, Switzerland would levy a final withholding tax on capital investment income proportional to Germany's fixed income tax on investment income. The Swiss paying agent would also charge an additional amount, meeting the tax obligations of Germany in respect of the required tax amount. Taxpayers would also receive a tax certificate issued by the paying agent as proof of taxation, with no further tax liability. Withholding tax collection ensured resident anonymity and any excess amount was returned by the Swiss payment agency on behalf of the relevant country authority, allowing taxpayers to remain anonymous. (Franceschetti, 2012, 1)

Switzerland's regulation method with two different perspectives set the model apart from other information exchange agreement concepts. This reflected the commitment to balance financial transparency with individual privacy rights.

5.3 Scope of information in the exchange Rubik's Agreement

The data material exchanged in the Rubik's Agreement comprised all assets including both those derived from income and profits which were subject to taxation. This exchange aimed to ensure effective taxation for the "person concerned" in a country bound by the Rubik's Agreement. The assets included but were not limited to the following. (Article 2.1.f Agreement Between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on Cooperation in the Area of Taxation) Agreement Between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on Cooperation in the Area of Taxation)

a. Cash accounts and precious metals accounts.
b. Bankable assets owned by a Swiss payment agent acting as a fiduciary agent.
c. All forms of stock, shares, and securities.
d. Options, payables, and continuation contracts.
e. Other structured products traded by banks, such as certificates and convertibles.

The bilateral nature of the Rubik's Agreement allowed both parties to define the scope of information exchange based on mutual interests and agreements. This act fostered cooperation and mutual understanding throughout the negotiation process.

5.4 Tools and Methods for Exchanging Information Rubik Agreement

The Rubik's Agreement represented an alternative to the automatic exchange of information and included a mechanism and withholding tax. Numerous nations increased efforts to combat tax evasion on the part of the citizens due to the changes in the world financial markets after the financial crisis of 2008. Switzerland faced certain formidable obstacles even with the globally renowned financial center. The country entered into withholding tax agreements to address the obstacles, enhanced administrative and mutual assistance, and expanded due diligence requirements for financial institutions to be established as tax-compliant financial centers. (Colombus Group, 2022)

Switzerland favoured the final withholding tax over automatic information sharing, ensuring client privacy while remitting due taxes directly to the respective nations. Additionally, the Confederation would continue to offer administrative support in tax concerns following the OECD norm in the future. A comparable double taxation agreement with the asking country was a requirement for this help. Furthermore, Switzerland aimed to streamline cross-border financial services with partner nations, granting improved market access to financial firms in exchange for enhanced tax collection capabilities of partner tax authorities. (Colombus Group, 2022)

Natural individuals and any entities connected to the financial institutions such as domiciliary businesses, institutions, or foundations were further subjected to taxation. However, the final withholding tax did not apply to the earnings of operationally engaged businesses. The tax was assessed on dividends, interest, and other types of investment income. No matter the taxpayer's personal income or asset status, the final withholding tax was determined at a preset rate. (Colombus Group, 2022)

The Swiss system was founded on the paying agent principle stating that the relevant withholding tax on investment income should be determined and assessed by the Swiss financial intermediary. Additionally, the system presented an intriguing middle ground between effective taxation in the country of domicile and confidentiality protection. (Oberson, 2018, 157) FTA anonymously received the final withholding tax after the payment was obtained by the paying agent. Furthermore, the client's identity would not be disclosed as part of the process because only information about the country of residence was required. The FTA would subsequently transfer the overall tax proceeds to the pertinent country of domicile. The tax liability was further considered as fully satisfied with this transfer. The requirement to report income to foreign tax authorities was eliminated for income from which the final withholding tax had been subtracted. (Colombus Group, 2022) The objective of this proposal was to establish a long-term replacement for automatic information sharing. The worldwide standard for automatic information exchange had shifted the wheel in the interim. (Oberson, 2018, 157) The Rubik's Agreement used a withholding system for exchanging information, ensuring anonymity for the engaging parties. Additionally, the system included tax-paying agents to facilitate the process.

Customer banks have the choice to voluntarily disclose assets to the country of residence or maintain confidentiality while fulfilling tax obligations. In the latter scenario, the paying agent which was typically a bank or securities trader would deduct the tax and subsequently transfer the funds to the country of residence through the Federal Tax Administration. (Franceschetti, 2012, 1) When the customer's account lacks sufficient funds, the bank would be compelled to disclose the customer's name to tax authorities unless a Lombard loan [1] was provided. The Swiss Banking Association recommended sending two letters to clients before the final disclosure to the tax authorities. The first should inform the clients well in advance about the new taxation agreement and the implications, providing the option to report assets or have taxes withheld from January 1, 2013, with a response deadline of October 31, 2012. The paying agent was required to have prepared the internal organization and IT system for this process. The second letter would be sent after January 1, 2013, requesting clients to disclose account information or accept a tax deduction. When there is no definitive answer, tax withholding would be applied. Timely communication, specifically for those who would be opting for "withheld mail" was crucial given the significance of the options to clients. In practice, clients have several choices before the expiration of the validity period in 2012. Those who declared assets to the country of residence have authorized the bank to re-disclose the account information. Clients with undeclared assets could be regularized through a single payment, voluntary disclosure using the "Liechtenstein disclosure facility" (for UK residents),or moving assets out of Switzerland. (Franceschetti, 2012, 2)

Clients should further decide between immediate tax payment and voluntary disclosure at the year-end. The calculation of the taxes should be automated once the volume exceeds several dozen transactions. (Franceschetti, 2012, 3) Taxpayers were expected not to procrastinate tax payments and the Rubik Agreement's implementation with the specific provisions demands a specialized operational system. Operational taxation further required a blend of various skills including knowledge of tax regulations, experience in financial products and resolution

[1] Lombard loans (also known as Lombard credits or Lombard lending) are a type of loan offered by Swiss banks and financial institutions where borrowers pledge securities or other assets as collateral for the loan. The term "Lombard" originates from Lombard Street in London, historically a financial center where such loans were common. See https://www.swissquote.com/en-ch/private/trade/products/securities/lombard-loan

processes, and a good understanding of software applications. (Franceschetti, 2012, 3) Furthermore, the voluntary disclosures stipulated in the UK and Northern Ireland agreement with Switzerland comprised the following information.

> "*(a) Identity (name, first name, and date of birth) and address of the individual concerned, (b) UK tax reference number, when known, (c) the name and address of a Swiss payment agent, (d) the account or deposit holder's customer number including customer, account or deposit number, and IBAN code, as well as (e) during the existence of an account or deposit between the designated 1st and the effective date of the Agreement, the annual account balance and asset statement as of December 31 of each relevant year."* (Art. 10.1 the Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on Cooperation in the field of Taxation)

Regarding voluntary disclosure data, the competent authority in Switzerland would transmit the information to the United Kingdom’s competent authority starting two months after the third disclosure. Subsequent disclosure models would follow due process and should be promptly communicated by the Swiss payment agent to the competent authority in Switzerland, who would swiftly relay the information to the UK's competent authority. (Art. 10.2 the Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on Cooperation in the field of Taxation)

As evidence of tax payment and voluntary disclosure, the Swiss paying agent would issue a certificate in the prescribed form to the individual concerned. (Art. 10.3 the Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on Cooperation in the field of Taxation) Switzerland would also extend opportunities for cooperation with the UK government. Officials in the UK could seek clarification or additional information from the competent authorities in Switzerland when the identification of the individual concerned could not be established based on the provided information. (Art. 10.4 the Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on Cooperation in the field of Taxation) In principle, the method used in Rubik's aimed to preserve the privacy principle of information data entrusted to Switzerland by bank customers, while still allowing the country of origin to access the necessary data.

5.5 Influence of the Rubik's Agreement on the application of the Secrecy

Privacy principles were impacted by the method through which information was accessed, as well as the underlying clauses. The authorized party to access the information in this context was the government, acting as a third party. Furthermore, the Rubik's Agreement possessed distinct characteristics.

a. Bank Privacy

Fundamentally, the exchange of information between Switzerland and the other nations with which it had agreements was not reciprocal. This lack of reciprocity was evident from Switzerland's unilateral effort to provide information without receiving any feedback. The existence of the Rubik Agreement which regulated the exchange of information for tax purposes serves as a middle ground to balance Switzerland's stance on banking privacy and neutrality in tax evasion schemes, often including Swiss banking privacy policies. Information exchange was also facilitated by agents anonymously. The data's information was accessed only by parties with a vested interest in banking, rather than the bank's customers or the financial institution. In essence, customer data from the bank did not influence or get shared personally with any other parties.

Banking privacy was extensively upheld, as all signatory nations expressly affirmed that tax reductions served as a well-established alternative to automated information exchange. The advantages of anonymity were more inclined to persist for a considerable duration for clients residing in the UK and Austria. This was anticipated to endure even in the event of the asset owner's demise, as the agreement with these two nations did not mandate the Swiss payment agency to collect any property taxes under any circumstances. In the case of German residents, anonymity could only be sustained during the lifetime of the original owner. (Colombus Group, 2022)

Switzerland aimed to offer total protection to maintain client trust, rooted in the principle of bank privacy. This was done to facilitate tax payments while upholding the principle of bank privacy. Managing client relationships posed a challenge for Switzerland, requiring diplomatic efforts and a practical mindset to retain clients, ensure satisfaction, and simultaneously enhance the correct implementation of the "Rubik's agreement."

b. Privacy on the Net

The Rubik Agreement solely governed agreements on the exchange of information for tax purposes concerning the protection of customer data related to bank privacy principles until January 2017. Despite the 11-year period from the publication of the white paper on cryptocurrency until the revocation of the Rubik Agreement, Switzerland did not address the exchange of information on online security within the contract. However, the operation of the Rubik Agreement required a request from the participating country. In contrast, the cryptocurrency system operated very quickly and in real-time rendering the contract ineffective. No principle of reciprocity was also observed as Switzerland primarily served as a location for storing money, seemingly without requiring information data from other nations.

