

Studi Komperatif Kebijakan Perpajakan Terhadap Transfer Pricing atas Intangible Property (Indonesia, Oecd, Amerika Serikat, Australia dan Malaysia)

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Abstrak

Intangible assets atau aktiva tidak berwujud adalah elemen kunci dalam perekonomian yang berbasis ilmu pengetahuan dan merupakan sumber daya yang penting bagi keunggulan daya saing bisnis perusahaan. Perusahaan-perusahaan yang mempergunakan aset-aset intelektual yang tinggi secara substansial, merupakan pelaku dalam bisnis modern yang dikenal sebagai modern economy. Saat ini, di negara-negara maju, faktor-faktor produksi yang paling penting telah beralih kepada sesuatu yang tidak kasat mata (invisible). Faktor-faktor tersebut adalah Intangible assets yang juga sering disebut sebagai intellectual assets atau intangibles, diantaranya : brand, reputation, trademarks, software, R&D, patent. SDM skills, strategy, process quality, supplier and customer relationship, dan lain-lain. Aset-aset tidak berwujud ini memberikan kontribusi sangat besar bagi peningkatan daya saing perusahaan dalam industri.

Pengenaan royalty fee telah menjadi hal yang umum digunakan oleh perusahaan yang mentransfer intangible property-nya kepada perusahaan lain tanpa memandang pihak ketiga, anak perusahaan atau afiliasinya. Bagi otoritas pajak, penting untuk memfokuskan perhatiannya terhadap intangible asset dan menghendaki perusahaan-perusahaan tersebut mengenakan royalti kepada anak perusahaannya atas penggunaan intangible property mereka dengan arm's length principle. Perusahaan-perusahaan multinasional dalam rangka meminimalkan beban pajak secara grup usaha cenderung melakukan tax planning, terkait dengan aliran pengenaan royalti atas penggunaan merk oleh semua anak perusahaan dan afiliasinya yang tersebar di beberapa negara dengan jenis perlakuan pajak yang berbeda-beda pula. Perencanaan tentang negara domisili yang paling efektif dan efisien bagi portofolio sering merupakan faktor penting.

Dari analisis yang dilakukan terhadap variabel-variabel yang menentukan daya redam regulasi pajak Indonesia terhadap praktik transfer pricing atas intangible property, disimpulkan sebagai berikut: (a) Indonesia belum memiliki peraturan yang memberikan perhatian khusus terhadap intangible property. Hanya terdapat aturan berupa daftar aktiva tidak berwujud atau khususnya intangible property yang berkaitan dengan pembayaran royalti. Pada penjelasan UU PPh pasal 4 ayat (1) huruf h. Tetapi tidak ada pengklasifikasian aktiva tidak berwujud tersebut baik sebagai marketing intangible maupun trade intangible. Royalti diatur pada pasal 4 ayat (1) huruf h tentang objek pajak penghasilan dan Tax treaty article 12. (b) Regulasi terakhir yang berlaku, tidak menyinggung tentang uji kepemilikan atas intangible property, baik secara legal ownership maupun economic ownership. (c) Terkait isu restrukturisasi supply chain pada Multi National Enterprises (MNE), ketentuan perpajakan di Indonesia belum bisa memberikan anti tax avoidance yang memadai. Ada kecenderungan perusahaan-perusahaan besar di Indonesia mengalami degradasi fungsi, terutama PMA yang masuk dalam jaringan internasional supply chain dari suatu MNE. Selanjutnya valuable intangible property (brand, patent, dan lain-lain) direlokasi ke asosiasinya di luar negeri, dan perusahaan di

dalam negeri hanya sebagai contract manufacturer dan sales commisian. (d) Tidak terdapat: panduan atau pernyataan tentang metode yang paling direkomendasikan dalam menangani transaksi transfer intangible property.

.....Intangible Assets are key elements in the knowledge-base economics and represent resource which necessary for excellence of a company's business competitiveness. Companies utilizing high intellectual assets by substantial, is representing perpetrator in modern business which is known as modern economy. Currently, in many developed countries, the most important production factors have transferred to something that are invisible. The factors are Intangible assets which also often being conceived as intellectual or intangibles, i.e.: brand, reputation, trademarks, software, R&D, patent, Human Resources, strategy, process, customer and supplier relationship, and others. These Intangibles contribute largely in order to increase the competitiveness of a company in industry.

The imposition of royalty fee have come to common feature used by companies which transferring their intangible properties to other companies without reference whether unrelated parties, subsidiaries or affiliations. For tax authorities, it is important to focus their attention to intangible assets and require the companies to impose royalty at arm's length principle to their subsidiaries due to the usage of their intangible property. Multinational Enterprises (MNE) in order to minimize tax burden on the whole group, tend to conduct tax planning, related to the stream of royalty imposition due to the usage of brand by all subsidiaries and affiliations which located in some states which tax regimes are different each other. The planning about most efficient and effective domiciled state to portfolio often represents important factor.

Analysis that have been conducted to those essential variables which energize the power of Indonesian tax regulation to combat the practices of transfer pricing of intangible property, concluded as follows: (a) Indonesia has not yet owned regulations giving special consideration to intangible property. Only there are order in the form of intangible asset list or specially respective intangible property with payment of royalty in clarification of Income tax Act section 4(1)(h). But there is no classification of the intangible asset in marketing intangible as well as trade intangible. Royalty is arranged by section 4 (1)(h) as object of income tax and in Tax treaty 12. (b) Final Regulations which go into effect, do not arrange about the ownership test of intangible property, either through legal ownership and also economic ownership. (c) reference to restructuring of supply chain issues at MNE, Indonesia final tax regulations not yet can give adequately anti tax avoidance There is a tendency of large companies in Indonesia concerning a degradation of functions especially foreign investment companies which enter in international supply chain network from a MNE. Hereinafter the valuable intangible properties (brand, patent, and others) migrated to their associations beyond the sea, and companies in this country only as contract manufacturer and sales commissionaire. (d) There are no statement or guidance about most recommended method/methods in handling transactions of transfer of intangible property.