6. Exchange of Tax Information by FATCA

The US executed a QI before implementing FATCA to tackle foreign tax avoidance. However, the concept of QI was not enough to combat the idea of foreign tax avoidance (Oberson, 2018, 159) because the QI agreement did not impose a withholding tax since the payments were made to foreign (non-US) entities. (Oberson, 2018, 160) The existence of tax evasion by the citizens was suspected, leading to the country losing the source of income annually from taxes of approximately $100 million. (Byrnes and Munro, 2017, 17)

FATCA was part of President Obama's promise during the campaign to crack down on offshore tax evasion in 2010 (Grinberg, 2012, 23) and a response to the UBS scandal. (Panayi, 2016, 17) According to the US Department of Justice, the country filed legal action against UBS AG. The lawsuit aimed to compel Swiss banks to show the identities of 52,000 affluent Americans who were accused of hiding $14.8 billion in taxes in secret accounts. The case requested that the court require the bank to disclose the account holder's identity. There were 52,000 hidden accounts, of which 20,000 contained securities and the remainder included cash. A Swiss embassy spokesperson asserted that bank privacy was maintained for crucial reasons but not to protect tax evaders. Furthermore, the information was observed to be protected from disclosure by Swiss financial privacy laws. Peter Kurer, the chairman of UBS claimed that the institution did not intend for the dedication to client confidentiality to serve as a defense against fraud or the client's identity. UBS sincerely regretted the

noncompliance of the transnational US business, emphasizing the commitment to rectifying the situation and upholding regulatory standards. (Bloomberg, 2009)

The issuance of FATCA by the US government was prompted by a sense of unease originating from the discovery that taxpayers' reporting and payments were lower than considered appropriate. (Darussalam and Septriadi, 2017, 604) The US Senate Subcommittee later reported that the country's multinational corporations were using tax loopholes to put most of the billions of funds from foreign financial services institutions in US banks, bonds, or stocks without paying taxes. (Darussalam and Septriadi, 2017, 615)

The US government finally issued a tax regulation known as the FATCA in 2010 due to the economic crisis that hit in 2008 and was caused by foreign nationals evading taxes through foreign financial institutions as previously described. This regulation was perceived as a beacon of hope by the US government aiming to reduce the level of tax evasion and increase government revenue. (Mello, 2012, 98)

FATCA formed part of the HIRE Act, where the act was structured as a detector and prevention of illegal tax evasion practices by US citizens through FFI or non-financial services (NFFEs). This was achieved through increased transparency, reporting, and enforcing sanctions. (Darussalam and Septriadi, 2017, 604) Arrangements for FFI's obligations to provide financial account data of US citizens comprising more than 10% ownership held at the institution, either for personal or investigative purposes. Additionally, NFFEs were required to report on the engagement of American citizens in institutional ownership. Failure to comply with FATCA regulations led to a 30% tax withholding on various types of income payments made in the US, including interest, dividends, salaries, and proceeds from the sale of US investment instruments. FFIs refusing to identify US investors experienced these penalties. Furthermore, assets held by US citizens outside the country should be reported to the IRS. (IRS, 2023)

6.1. The Information Exchange Clause FATCA

The FATCA was a regulation established by the US government, introduced as part of the Hiring Incentives to Restore Employment Act (IRS, 2023) promulgated on March 18, 2010, and officially enforced from January 1, 2013. This legislation represented a unilateral policy of the US. FATCA outlined the obligations of FFIs to

provide financial reports to the IRS regarding accounts belonging to US citizens within the institution. The primary objective was to address tax evasion by US citizens, either through direct investments in financial institutions or indirect investments via ownership of overseas companies.

The Congress enacted FATCA on March 18, 2010, by introducing sections 1471 through 1474 in Chapter 4 of the IRC. The final regulations were also issued by the IRS in January 2013. (Oberson, 2018, 160) This Act was integrated into Chapter 1471-1474 of the Internal Revenue Code of 1986 through section 501 (a) of the HIRE Act 2010. (Byrnes and Munro, 2017, 1-4)

Section 1471 (a) IRC (Bloomberg Tax, 2009) stipulated that the withholding agent was obliged to withhold 30% of any withholding payment to FFI that failed to meet the requirements of Section 1471(b) IRC. To become participating FFIs, these institutions were mandated to enter into an agreement with the IRS. (Oberson, 2018, 161)

6.2. Target and Purpose of FATCA

FATCA aimed to ensure that all US direct and indirect account owners declare the value and revenue of offshore accounts to the IRS annually. The framework was established to treat deposits into offshore accounts as post-tax income and mandate the disclosure of the income for US citizens. FATCA was expected to apply to foreign entities with significant US ownership as well as US account holders, comprising both direct and indirect ownership. (Oberson, 2018, 160)

6.3. Scope of Information Exchange FATCA

The scope of FATCA included reporting obligations for both US taxpayers holding foreign financial assets and FFIs. (IRS, 2023) US taxpayers with overseas financial assets were mandated to report certain information about the assets on a new form (Form 8938), which was to be affixed to the annual tax return. This requirement originating from FATCA applied to assets held in taxable years starting after March 18, 2010. This implied that the majority of the filers had to include the figure in the 2011 tax return submitted during the 2012 tax filing season. Failure to report foreign financial assets on Form 8938 would lead to a penalty of $10,000 with an additional fee of up to $50,000 for continued failure after IRS notification.

Furthermore, severe understatement penalties of 40% would be applied to tax underpayments related to undisclosed foreign financial holdings. (IRS, 2023)

FFIs were required by FATCA to submit certain information regarding the financial accounts owned by US taxpayers or by foreign businesses with significant ownership interest directly to the IRS. To comply with these reporting obligations, an FFI had to sign a specific agreement with the IRS by June 30, 2013. A "participating" FFI was required by this Agreement to (1) conduct specific account holder identification and due diligence processes, (2) provide an annual report to the IRS on the account holders that were American citizens or foreign companies with significant American ownership, and (3) withhold and pay over to the IRS 30% of any payments of US source income, as well as gross proceeds from the sale of securities generating income, made to (a) non-participating FFIs, (b) individual account holders or (c) foreign entity account holders who failed to provide enough information. (IRS, 2023)

Based on Section 1471(c) (Bloomberg Tax, 2009) of the Internal Revenue Code, participating FFIs were mandated to identify the US account holders and report certain information annually including the name, address, and TIN of each account holder who was a specified US individual or owned foreign entity. According to Sections 1471(c)(3) and 1473(2) IRC (Bloomberg Tax, 2009), an entity more than 10% held either directly or indirectly by a US individual was a US-owned foreign entity with significant ownership. Section 1471(b)(1)(D) (Bloomberg Tax, 2009) of the Internal Revenue Code also stipulated that participating FFIs were required to withhold 30% of certain payments made to account holders who refused to comply with FATCA requirements. This withholding tax was specifically applicable to payments made to non-participating FFIs when the funds were related to a pass-through payment also known as a withhold able payment. The WHT motivated foreign FFIs to sign up for FATCA compliance even when "not investing in the US but investing in or through participating financial institutions". (Oberson, 2018, 160)

6.4. The Exchanging Information Method of FATCA

Financial Services Institutions worldwide were required by FATCA to provide information on US citizens who held accounts with FSIs to the IRS. (Byrnes and Munro, 2017, 1-4) Implementing FATCA in partner nations was contingent upon bilateral agreements between the FATCA partner country and the state government.

These agreements stipulated the due diligence mechanism, the process of collecting, validating, and exchanging information between the US authorities and the partner country based on the standards outlined in the IGA. (Darussalam and Septriadi, 2017, 606) Furthermore, there were two IGA models used for the implementation of FATCA namely. (Darussalam and Septriadi, 2017, 606)

1. IGA Model 1. Under this model, information was initially collected by the competent authority of the FFI and subsequently submitted to the US authorities. The exchange of information used an automatic information exchange method.
2. IGA Model 2. Information was collected under this model and transferred directly from the FFI to the US authorities. The model used a request-based information exchange method, where the US government requested information related to the financial statements of the citizens, and the FSI promptly provided the requested information.

The IGA Model 1 had two different configurations to accommodate varying bilateral agreements between the US and partner nations. First, the reciprocal version (Model 1A) enabled the US to share data currently collected on foreign nationals who have accounts with financial institutions in the country. (Panayi, 2016, 19) Consequently, only jurisdictions with active income tax treaties or tax information-sharing agreements with the US were eligible for the reciprocal version. This also applied to governments with strict policies and procedures to guarantee that the data was kept private and only used for tax-related purposes. There was a commitment to policy to pursue regulations and support legislation that would allow the US to exchange at equal levels. The second configuration was the non-reciprocal version (Model 1B) where there was no information exchange back and forth. Both nations with and without existing income tax treaties or TIEAs with the US could use the non-reciprocal variant.

The exchange of Information under FATCA could be done automatically (IGA Model 1) or on-demand (IGA Model 2). FATCA rules expanded rapidly, particularly under the new form of IGA which introduced a form of mutual automatic exchange of information between nations worldwide and the US. (Oberson, 2018, 285) Member States such as Luxembourg or Austria established an IGA with an expanded exchange

of information. The country was not in a position to refuse cooperation with another Member State for the same reason. (Oberson, 2018, 285) FATCA through the IGAs established globally accelerated the movement toward a more globalized automated exchange of information among the member states. (Oberson, 2018, 285)

6.5. How does the FATCA affect the application of the secrecy?

a. Bank Privacy

FATCA exerted significant pressure on foreign financial service institutions by implementing a 30% withholding tax tariff on Non-Participating Foreign Financial Institutions. This tariff was applied to all payments received for various types of income originating from the US, including FDAP income. The application of 30% tariff also applied to payments that were pass-thru payments which were also related to withhold-able payments to account holders, including recalcitrant account holders and -participating FFI. The measures aimed to compel states and FSIs to comply with FATCA's information exchange requirements for tax purposes. (Kemenkeu, 2021)

Another form of FATCA that pursued the potential for losing the tax revenue source to obtain information exchange and disregards the principle of bank privacy was imposing a reportable account balance threshold of more than $50,000 for individual foreign customer accounts and deposits as well as over $250,000 for foreign customers. (Kemenkeu, 2021) This approach prioritized high-value accounts, reflecting FATCA's focus on targeting significant financial holdings. Additionally, business considerations should be expended in due diligence to examine the actual ultimate beneficial owner of the account holder in the FATCA reporting procedure. Within the scope of the cooperation, FATCA pressured other nations to exchange information to achieve the tax revenue objectives.

All information communicated with the IRS was enabled by the Competent Authority, and FFIs were less inclined to violate bank privacy laws by having Model 1 IGA. The Competent Authorities compiled and directly delivered reports from all participating FFIs to the IRS. (PWC Indonesia, 2014) However, the US refrained from engaging in financial information exchange agreements for tax purposes. Instead, FATCA represented a distinct approach to information exchange implemented by the US. The existence of FATCA provided the US with a framework that would be more

feasible to continue developing than adopting an entirely new system. The US government known for focus on addressing tax avoidance established bilateral agreements with other nations to collaborate on combating tax evasion and ensuring accurate financial information reporting. This choice originated from the intricate legal and legislative processes engaged in international treaty application. The US preferred an independent method of managing the tax information exchange policy to maintain control over the tax system. Domestic concerns including privacy, data security, or impacts on financial institutions would influence the decision-making process.

In practice, FATCA was mirrored in the IGA Model 1 which facilitated compliance with the requirements for participating foreign financial institutions. The US appeared hesitant to comply with multilateral information exchange agreements instead of FATCA or to undertake radical reforms of the act and IGA, showing limited indications of reciprocal tax data exchange. This situation sparked debates within EU nations, particularly regarding the flow of information directly from EU financial institutions to the US IRS violating banking EU laws. To resolve this issue, the US had requested adjustments, prompting EU Member States to collaborate through the IGA for accommodation. The IGA integrated into the domestic legislation of the Member States also operated under indirect EU law constraints. This situation placed European nations within the EU in a complex legal framework, subject to both internal agreements and external regulations.

FATCA through IGA was observed to contradict EU law in two key instances. First, the storage and transmission of FATCA data by EU financial intermediaries raised concerns regarding procedural security and data protection. Second, EU financial intermediaries refusing to provide services when data was not obtained following the law could have led to a direct violation of the substantive rights of individuals such as involuntary Americans. (European Parliament, 2022)

In response to the resolution of July 5, 2018, the European Parliament enacted several measures on key external dimensions. First, the parliament emphasized the importance of ensuring an adequate level of protection for personal data transferred to the US under FATCA. The Parliament urged Member States to review and amend the IGAs to correlate with GDPR rights and principles. The members called for prompt investigations into any GDPR breaches related to EU data protection regulations,

initiating procedural actions against Member States that did not effectively enforce the rules in FATCA-related data transfers to the IRS.

Second, the Parliament requested the Commission to conduct a comprehensive assessment of the impact of FATCA and US extraterritorial practices on EU citizens, financial institutions, and the economy. This assessment should have considered current efforts in France and other Member States, focusing on potential gaps in EU citizens' and fundamental rights standards due to FATCA and US indications. The Commission was also asked to evaluate the EU-wide status of FATCA and US compliance with obligations under various IGAs signed with Member States. Third, the Parliament called on the Commission to assess and take action to ensure that fundamental EU rights and values including the right to privacy, non-discrimination principles, and EU data protection rules were respected in the context of FATCA and automatic information exchange with the US.

The Parliament urged all Member States to collectively suspend the application of the IGAs until the US agreed to a multilateral method for automated information exchange. This included either revoking or renegotiating FATCA on an EU-wide basis with identical reciprocal sharing obligations on both sides of the Atlantic. Consequently, the Parliament took action by requesting the Commission and the Council to present a unified EU method to FATCA, aiming to protect the rights of European citizens and promote equality and reciprocity in automated information exchange with the U.S. The member states also urged the Council to mandate the Commission to initiate negotiations with the US on EU-US relations, ensuring that the FATCA agreement correlated with fundamental EU law principles. (European Parliament, 2022)

The European Parliament's actions prompted a response from the US in 2022. The initial response from the US was evident in the domestic political proceedings. On April 7, 2022, IRS Commissioner Charles Retting provided an update to the U.S. Senate Committee, expressing support for Bill S. 725, known as the "Stop the Tax Abuse Act." Section 202 of this bill contained "reciprocal provisions of FATCA." Retting also emphasized that the US should honour the commitment to other nations sharing taxpayer information under the FATCA by reciprocally providing similar information.

In the written testimony, Charles Retting underscored the significance of the information obtained by the IRS through the extensive network of relationships

contributing to the success of IRS enforcement against tax evasion abroad. Retting acknowledged the crucial role of information exchange in the implementation of FATCA. Presently, the US provided less information to foreign governments than the EU. The proposed bill aimed to enhance reporting by financial institutions and digital asset brokers. For instance, the bill mandated financial institutions to report account balances for all financial accounts held in US offices and owned by foreigners. These expanded reporting requirements aimed to enable the IRS to furnish an equivalent level of information to cooperating foreign governments under appropriate conditions, supporting the efforts to combat tax avoidance by the residents.

The detailed points of the proposal for mutual exchange of information were outlined in the General Explanation of the Proposed Government Revenue for Fiscal Year 2023. These points included (1) requiring certain financial institutions to report account balances of all financial accounts belonging to foreigners maintained at US offices, (2) expanding current reporting obligations regarding the sources of income paid into accounts held by foreigners to cover similar payments from outside the country (3) mandating reporting of gross proceeds from the sale or redemption of property associated with financial accounts held by foreigners, and (4) compelling financial institutions to report information on certain passive entities and the large foreign owners. For instance, a financial institution managing accounts for a passive entity including a trust would be obligated to acquire and report information to the IRS about the trust's owner. (European Parliament, 2022)

Following actions by the European Parliament and the subsequent response from the US, adjustments were needed in IGAs to correlate with GDPR and ensure reciprocal tax data exchange between the EU and the US. The EU's unilateral policy served as a contingency plan when the bilateral approach fell short. The EU identified three key courses of action in this domain namely (1) In the event of the U.S. disregarding the reciprocity principle in information exchange, the EU could explore the possibility of enacting a "blocking law on reciprocity." This measure would remain in effect until the principle of reciprocity was reinstated concerning FATCA. (2) The "Blocking Act regarding certain items" would be applicable until crucial FATCA provisions related to Accidental Americans were addressed by the US. When the EU blocked FATCA implementation leading to the US imposing a 30% withholding on payments to EU financial institutions as per the requirements, the EU would

reciprocate with a similar 30% withholding on payments to US financial institutions and the operations in the EU. (3) The EU allowed the transfer of FATCA Data from the EU concerning US Citizens who were not residents until specific bilateral measures were adopted. These measures could include the renegotiation of the IGA to ensure reciprocal treatment in tax information exchange and the establishment of safeguards compliant with GDPR for data protection. FATCA would further persist in handling transfers of FATCA Data related to US citizens who were not EU residents. However, there would be a termination clause for transfers of FATCA Data concerning US individuals who were EU residents or citizens. (European Parliament, 2022)

The implementation of FATCA followed a general standard but differed among countries due to unique models. The European Parliament's actions signalled a call for the US to harmonize FATCA application with the legal frameworks recognized in European nations. Importantly, the European Union wielded significant influence in pushing for these adjustments supported by potential consequences for the US. In this intricate scenario, the interplay of robust interests and favourable positions in international agreements significantly influenced the shaping of decisions or agreements. Although agreements were ostensibly rooted in mutual benefits, the prevailing consideration in the instance was the prioritization of taxation interests.

The data protection standards between the US and the EU concerning the exchange of tax information under the FATCA treaty differed significantly. The EU imposed stricter data protection measures compared to the US. This variance in data protection standards had implications for the agreements under consideration. When the EU's stringent standards were to be applied to other parties bound by agreements with the US, it would ensure that those nations’ data protection provisions afforded rights equivalent to those of European Union citizens.

b. Privacy on the Net

The US responded to tax avoidance in cryptocurrency transactions with several policies outlined in the 2024 Greenbook’s Crypto tax proposals. (Baker Mc Kenzie, 2023) FATCA has not established cryptocurrency privacy features comparable to those of the OECD and the EU. However, this implied that there was no mechanism in place similar to FATCA focusing on privacy based on banking principles to address

taxpayers who held their assets abroad. Essentially, the US implemented regulations regarding tax avoidance in cryptocurrency for the citizens.

The conclusion is that the mechanism for handling bank secrecy is mature. However, the same cannot be said for online privacy. The distinction lies in the diminishing role of bank secrecy, which is now supplanted by the capabilities offered by crypto assets. These crypto assets significantly impact the legal status of individuals and entities. Consequently, it is plausible to consider the internet as a potential new tax haven. If this is the case, it underscores the justification for recognizing the principle of tax justice as a human right. While bank secrecy is a national phenomenon addressed by domestic laws and treaties, online secrecy transcends borders and is not confined to any particular country. This global nature of online secrecy makes a compelling case for viewing tax justice as a human right with a worldwide scope.

7. Enforcing the Principle of International Tax Equity

The Rubik’s Agreement was a bilateral agreement that was fair among all existing information exchange contracts because it could accommodate individual interests as taxpayers and bank customers. This allowed individuals to carry out tax obligations without having the privacy rights impaired. The Swiss Government included agents who maintained information on customer data whose tax obligations were paid to the country of origin. The Rubik’s Agreement was no longer valid as Switzerland entered into a bilateral agreement with the EU in 2017 repealing the Rubik's and the RA. With the existence of a bilateral agreement with the EU, efforts to monitor assets held in Swiss banks were essentially resolved, thereby addressing the Rubik's Agreement and the consequences.

The EU was a strong international regional organization and a pioneer in the exchange of information because since 2005 the union regulated and tried to implement among the member states. Essentially, the most impactful factor influencing the world and potentially altering or infringing upon the principle of bank privacy was FATCA. The reason was that US forces with the political economy power to impose sanctions easily on nations that did not want to cooperate to exchange financial information of US citizens. Furthermore, even the collection of information data was carried out without the knowledge of the citizens of that country. This FATCA

movement provided a trigger for the OECD to apply the act more widely through negotiation and collective agreement for the law to be applied globally. The OECD was also motivated by the strength and influence of an economically stable country, resulting in unequal impacts on nations struggling to maintain income and reliant on support from other developed states. In contrast, the UN offered a friendlier information exchange model favouring weaker nations.

FATCA provided a coercive nature with a predetermined nominal form of sanction, contrasting with the OECD's focus on social consequences, which negatively affected the economies of non-cooperating countries. These international agreements significantly influenced and altered the application of bank secrecy principles globally. Human rights and justice were undermined as the state's responsibility to ensure privacy rights became uncertain. The state's instability compromised privacy rights, which were essential for meeting citizens' basic needs funded by tax revenues.

From an international perspective, nations with weak positions and those reliant on tax income faced threats from evasion by non-cooperating states, hindering the ability to collect tax revenue as citizens deposited funds refusing to implement information exchange agreements, or rejecting based on bank privacy principles. In that sub-chapter, the focus shifted to exploring how law enforcement in information exchange activities could ensure justice for both developing nations, which were entitled to protect the tax revenue sources and developed nations aiming to safeguard the trust of bank customers based on confidentiality principles. Furthermore, the section examined the enforcement of various mechanisms correlated with the principles of international tax justice. The subsequent sub-chapters explored organized questions that served as comprehensive explanations of the complex subject matter.

7.1 General Considerations

7.1.1 The International Responsibility of a Country

The principle of universal tax justice and the application of the concept of bank privacy were applied by every country, making the relationship between one country and another unavoidable and holding the state accountable. This was because each country would pursue personal interests without disturbing other nations.

Responsibility represents the obligation to provide an answer and calculate the consequences of actions, as well as providing compensation for any resulting losses. (Supriyanto, 2020) State responsibility could be interpreted as an obligation to make repairs (reparations) arising when a country failed to comply with the legal obligation under international law. According to Black's Law Dictionary, responsibility was narrowly defined as *answerability or accountability.* (Garner, 2014, 211)

Similar to the national legal system, international law recognized the existence of responsibility arising from non-compliance with obligations. (Thontowi and Iskandar, 2016, 193) State responsibility had two meanings namely accountability for actions violating international obligations and responsibility for violations against foreigners.

State responsibility in international law originated from the notion that no country could enjoy the rights without respecting the rights of others. Violating the rights of other nations led to accountability for all actions under international law which was a globally accepted principle. (Thontowi and Iskandar, 2016, 193) Furthermore, state accountability occurred when a country caused harm to other nations, limited to actions violating international law. Actions harming other nations but not violating international law did not contain state accountability. For example, a country that refused the entry of foreigners into the territory. The state possessed the right to refuse or accept foreign nationals into the territory. (Supriyanto, 2020) There were several kinds of state accountability, including international agreements, contracts, concessions, expropriation, state debts, and international crimes.

International cooperation dynamics among nations worldwide included the exchange of tax-related information, forming the basis of relationships through agreements. However, the execution of these agreements often led to instances of international responsibility, where a party failed to fulfill the obligations or caused harm to another country. These matters were addressed by the UN in the domain of the international responsibility of states for internationally wrongful acts, which outlined the principles guiding a country's international responsibility.

The general principles in the responsibility of states for internationally wrongful acts[2] (Responsibility of States for Internationally Wrongful Acts 2012) were outlined in Chapter 1 comprising Articles 1, 2, and 3. Article 1 stipulated the responsibility of a state for internationally wrongful acts, defining any action that violated international law as the responsibility of the country. (UN, 2012, 7) Article 2 detailed the elements of an internationally wrongful act of a state, clarifying actions considered violations of a country's international obligation. (UN, 2012, 12) Furthermore, Article 3 delineated the characteristics of a state's actions considered internationally wrongful. This article regulated the characteristics of a state's actions which were considered as unlawful actions regulated in international law. (UN, 2012, 19)

The accountability aimed at rectifying violations caused, with recovery for the violation taking various forms. Satisfaction, a remedy for actions violating a state's honor, was typically pursued through diplomatic negotiations, often including an official apology or a guarantee against future repetition. Conversely, pecuniary reparation was sought if the violation resulted in material loss. (Supriyanto, 2020)

7.1.2 Agreements

The parties could place a clause in the agreement regarding dispute resolution when a dispute arises in the future. Dispute settlement could be done through deliberation or litigation directed to the International Court of Justice. (Art. 40.1 Statute of the Court of International Court of Justice) Therefore, international agreements played a role in resolving disputes that would arise. These agreements should establish dispute resolution mechanisms related to the contract, which the engaged parties should adhere to. The available methods for resolving disputes comprised mediation, arbitration, and resorting to formal legal proceedings in court.

7.1.3 Alternative Dispute Resolution

The states were obligated to have a resolution when a dispute between nations that threatened the peace of both parties evolved. The UN as an international

[2] "Responsibility of States for Internationally Wrongful Acts 2012" is an international legal guide prepared by the UN's International Law Commission (ILC). It aims to address the legal consequences of wrongful actions committed by states at the international level. This document provides rules and procedures for holding states accountable for actions that violate their obligations in international law. Although not a treaty or convention, "Responsibility of States for Internationally Wrongful Acts" is an important guide in understanding state responsibilities under international law.

organization with security bodies addressed these issues through conventions and regulations. When a dispute arises, the Convention of Vienna would refer to Article 33 of the UN Charter in the resolution. (Art. 65.3 "Vienna Convention on the Law of Treaties 1969) It was stated that the parties to the dispute would jeopardize international peace and security, seeking a settlement through negotiation, investigation, mediation, conciliation, arbitration, judicial settlement, using regional bodies or arrangements, or other peaceful avenues selected by the affected parties. (Art. 33.1 Statute of the Court of International Court of Justice)

Peaceful methods were preferred whenever possible in resolving disputes to maintain harmonious relations among parties. A method was Alternative Dispute Resolution (ADR), which included resolving disputes outside of litigation or court proceedings. This method was voluntary and offered several advantages over traditional litigation, (Hanif, 2020) such as faster resolution, confidentiality, flexibility, cost-effectiveness, and the preservation of working relationships. Both individual taxpayers and countries could engage in ADR to resolve disputes provided the agreement permitted the process.

7.1.4 Litigation

The principle of *pacta sunt servanda* (agreement as law for the parties) represented a principle of international law that formed the basis for an agreement to exchange information for tax purposes. In the information exchange agreement, the parties signed an agreement and were bound by each of the clauses contained in the contract.

Based on the principle of *pacta sunt servanda* which implied the agreement applies as law for the parties. When a default attitude towards the agreement was observed, it could be considered a violation of a law and subject to consequences. The provisions of the clauses contained in the agreement determined the consequences that could be imposed. However, a case could be submitted to an international court in public international cases.

The purpose of the law was expediency, certainty, and justice, ensuring fair and efficient resolution of disputes. (Alexy, 2021) Therefore, an effort to achieve justice in the case was the achievement of a decision from the dispute that arose. The form of

effort to achieve this decision was by submitting a case to the International Court of Justice based on justice in the field of taxation. Justice was obtained through the judicial process, with the judge's decision mandating full implementation by the parties. However, an aspect that needed to be considered was the authority of the International Court of Justice. Cases between parties based on the violation of obligations outlined in the agreement were resolved by the International Court of Justice. Correlating with the content of the Statute of the International Court of Justice, Article 36, Paragraph 6, stipulated that the determination of the eligibility of a case for processing at the International Court could be decided by the Court. (Art. 36.6 Statute of the Court of International Court of Justice) All legal disputes arising from the interpretation of a treaty (Art. 36.1 Statute of the Court of International Court of Justice) or a point also emphasized the principle of pacta *sunt servenda* implying that certain facts when determined would constitute a violation of international obligations. (Art. 36.3 Statute of the Court of International Court of Justice) Violation of international obligations here could be interpreted as originating from international agreements as the contract became binding for the parties.

The two points mentioned, which comprised the "interpretation of a treaty" and "the existence of facts when determined constituted a violation of international obligations" were the jurisdiction of the International Court of Justice in all legal disputes. The jurisdiction of the International Court of Justice was ipso facto (Art. 36.2 Statute of the Court of International Court of Justice) implying it was based on facts. Cases or disputes in the field of taxation and in the context of seeking justice for human rights could be submitted for settlement to the International Court of Justice. This was a process strengthened when the agreement or convention stated that the ICJ was the reference for addressing arising problems. (Art. 37 Statute of the Court of International Court of Justice) Furthermore, Art. 38 stipulated that the ICJ had the function of deciding following international law on disputes submitted to it and would apply the general principles of law recognized by nations. (Art. 38 Statute of the Court of International Court of Justice)

7.1.5 Parties Engaged in Upholding the Principles of International Justice

The disputing parties were legal subjects, suggesting the nations or jurisdictions bound by the agreement. There was a minimum of two jurisdictions, with an outside

party acting as a neutral mediator to resolve disputes and seek a just solution. The third party could be a neutral country appointed by the disputing parties. Disputes arising from treaties, such as other international disputes needed to be peacefully resolved following principles of justice and international law. (page 2 Vienna Convention on the Law of Treaties 1969)

7.1.6 Identifying the Competent Authority for Enforcing International Tax Equity Principles

The place for dispute resolution in the context of upholding the principle of international tax justice was in a neutral location that ensured fairness for all disputing parties. This neutral place needed to facilitate negotiations, investigations, mediation, conciliation, arbitration, judicial settlement, using regional bodies or arrangements, or other peaceful avenues agreed upon by the parties. (Art. 33.1 United Nations. Chapter VI: Pacific Settlement of Disputes) When the parties failed to reach an agreement due to arising disputes, the legal disputes based on the agreement had to be referred by the parties to the International Court of Justice following the provisions of the Court's statute.

7.2 Special Mechanism to Solve Disputes Between Nations in the Frame

The principle of international tax justice needed to be enforced when a dispute arose between the parties who had signed the agreement because the legal relationship that evolved originated from the contract and was binding on the parties. P*acta sunt servanda further supported the principle,* confirming that every agreement was binding on the parties engaged.

Disputes between the parties evolved when a country refused to exchange information, failed to exchange information as agreed upon, or used information data outside the agreed-upon terms. Consequently, a party would experience losses due to the default of another country. To recover the losses incurred, legal protection for the aggrieved country was necessary to achieve justice. In seeking justice, the aggrieved country could file a claim against the defaulting state to fulfill the terms of the previous agreement. This claim was typically filed in a court specializing in taxation cases, specifically those concerning the exchange of financial information. However, bringing the issue before the court required a prior agreement among the nations.

Countries that defaulted by not exchanging financial information for tax purposes had an interest in bank privacy rights, originating directly from human rights. Conversely, countries harmed by breaches of the agreement that related to the exchange of financial information for tax purposes were interested in achieving tax justice, as the state's failure to effectively combat international tax fraud undermined the interests. The pursuit of international tax justice principles was evident through international organizations regulating the settlement of tax disputes among their members. Specific organizations focused on the exchange of financial information for tax purposes, including the OECD, UN, EU, Rubik's Agreement, and FATCA.

7.2.1 Enforcement of the Principle of Tax Justice in the Rubik's Agreement

An agreement was a form of manifestation of tolerance for fulfilling the tax obligations of foreign citizens who deposited money in Switzerland. The Swiss government made efforts to cooperate with neighboring nations that had previously entered into agreements. However, the efforts did not interfere with bank customer data because the information was carried out anonymously. The Rubik Agreement was concluded to continue making efforts to maintain the right to bank privacy, originating directly from human rights, and aimed to achieve tax justice for nations with the agreement with Switzerland to avoid international tax fraud.

In the Rubik's Agreement procedure and the event of an inconsistency in the agreement, it was stated that consultations and agreements would be carried out by the nations agreeing to determine adequate steps. (Art. 41 Treaty Series No. 9 (2013) Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on Cooperation in the area of Taxation) Consequently, any disputes would be resolved through negotiation facilitating mutual agreement.

7.2.2 Enforcement of the Principle of Tax Justice in the FATCA Procedure

Regarding the realization of the implementation of the principle of tax justice in internal procedures, FATCA was a concrete form in which the US government tried very hard to collect taxes from the citizens earning abroad. The US government cooperated with other nations to calculate the income of the citizens to pay taxes. Even making deductions which was an obligation when not done, thereby sidelining the principle of bank privacy as a human right.

There were steps taken to prevent disputes or objections to decisions made by the IRS in the FATCA procedure. (IRS, 2024) The existence of these steps reflected the enforcement of the principle of tax justice because taxpayers did not lose the right to voice disparities or disagreements with tax calculations or tax collection techniques. The US government provided several options for resolving taxpayer complaints in the FATCA procedure including the trial process to appeal. (IRS, 2024) In this instance, the litigation pertained to disputes between individual taxpayers and the IRS, rather than disputes among sovereign States or nations.

FATCA provided a resolution pathway for disputes between taxpayers and IRS employees through a process known as ADR. A dispute could arise from an unresolved case with the IRS or a disagreement with the decision or action. This informal, confidential, and voluntary procedure included a mediator whose roles were to facilitate communication between the taxpayer and the IRS, identify core issues or obstacles to settlement, propose possible terms of settlement, provide perspective and encouragement, as well as ensure equality and mutual respect during mediation sessions. Mediation was inherently voluntary for both parties and was non-binding suggesting that each party retained 100% control over either to resolve the case or not. Both parties including the mediator lacked the authority to coerce the other into accepting something unwilling to accept. The effectiveness of mediation depended on the willingness of both parties to address the disputed issue. This process was initiated to circumvent a prolonged appeal process or costly litigation. (IRS, 2023)

The system offered was mediation which was usually an alternative to litigation when problems arose between nations and when these problems had an impact on individuals. However, this solution system did not guarantee a resolution to every problem.

7.2.3 Enforcement of the Principle of Tax Justice in the OECD Procedure

The enforcement of the principle of tax justice in the OECD procedure was evident through the regulation of Article 25. This allowed individuals who felt subjected to unjust taxation to file complaints through various channels, including submission to the competent authority and proceeding to arbitration.

The case of a taxpayer who believed the authorities subjected taxation not following the Convention could be lodged with the competent authority of the Contracting State where the taxpayer resided or held nationality. This option remained available for three years from the initial notification of the tax imposition not correlated with Convention provisions. (Art. 25 Alternative A.1 Model Tax Convention on Income and on Capital 2017)

The validity of the raised objection would be assessed by the competent authority. When a satisfactory resolution was not reached, the case would be settled by mutual agreement between the competent authorities of both Contracting States, considering tax avoidance measures inconsistent with the Convention. Any agreement reached had to be executed within the timeframe dictated by the domestic laws of the relevant country. (Art. 25 Alternative A.2 Model Tax Convention on Income and on Capital 2017)

The competent authorities of the Contracting States were tasked with addressing difficulties or doubts regarding the interpretation or application of the Convention through mutual agreement. The contracting states could also collaborate to address double taxation in matters not provided for in the Convention. (Art. 25 Alternative A.3 Model Tax Convention on Income and on Capital 2017) These authorities possessed the power to directly communicate with each other, either independently or through collaborative commissions to achieve mutual agreement. Through consultations, these competent authorities could formulate bilateral procedures, conditions, methods, and techniques considered suitable for the effective implementation of collective agreement procedures. (Art. 25 Alternative A.4 Model Tax Convention on Income and on Capital 2017)

Article 25 offered an alternative solution through arbitration when the case submitted to the competent authority remained unresolved. Arbitration was conducted against the backdrop of two key considerations. Firstly, a case had been submitted to the competent authority of a country based on the actions of a single or both countries, resulting in that person being subject to taxation not following the provisions of the Convention. (Art. 25 Alternative B.5.a) Model Tax Convention on Income and on Capital 2017)

Any unresolved issue arising from the case had to be submitted to arbitration when competent authorities made a request. However, these unresolved issues would not be submitted to arbitration when a decision on the matters had been submitted to the court or administrative tribunal of either State. The arbitral award would be binding on both States and enforceable regardless of any time limit in the domestic laws of those States unless the two competent authorities agreed on a different solution within six months of the decision being communicated. Conversely, when someone was directly affected in the event of not accepting the collective agreement implementing the arbitral award. The competent authorities of the two parties to the agreement by mutual agreement would resolve the case following the application of the provisions. (Art. 25 Alternative B.5.b) Model Tax Convention on Income and on Capital 2017) The competent authorities could not reach an agreement to settle the case following Paragraph 2 within three years after the case was submitted to the competent authority of the other Contracting States. (Art. 25 Alternative B.5.b) Model Tax Convention on Income and on Capital 2017)

In the process of tax justice enforcement, the OECD provided a logical solution starting from submission to the competent authority where the taxpayer was located or to an authorized official according to nationality up to the arbitration process for the continuation of the settlement process. The OECD process mentioned the option of submitting to the court before arbitration. In the context of upholding justice, an individual's rights were still protected to be filed in court. Concerning access to personal data for the settlement of tax collection complaints not following the agreement, the courts played a role. The courts should consider filing cases of non-compliance with tax collections under this agreement, based on the premise that taxes were a basic human right as part of the public interest. Furthermore, this served to address issues between engaged parties when a country failed to exchange tax information despite the obligation.

The OECD had established another crucial provision aimed at achieving international tax justice, specifically addressing dispute resolution through mutual agreement procedures. Individuals had the right to bring forth a case concerning non-compliance with a tax treaty to the competent authority in the contracting jurisdictions. This case had to be initiated within three years of the initial notification of the act

leading to tax non-compliance. (Art. 16. 1 Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting) Additionally, the OECD facilitated mutual agreements between jurisdictional authorities, where the competent authority collaborated with the authorities of other contracting jurisdictions to resolve reasonable cases. Any agreements reached would be enforced irrespective of domestic law time constraints. (Article 16.2 Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting) Furthermore, the authorities of both contracting jurisdictions committed to jointly addressing any challenges or uncertainties arising from the interpretation or application of the Tax Treaty. The authorities could also engage in consultations to prevent instances of double taxation. (Article 16.3 Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting) The OECD allowed parties to assert the right to select not to apply the first sentence of Paragraph 1, provided the parties adhered to the minimum OECD/G20 BEPS standards (Art.16.5.a) Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting) and had not established a time limit. (Article 16.5.b) Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting)

The procedures for resolving disputes between individuals and nations were regulated but there had been no specific procedure or singular method for resolving disputes between nations. In such cases, disputes had typically been resolved through negotiation for a new treaty or, as a last option, by resorting to the International Court of Justice. Conversely, individual problems requiring resolution for justice were usually addressed through deliberation. Seeking justice at the international level had often comprised a lengthy process, necessitating the engagement of international courts in cases where significant harm or threats to many lives were observed. While an individual could file a complaint regarding unauthorized use of tax information or data resulting in personal harm, seeking redress through international courts was time-consuming and complex. This was primarily due to the absence of clear protocols or settlement arrangements at the international level to address human rights violations from an individual tax perspective.

7.2.4 Enforcement of Tax Equity Principles in Procedures Articles of the UN Model Double Taxation Convention Between Developed and Developing Nations

The UN regulated the procedure for collective agreements outlining solutions for discrepancies with previously agreed agreements. These solutions included mutual agreement, arbitration, and settlement through the courts. The UN reproduced the OECD's mutual agreement procedure arrangement as regulated in Art. 25.

The collective agreement procedure served not only as an avenue to resolve questions relating to the interpretation and application of the Convention but also as a (1) forum for seeking redress for acts not following the convention for residents of the nations (2) mechanism for eliminating double taxation in matters not regulated in the convention. (Art. 25.2. United Nations Model Double Taxation Convention between Developed and Developing Countries)

Although Article 25 of the UN Model reproduced Article 25 of the OECD Model, Article 25 of the UN Model paid special attention to considerations for nations that want to take a solution by conducting arbitration. The UN directed nations to consider the policy and administration of each Contracting State and the experience with collective agreement procedures. (Art. 25.3 United Nations Model Double Taxation Convention between Developed and Developing Countries) These considerations included (1) nations analyzing the advantages and disadvantages of compulsory or voluntary arbitration and (2) evaluating the suitability of the arbitration. The UN also stated that nations having limited experience with collective agreement procedures found the process difficult to determine the consequences of adding arbitration, thereby refusing arbitration. The UN also proposed another option, suggesting that arbitration could be achieved but the implementation could be postponed until each country informed the other about the provision taking effect. (Art. 25.3 United Nations Model Double Taxation Convention between Developed and Developing Countries)

The UN emphasized the settlement of tax disputes with an agreement between the parties by including the points of settlement in the agreement. It allowed countries lacking experience to add arbitration to the collective agreement procedure, assuring taxpayers that cases filed under paragraph 1 of Article 25 would be resolved by mutual

agreement unless a party rejected the collective agreement. (Art. 25.3 United Nations Model Double Taxation Convention between Developed and Developing Countries)

Several considerations faced by developing and developed nations were further regulated by the UN to uphold the principles of tax justice in procedures. This included dividing the concept into two alternatives namely with and without an arbitration process. Several factors were also considered when deciding which approach to implement.

In the procedure without experiencing an arbitration process, the committee members considered various arguments to determine the course of action. Alternative A was selected by considering the conditions of each country included in the dispute, either developing or developed nations. The consideration originated from the recognition that many developing nations lacked experience with collective bargaining processes, making arbitration potentially unfair when disputes arose with more experienced nations. Additionally, Alternative A factored in the limitations faced by developing nations in terms of the arbitrator's understanding of the specific circumstances in tax disputes. The UN acknowledged challenges in ensuring the impartiality and availability of skilled arbitrators, as well as the high costs associated with mandatory arbitration. Alternative A was considered preferable in cases where the nations preferred not to use mandatory arbitration to limit the authority on tax matters.

Among the states that agreed to authorize competent authorities of the state parties, the legitimate figures included the Minister of Finance or the legal representative responsible for administering the convention. These representatives had the authority to mutually resolve any difficulties that would arise in connection with the interpretation of the convention. This did not exclude the interpretation of international treaties, which were subject to the domestic laws of the nations and fell under the exclusive rights of other authorities. (UN, 2017)

The UN explained that domestic law posed obstacles to the implementation of the convention. To address this issue, the Convention could be supplemented by a protocol. States Parties had the option to engage in consultations to eliminate double taxation, correlating with the respective national legislation or tax treaties. In scenarios where residents of a third State maintained a permanent establishment in both Contracting States, competent authorities could collaborate to agree on the facts and

circumstances of a case for the reasonable application of domestic tax law. States Parties would offer relief from double taxation on the profits of the permanent establishments, but this was contingent upon compliance with national legislation or tax treaties between States Parties and third nations. Essentially, the UN provided a framework where Paragraph 3 played a crucial role in facilitating consultations with competent authorities, ensuring the effective and coordinated operation of tax treaties. (UN, 2017)

The UN oversaw the resolution of disputes when an individual or entity believed that tax imposition did not correlate with the convention's provisions. In this case, the individual could present the matter to the competent authority in the residing Contracting State within three years from the first notification of the non-compliant tax action. (Art. 25 Alternative A.1 United Nations Model Double Taxation Convention between Developed and Developing Countries) Additionally, the resolution of the case could be conducted through mutual agreement with the competent authorities of other Contracting States to avoid taxation incompatible with the convention. (Art. 25 Alternative A.2 United Nations Model Double Taxation Convention between Developed and Developing Countries) The UN also governed consultations between these nations to eliminate double taxation in matters not covered by the convention. The competent authorities of both Contracting States would strive to resolve any difficulties or doubts in the interpretation or application of the convention through mutual agreement. (Art. 25 Alternative A.3 United Nations Model Double Taxation Convention between Developed and Developing Countries) Furthermore, the UN dictated that the competent authorities of both Contracting States could communicate directly, including through joint commissions to reach agreements. Through consultation, these authorities could develop appropriate bilateral procedures, provisions, and methods for the implementation of mutual agreement procedures. (Art. Alternative A.4 United Nations Model Double Taxation Convention between Developed and Developing Countries) When an individual or body believed that the actions of either Contracting State would lead to a tax imposition contrary to the convention, Remedies provided in the domestic laws of those States might have been exempted. (Art. 25 Alternative B.1 United Nations Model Double Taxation Convention between Developed and Developing Countries)

Arbitration would be sought at the request of the competent parties when any issues remained unresolved. However, arbitration was not applicable when a decision on the issue had already been made by a court or administrative tribunal in the State. The arbitral decision would be binding on both States and implemented irrespective of domestic laws' time limits, unless the competent authorities agreed on a different solution within six months or when the affected person rejected the collective agreement implementing the arbitration award. The competent authorities of both Contracting States would mutually determine the manner of implementation. This procedure in cases of disputes between nations where a country failed to communicate tax data to the requesting country could proceed when all parties act in good faith to resolve the dispute. However, when a party remained at a loss and could not find a resolution after following this procedure, an alternative solution would be required. All of these procedures applied in instances of double taxation issues without explicitly addressing other losses. For instance, the losses would occur when a country discloses the tax data to other nations in contravention of the convention.

7.2.5 Enforcement of the Principle of Tax Justice in EU Procedures

The European Union (EU) represented an international organization where member states could derive convenience and benefits from interactions on the European continent. This association primarily influenced economic arrangements and relations among the member states. Significantly, the foundation of this arrangement was rooted in legal frameworks portraying the EU as a legal community. Both organizationally and domestically, compliance was mandated as member states were expected to adhere to domestic laws correlating with EU organizational laws agreed upon by other member states. This initiative aims to coordinate and harmonize the tax structures of European Commission (EC) member countries and non-EC member countries. A harmonized EC tax system could facilitate closer income tax coordination and administrative cooperation, as outlined in the Council of Europe-OECD draft convention (Council of Europe and OECD, 1989), between EC members and non-EC countries (Kopits, 1992).

Established upon shared values among the member states, the EU operated as a legal community. The cornerstone of the community lay in the application and enforcement of EU law, emphasizing respect for the rule of law. Laws served as the

EU's most potent tool in delivering societal, business, and environmental benefits. The principle of the primacy of EU law was anchored in equality before the Treaties, ensuring uniform rights for everyone within the EU. This principle dictated that all provisions of EU law should possess the same interpretation and be uniformly applied across all Member States. Upholding this law was essential for the EU to safeguard and promote the values, facilitate effective judicial cooperation, and ensure the security of the Union.

The mutual ties between member states based on agreements formed a legal foundation. However, this did not rule out the possibility of member states that had agreed to these agreements committing violations and causing losses to other members of the EU. Both preventive and curative measures were in place by the EU to handle the situation. Preventive measures were emphasized by the Commission, and cooperation between the Commission and Member States was crucial. Through various tools, the Commission consistently assisted Member States in correctly implementing EU law, aiming to prevent violations.

As for curative measures, the EU used infringement procedures correlated with the law enforcement policy. These procedures were administered by the Commission, which served as the custodian of the Treaty and EU law more broadly. According to Article 17 of the Treaty on the European Union, the Commission's role was to ensure the protection of the EU's interests and supervise the application of Union law under the Court of Justice of the European Union's control. Infringement procedures regulated in Articles 258 and 260 of the Treaty on the Functioning of the European Union (European Commission, 2022) allowed the Commission to take formal action against Member States suspected of violating EU law and requiring the party to rectify the situation by a specified date. Referral to the Court of Justice would be necessary when the violation persists. Essentially, this remedial action aims to uphold the principle of tax justice, emphasizing that no rights are absolute and that certain rights must not be exploited to undermine others (Knobel, 2024). The court process also aims to provide legal certainty (Mudrecki, 2018. 56).

Furthermore, priority was given to addressing violations with the greatest impact on society and the business world, hindering the implementation of crucial EU policy objectives. Treaty breaches constituted part of the four main types of EU law

breaches. Infringement procedures primarily aimed to ensure that Member States applied EU law in the general interest rather than providing individual redress. Cases of incorrect application without general principle issues or evidence of systemic weaknesses were handled more effectively by redressal bodies closer to those affected by the violation.

Article 258 of the Treaty on the Functioning of the European Union granted the Commission authority to take legal action against Member States not complying with the obligations under EU law. (European Commission, 2022) The infringement procedure began with an official notification letter requesting information from the Member State, which had to be answered within two months. When unsatisfied, the Commission would issue a formal request for compliance (reasonable opinion), requiring the Member State to inform the Commission of steps taken within another two months.

The Commission could refer the country to the Court of Justice when a Member State failed to comply. Furthermore, corrective measures would be taken when the Court rules against the Member State. When the initial decision was overturned and non-compliance persisted, the Commission could proceed with an infringement case under Article 260 TFEU (European Commission, 2022) with a single written warning before referring the Member State back to the Court.

In cases of referral, the Commission would propose financial sanctions based on the duration, seriousness, and the Member State's ability to pay. This consisted of a lump sum depending on the time passed since the original Court decision and daily fines until the violation ends. Financial sanctions could also be imposed at the first instance, as outlined in Article 260(3) TFEU (European Commission, 2022) for failing to amend a directive within specified time limits. Thus, there are two possible issues in the EU which are violations of EU law and disputes between member countries.

Furthermore, MAP was the administrative process used when tax disputes arose between the competent authorities of the Member States. The authorities tried to resolve the conflict during the MAP. Council Directive 2017/1852 of 10 October 2017 regulated a time limit of two years for the MAP, or a time limit of three years when the

appropriate competent authority requested an extension for good reason. (European Commision, n.d. d)

When officials representing a specific country failed to reach a consensus on the resolution of a given issue within a stipulated timeframe, it was incumbent upon officials from each respective country to inform the individuals adversely affected by the matter. Consequently, the officials were required to elucidate the overarching reasons contributing to the inability to achieve a mutual agreement. (Art. 4.1 Council Directive (EU) 2017/1852 of 10 October 2017 on the mechanism for resolving tax disputes in the European Union)

After the competent authorities of the Member States reached an agreement on resolving the disputed issue within the specified timeframe, the official promptly informed the affected individual of the agreement. It was considered a binding decision on the authorities, enforceable by the affected individual provided that the decision was accepted and waived the right to other remedies. Evidence of acceptance had to be provided within 60 days from the date of notification. Subsequently, the decision was implemented without delay, regardless of the time limit set by the national laws of the Member States engaged. (Art. 4.2 Council Directive (EU) 2017/1852 of 10 October 2017 on the mechanism for resolving tax disputes in the European Union)

Where the competent authorities of the Member State concerned had not reached an agreement on how to resolve the disputed issue within the timeframe specified, the competent authority of the respective Member State concerned would notify the affected persons stating the general reason for the failure to reach an agreement. (Art. 4.3 Council Directive (EU) 2017/1852 of 10 October 2017 on the mechanism for resolving tax disputes in the European Union) After the submission of the opinion of the advisory commission, the relevant authorities were informed of the opinion. The competent authority of the Member State concerned would make a decision based on this opinion. When a final agreement could not be reached promptly, the opinion became legally binding on the relevant authorities. Specific decisions would be published online, ensuring transparency and accessibility to the public. (European Commission, n.d. d)

When a disagreement arose where the dispute could not be resolved through MAP between the relevant agencies, the taxpayer could request the formation of an

advisory commission. The Advisory Committee consisted of three impartial individuals and the relevant authorities from the Member States in the dispute. These individuals were selected from a specially developed list and were added after being nominated by Member States following the Directive.

The Rules of Function defined the procedure in detail and should be approved by the responsible authority sitting on the Advisory Committee. When the Taxpayer was informed of the Work Order, or the notification was not sufficient. (Payton, 2010, 1) The detailed procedural descriptions in the Functioning Rules which should be approved by the authorities on the Advisory Committee raised the question of how the situations would be impacted including individuals and states. For instance, how did the notification differ from a situation where two or more nations faced resistance when a Taxpayer received a Work Order or notification that was considered insufficient? In both cases, it was important to consider the application of different laws and procedures, as well as the role of the responsible authorities in resolving the issue.

Furthermore, a country could sue another through the European Court, particularly via the European Court of Justice. A crucial role was played by the European Court of Justice in interpreting and enforcing European Union law. However, this legal process was subject to strict agreements and rules. Member states of the European Union and certain parties with relevant legal interests had the authority to bring lawsuits before the European Court of Justice, typically related to alleged violations of European Union law by a country. These lawsuits often entailed lengthy and intricate proceedings, with the outcome dependent on the specific facts and laws included in the case. The European Court of Justice possessed the authority to issue binding rulings on countries accused of violating EU law.

The competent authorities of the Member States could alternatively opt to establish an Alternative Dispute Resolution Commission. Furthermore, this authority could sanction the formation of a permanent committee called the 'Standing Committee,' as outlined in Paragraph 1 of Article 10 of the Council Directive (EU) 2017/1852 on the mechanism for resolving tax disputes in the European Union. (Art. 10.1 of Council Directive (EU) 2017/1852 on tax dispute resolution mechanisms in the European Union)

In resolving disputes between EU member states, the process stipulated the use of dispute resolution mechanisms to address contested issues in a binding manner. Besides the Advisory Commission's opinion process, other dispute resolution methods such as 'final offer' arbitration could be approved by authorized officials of concerned Member States. These methods were implemented by the Alternative Dispute Resolution Commission, as specified in paragraph 2 Article 10 of Council Directive (EU) 2017/1852 on tax dispute resolution mechanisms in the European Union. (Art.10.2 of Council Directive (EU) 2017/1852 on tax dispute resolution mechanisms in the European Union)

Both the agreement and the law were observed to govern taxation. The agreement comprised articles that governed tax disputes, either including the taxpayer and the tax authority or disputes between nations having a mutual agreement. The Rubik's Agreement was the simplest due to the background as a bilateral agreement. Consequently, Rubik’s Agreement regulated matters between two nations making the process simpler than multilateral or regional agreements. Essentially, the process only required a consensus between the parties to resolve disputes.

FATCA was more commonly perceived as a unilateral agreement while the Rubik Agreement was considered a bilateral agreement. Other nations were compelled by FATCA through a withholding policy for non-compliance, essentially regulating tax disputes for the citizens. Therefore, FATCA operated without any consensus and primarily served the interests of a country.

There were organizations such as the EU, OECD, and UN, with a broader and more global scope. Laws and agreements should comprehensively address the interests of all nations, ensuring fairness and equity in international relations. However, each organization had differences in the policies regarding tax disputes. It was observed that the UN was more considerate of developing nations and the limitations, such as how to handle the arbitration process. Another aspect was how to deal with a country that did not have any agreement or did not follow the law. Specifically, there were no rules addressing this point. Some nations lacked strong influence in global interests but deserve equal sovereignty. This posed difficulties for nations rejected by others due to the tax interests. Another scenario pertained to taxpayers who were

taxed in other nations without any agreement or legal binding. This raised the question of where tax justice was, suggesting the need for equitable tax practices globally.

The world needed a concrete framework to regulate this matter, ensuring fairness and accountability across international tax systems. The UN Charter of Human Rights should comprise this concept, considering that the UN broadly consisted of nations worldwide. EU member states failing to comply with the law should face penalties, similar to the deterrent effects seen in the EU and FATCA. (Macintoshjune, 2018) Therefore, it can be analyzed that the world needs a foundational solution, beginning with a declaration and leading to the establishment of a judiciary to address global tax issues. This topic will be explored further in the next sub-chapter.

7.3 Proposed Enforcement of International Tax Justice Principles

The principle of bank secrecy is gradually losing its influence as recent global problems are associated with the secrecy characteristic of cryptocurrencies. The handling of secrecy in cryptocurrencies is similar to banks. Therefore, international organizations such as the OECD and the European Union constantly update policies through various agreements. Disputes are still possible when previous agreements are unfulfilled, which indicates the parties need to have other alternatives.

In general, the way disputes have been resolved in international treaties, including tax treaties and agreements initiated by international organizations, has provided a basis for their respective solutions. However, as explained earlier, the problem of taxation is not only found in agreements between countries but also concerns individuals and countries influenced by economic, political, and legal circumstances. It is not only in the form of disputes that require resolution there are many challenges related to tax issues in this digital age, as the OECD has reported and analysed, including adverse tax competition, tax havens, secrecy, and unfair distribution of tax burdens.

Tax problems experienced by individuals are typically resolved first in their respective countries, as it is the responsibility of the state to address the legal problems of its citizens. However, with the growing principle of tax justice, which asserts that everyone has the right to pay fair taxes, sometimes the state lacks a solution. This is because some wealthy citizens can store their wealth abroad easily

without the knowledge of the tax authorities. Another issue is when a company has a business abroad with an entity that is different from the legal establishment in the place of its business productivity. This requires international cooperation, which is beyond the reach of domestic governments without collaboration with other countries. Tensions in which states seek to defend their right to apply taxes and citizens' right to be taxed fairly will always lead to disputes. (Bantekas, 2017, 22) Such disputes create injustice for individual citizens, and if not resolved, the government cannot maintain its credibility if it does not effectively address issues within the scope of Public International Law. (Howard, 2023, 283)

In the absence of the rights of the parties, legal protection is needed, in this context basically the principles of international tax justice law are part of human rights that must be realized. Such embodiments are based on general international law. The UN should declare tax in the International Bill of Rights as a globalized organization because it is integral to human rights. Previously, deliberations were held to reach a global agreement on the inclusion of international tax justice as a clause in the International Bill of Rights. Additionally, each state has been working towards achieving domestic tax law justice. This deliberation is important.

Every country should support this idea because, fundamentally, each nation strives to achieve good governance. While it does not create binding obligations, governments that achieve their goals will inevitably realize good governance. As analysed in Chapter 2, taxes are an important part of good governance, particularly in the context of ensuring fair taxation. Disputes between parties to tax treaties are not the sole reason or background for the need to realize the principles of international tax justice through declarations and consensus.

Achieving this consensus is not easy but also not impossible. One or several countries with the same idea can submit this proposal to the UN council. After submission, it is necessary to make decisions democratically. Agreements among the countries of the world gathered to make a joint decision can be reached through voting or consensus. These two methods have different foundational principles, which dictate their use. Consensus is implemented when the country's representatives agree to forego a formal vote. (Payton, 2010, 1) Or in the case of maintaining a hierarchy of voting rules, states should attempt to make decisions by consensus first. If no

consensus is reached, they will then move on to formal voting rules. (Payton, 2010, 1) What is most crucial, however, is the manner in which the application of consensus can influence international outcomes. (Payton, 2010, 30) For the impact of the consensus to be effective, it must become an active legal norm.

Therefore, through consensus among the countries of the world, international tax justice should be codified in a universally recognized written document, thus forming a normative legal framework. Respect for human rights requires law enforcement at both national and international levels, as outlined in the International Bill of Rights. (UN, n.d b)

In the process of codification, we should learn from the history of the formation of the UDHR. Initially, the UN established a specific commission led by a chief in charge. A similar commission is needed to take full responsibility for this idea, acting as the driving force behind the formation and enforcement of these legal norms. The UDHR did not have a smooth path to acceptance because the world had never previously agreed on a general concept of human rights. (Black, 2023) It is also possible that a similar process will be encountered in declaring the legal principles of international tax justice as part of human rights, recognized in writing as the basis of legal norms.

While writing in legal language with the same intent and purpose among the members of the commission cannot be avoided, debates are inevitable. This is because, as we know, each country has its own concept of international tax justice. In its universal formulation, a grammar that is easily accepted is needed, but without compromising its true meaning. Even the UDHR required 3000 hours of deliberation in its formation. (Black, 2023)

However, once the drafting was completed, it was decided to push for a comprehensive agreement that could be adopted as quickly as possible. Even the chairman of the commission urged that the assignment of the Human Rights Commission be divided into three complementary tasks: drafting a human rights declaration, a treaty to enforce it, and the establishment of a human rights court to hold violators accountable. (Black, 2023)

As mentioned, after reaching a consensus and deliberating on the formulation for the declaration, it is possible that there are some parties who do not agree with it. The case of the UDHR illustrates that the U.S. State Department was reluctant, and even rejected, to accept a definition of human rights that includes social, economic, and cultural rights, not just civil and political rights. (Black, 2023) Meanwhile, from the perspective of the principle of international tax justice law, countries can be seen not only as users of taxes from their domestic environment but also as destinations for storing assets from foreign residents. In other words, they have the potential to be tax havens. For the principle of tax justice to serve as the foundation of tax cooperation beneficial to the community, every country involved in tax cooperation must recognize the existence of the declaration.

Furthermore, at present, there is no forum that accommodates the trial of tax cases such as the settlement of international crimes in general. Due to the inconsistencies, questions arise about which international organization is competent in international tax dispute resolution. The OECD focuses more on advanced economic policies and lacks a judicial apparatus. Meanwhile, the European Union, which has legitimacy in tax justice issues and a judicial body to resolve disputes, operates only at the regional level. As a global organization consisting of many states, the UN offers an alternative perspective and emphasizes various issues beyond economics.

From an international perspective, the current competent judicial authority is the International ICJ. The role of the ICJ is to resolve legal disputes raised by states and provide advisory opinions on legal issues raised by official UN and specialized agencies in accordance with international law. (IJC, n.d) Article 34 of the Statute of the ICJ (IJC, n.d) provides an overview of the group responsible for a case at the ICJ, the methods that can be used by the Court to obtain information from international organizations, and the procedures for interpreting the founding documents of an international organization in a case. According to the first paragraph, the state is the party to the dispute, which indicates people, companies, or non-state organizations cannot bring cases directly to the Court. However, tax disputes comprises people and company losses, which indicates the UN needs to establish an agency capable of accommodating both parties other than the states.

The second international judicial agency competent to hear tax cases is the World Court of Human Rights. The World Court of Human Rights provides a forum for adjudicating people claims and class action suits arising from large-scale human rights violations, as opposed to the ICJ. (ICJ, n.d) Parties to the dispute are people affected by these violations and not states. Although this international judicial body is not part of the UN, cases accepted for adjudication by the court will be decided in part based on UN human rights-related conventions and case law, which evolved from the UDHR of December 10, 1948. Cases brought before the court will also be adjudicated in accordance with regional human rights conventions, case law, as well as generally accepted human rights custom, practice, jurisprudence and scholarship. (ICJ, n.d) Therefore, the declaration in the UDHR is important as a foundation.

In addition to human rights courts whose scope is international, there are human rights courts whose scope is regional, namely the European Court of Human Rights and the African Court on Human People's Right. The European Court of Human Rights is an international court established in 1959. This court governs the application of individuals or States for alleged violations of civil and political rights provided for in the European Convention on Human Rights. Either individual can apply directly. Decisions issued by the European Court of Human Rights are binding on the countries concerned. Thus, causing governments to change their laws and administrative practices in various fields. The legal case presented to the Court makes the Convention a powerful living instrument to face new challenges and consolidate the rule of law and democracy in Europe. There are 46 member states of the Council of Europe that have ratified the Convention. (Council of Europe, n.d) With its establishment, it is not surprising that Europe has human rights courts. However, in Europe, there hasn't been a specific human rights court proven to address taxation cases or grievances related to taxation. In this context, global recognition is needed.

The next court is the African Court on Human and Peoples' Rights. The African Court of Human and Peoples' Rights (the Court) is a continental court established by African countries to guarantee the protection of human and people's rights in Africa. It complements the functions of the African Commission on Human and Peoples' Rights. The tribunal was established under Article 1 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and

Peoples' Rights, adopted by the Member States of the Organization of African Unity at the time. The Protocol establishing the Court does not grant criminal jurisdiction like that of the International Criminal Court. (African Court on Human and Peoples' Rights , n.d.) The African Court focuses on cases of violations of human and people's rights brought by member states, African intergovernmental organizations, and individuals and non-governmental organizations with special permits. It adjudicates human rights violations under the African Charter of Human Rights and Peoples' Rights but has no authority to try or convict individuals for criminal crimes such as genocide, war crimes, or crimes against humanity, which are the jurisdiction of the ICC.

Out of all the member states, only 34 agreed with the content of the Protocol, and only eight agreed to authorize the African Court of Human and Peoples' Rights to accept and process cases filed by individuals and non-governmental organizations (NGOs). (African Court on Human and Peoples' Rights , n.d.)

Both forms of human rights justice are manifestations of the human rights recognition clause, which has become active law. Both the European Union and the African Union give specific attention to tax justice. However, there is no clear indication of tax justice being recognized as a part of human rights, so if there is a violation of rights, a settlement is drawn up before the court.

Moreover, the United Nations should be competent in addressing these shortcomings by establishing a special court to resolve tax cases or by adding authority to existing courts. Furthermore, regarding the parties who can submit cases to the court, it should also be adjusted to various updated cases. Individuals become inevitable parties because the right to fair taxation is a right for individual taxpayers and companies. Additionally, due to the globalization of financial transactions today, disputes in terms of taxation may arise between different individuals and entities. Therefore, it is necessary to study and resolve cases between individuals from different countries in terms of taxation. As Roosevelt envisioned, after the declaration of tax justice as a human right and the establishment of a tax judiciary, a body was needed to oversee the consistency of the states subject to the law in implementing its rulings.

The realization of good governance in each state led to the creation of the international tax justice law. The law is mainly achieved through information exchange, international cooperation, each state striving for tax justice, and the establishment of global tax treaties. These four factors provide concrete evidence of the pursuit of international tax justice. However, when information exchange and international cooperation break down, or one party fails to honour a treaty, the affected party may seek redress through treaty annulment, decommissioning, or legal action. The strategies implemented to seek redress are necessary to correct injustices and provide legal protection for aggrieved parties. The establishment of an international tax court serves as a platform to restore rights and ensure legal protection. Therefore, the creation of written norms and the establishment of an international tax court are essential in promoting good governance. The reason is that a strong tax system that promotes well-being is a cornerstone of good governance.

CONCLUSIONS

From the previous analysis, several conclusions can be drawn as follows: First, in principle, every country theoretically possesses equal power to safeguard data information and maintain secrecy, the reality reveals disparities in the level of protection afforded to citizens' information. This discrepancy impacts access to bank secrecy principles and is influenced by a combination of domestic and international factors. The concept of secrecy in banking has its roots in legal frameworks. Furthermore, online secrecy stems from advancements in internet technology. This technological basis introduces a new dimension to the traditional notion of secrecy. Online secrecy encompasses an international scope. In fact, the online inherently implies that the scope of transactions is borderless. Therefore, it can be asserted that the concept of secrecy has an additional dimension in the modern context. By the explosion of the secrecy now has changed. This reflects the latest trend in tax concealment practices and underscores the need for ongoing vigilance and adaptation in addressing emerging challenges.

Taxpayer concealment activities encompass both conventional banking deposits and online transactions, including cryptocurrency. In both cases, government involvement as a third party is essential. However, the journey of government involvement differs between fiat currency transactions and cryptocurrency transactions. While measures for fiat currency transactions have been established, their execution requires further refinement. Conversely, plans for cryptocurrency regulation have been outlined by international organizations and are expected to be implemented soon. The legal regulations implemented to address the concealment of assets from cryptocurrencies include FATF.

Second, the transition of fiat currencies from physical to digital has changed how bank secrecy works. Meanwhile, cryptocurrencies, being digital from the start, have maintained their secretive nature, relying on anonymity for their value. These different paths in currency development have important effects on tax systems and processes.

Third, this analysis encompasses various stakeholders, including taxpayers, tax authorities, jurisdictions, and international organizations. The primary focus lies on

understanding the roles and interactions of these parties within the taxation process. Taxpayers represent the core subject of taxation, as they are individuals or entities obligated to contribute to the public fisc. Taxpayers are subject to relevant tax regulations and are expected to disclose their assets accurately. Tax justice for taxpayers entails ensuring equitable treatment and fair asset disclosure. However, any obstacles to asset disclosure can lead to tax injustice, particularly affecting compliant taxpayers.

Additionally, tax authorities, or the fiscus, play a crucial role in tax collection, enforcement, and administration. As a government agency responsible for managing tax revenues and enforcing tax laws, the fiscus operates within the framework of jurisdictional policies. These policies are shaped not only by domestic considerations but also by international factors, including the involvement of other states and international organizations. Consequently, jurisdictions may encounter friction with other countries, necessitating the resolution of disputes arising from violations of agreements or rights. Each jurisdiction has its own authority, resulting in differences in tax policies between countries. For international organizations, it serves as a platform to seek solutions to problems between jurisdictions. It's a forum where a compromise can be reached despite the disparities. Each jurisdiction can express its views on the challenges, allowing other countries to understand and accommodate them without causing harm. Agreements are one way to achieve this.

Fourth, initially, the principle of tax fairness primarily pertained to domestic realms, with inter-country agreements being confined to bilateral or multilateral accords. International tax fairness primarily grappled with mitigating double taxation between exporting and importing nations. However, the perspective on international tax justice has evolved and broadened over time. International tax justice is contingent upon various factors, including strategies to counteract tax avoidance driven by asset concealment. Asset concealment, motivated by secrecy, affords countries the opportunity to establish themselves as tax havens, impeding the exchange of information with other nations. Hence, conventions and agreements are imperative among nations committed to information exchange. The achievement of international tax justice hinges on information exchange between countries. Peaceful negotiations, arbitration, mediation, or alternative dispute resolution methods serve as initial

recourse. Judicial intervention is sought only when these avenues prove fruitless. Challenges arise when the sense of justice is compromised.

Fifth, at the remedial stage of international tax justice, a robust legal framework is indispensable, providing concrete legal grounds for safeguarding individual taxpayers and countries engaged in information exchange. This necessitates the establishment of a dedicated international tax court or its integration into existing international judicial frameworks.

Sixth, it adopts an international perspective, emphasizing cooperation among countries in addressing tax-related challenges. In today's world, distance and time are no longer obstacles to economic transactions. This is the basis of this research within the scope of an international perspective. Therefore, perspectives from several countries are considered. In an era of increasingly connected economic globalization, international cooperation in the field of taxation has become very important. An international perspective in tax administration highlights the importance of collaboration between countries to address various challenges related to taxation, including cross-border tax avoidance, exchange of tax information, and harmonization of tax policies. This cooperation enables countries to learn from each other and support each other in developing best practices and effective strategies in tax collection and tax avoidance prevention. One important aspect of the international perspective in taxation is the effort to ensure fairness and equality in the global tax system. Countries work together to create a fair tax environment for all parties, including individuals and governments. This includes efforts to address tax inequality between countries, improve cross-border exchange of tax information, and strengthen a transparent and effective global tax framework. By adopting an international perspective on taxation, countries can take concrete steps to improve tax compliance and reduce global tax gaps. It involves the establishment of bilateral and multilateral tax treaties, the development of international standards for reporting and exchange of tax information, as well as collaboration in the enforcement of cross-border tax laws. Thus, international cooperation in the field of taxation is a key element in efforts to create a fair, efficient, and sustainable tax system at the global level.

Seventh, the previous hypothesis regarding international tax justice law represents an incomplete understanding. From an international perspective, tax

justice law encompasses not only the interaction of storing assets abroad but also the pursuit of tax justice as a common goal among nations. Countries worldwide engage in information exchange and binding agreements for tax purposes. Furthermore, tax justice law is intrinsic to human rights, having been recognized since the French Declaration of Human Rights. However, it was not explicitly mentioned in the UN Declaration of Human Rights. Therefore, international tax justice law is not solely a result of interactions between countries but is rooted in human rights. It serves as a means to fulfil the basic needs of a decent life through taxation and is a fundamental aspect of international law essential for good governance.

Eight, however, establishing legal principles of tax justice is not sufficient; enforcement mechanisms are also necessary. As there is no dedicated judicial body for tax cases at the international level, international institutions should be empowered to address tax justice issues through legal means. The United Nations (UN) is a suitable candidate for handling international tax justice cases, although it lacks a judicial institution with sufficient competence. Therefore, the establishment of an institution or assembly equipped with judicial tools, including international tax law judges and procedural regulations, is imperative.

Ninth, the UN, as an international organization competent to implement legal declarations of international tax justice and organize international tax trials, does not regularly update the status of global tax crimes, including tax evasion and concealment involving cryptocurrencies. However, during deliberations attended by influential countries, they can contribute insights and decisions that are relevant to current conditions and needs.

Tenth, as information technology advances and international regulations tighten, governments and taxpayers are under growing pressure to improve transparency in tax collection. Therefore, research into various aspects of tax administration is crucial for guiding policy choices and promoting efficiency and fairness in tax systems worldwide.

Eleventh, understanding and addressing tax evasion while ensuring fairness in taxation is crucial. It aims to explore the complexities of tax evasion across different jurisdictions, analyzing the methods used to maintain bank secrecy for both traditional

currencies and the hidden aspects of cryptocurrencies. In essence, both avenues facilitate tax avoidance, ultimately aiming to circumvent tax obligations. This comprehension is pivotal in combatting tax evasion effectively, thereby fostering tax fairness. The urgency to comprehend and tackle tax avoidance is amplified in the era of globalization and technological progression. Tax avoidance practices, whether by individuals or corporations, can result in significant economic damage to a country. Ensuring fairness within the tax system is paramount to enable all entities to willingly disclose their financial holdings, facilitating the exchange of information among jurisdictions.

Twelfth, technology not only influences and disrupts tax administration both nationally and internationally but also offers solutions to these challenges. With technology, information exchange can occur in real-time. The Automatic Exchange of Information (AEoI) system relies on technological infrastructure for its implementation. Each participating country is required to adhere to predetermined technological standards to ensure balanced information exchange and foster a principle of reciprocity. Thus, technology not only provides support but also guarantees the realization of international tax justice law.

Thirteenth, international tax law has evolved from merely addressing double taxation through bilateral agreements to pursuing tax justice globally. International cooperation is crucial in resolving double taxation, but broader efforts involving multilateral agreements and support from international organizations are necessary to combat global tax crimes effectively. Technology plays a significant role in facilitating tax evasion, highlighting the importance of comprehensive approaches to address tax crimes involving both conventional currency and cryptocurrency.

Fourteenth, the mechanism for exchanging bank secrecy information has evolved through several stages, from request-based exchanges to spontaneous and automatic exchanges. This evolution is mirrored in the exchange of cryptocurrency information, which requires advanced technology to overcome its unique characteristics. Unlike traditional banking systems, cryptocurrencies operate globally and in real-time, necessitating instantaneous and automated information exchange mechanisms to combat tax evasion effectively.

Fifteenth, Secrecy is grounded in the right to privacy; however, issues arise when this right is exploited by taxpayers for detrimental behavior. When taxpayers abuse this right, they violate their obligation to pay taxes, leveraging privacy solely for fiscal gain. This exploitation necessitates the creation of effective tax justice systems, which are relatively straightforward to implement domestically but pose significant challenges at the international level due to the complexities of cross-border jurisdictions.

To prevent the erosion of the tax base, it is crucial for countries to engage in cooperation agreements that facilitate the exchange of information. While such agreements are a vital first step, they must be bolstered by the establishment of a dedicated international tax court. This court would provide a platform for countries and individuals to address contentious cases, ensuring that the principle of tax fairness is upheld in the global economy. As the economy becomes increasingly globalized, the principle of tax fairness must be applied consistently across borders.

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