

## Tax Treaty Sebagai Dasar Penetapan Tarif Pajak Penghasilan Pasal 26 Ayat (4)= Tax Treaty As The Basis for Determinating Rates of Income Tax in Article 26 Paragraph (4)

Elfrieda Anggi Basamarito, author

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### Abstrak

Tax Treaty adalah sebagai sumber hukum yang bermaterikan kepentingan publik secara pembentukannya haruslah diperlakukan sama seperti ketentuan perundangan yang berlaku karena telah melewati proses pengesahan atau ratifikasi. Namun dalam pelaksanaan di lapangan dalam proses banding di Pengadilan Pajak, masih terdapat perbedaan putusan Majelis Hakim yang mempertimbangkan Tax Treaty maupun sebaliknya. Pengadilan Pajak harus memiliki kesatuan suara agar kepastian hukum tercapai baik untuk Wajib Pajak dan Direktorat Jenderal Pajak, karena sesuai dengan dasar hukum hierarki perundangan, Tax Treaty yang sudah diratifikasi memiliki kekuatan hukum yang sah sebagai dasar penetapan Pajak Penghasilan Pasal 26 ayat (4). Oleh karena itu melalui penelitian yang menganalisa sumber normatif yaitu putusan pengadilan pajak Nomor: Put-099239.13/2009/PP/M.XVIB Tahun 2019 dan putusan Nomor: 886128/PP/M.VIIIA/36/2017 serta aturan perpajakan yang berlaku, akan mendorong kepastian hukum agar Majelis Hakim Pengadilan Pajak akan mendorong Majelis Hakim Pengadilan Pajak untuk memberikan kepastian hukum untuk menetapkan Tax Treaty sebagai sumber hukum untuk menggunakan tarif Pajak Penghasilan Pasal 26 ayat (4) sesuai dengan Tax Treaty. Kepastian hukum penetapan tarif tersebut juga dapat diminimalisir melalui tahap awal dalam instansi Direktorat Jenderal Pajak sejak saat pemeriksaan keberatan sebelum WP mengajukan Banding ke Pengadilan Pajak, agar dapat dianalisa apabila WP terbukti berhak menggunakan tarif Tax Treaty, maka ketentuan Tax Treaty sudah seharusnya ditetapkan sebagai sumber hukum, sebaliknya apabila tidak memenuhi, maka berlaku aturan domestik perpajakan Indonesia sebagai dasar penetapan tarif PPh Pasal 26 ayat (4).

.....Tax Treaty is a source of law with the material of public interest in its formation, it must be treated the same as the provisions of the applicable laws because it is equivalent to the Law which has passed the process of ratification or ratification. However, in the implementation in the field in the appeal process at the Tax Court, there are still differences in the decisions of the Panel of Judges considering the Tax Treaty or vice versa. The Tax Court must have a unified voice so that legal certainty is achieved for both Taxpayers and the Directorate General of Taxes, because in accordance with the legal basis of the legal hierarchy, the ratified Tax Treaty has legal force as the basis for determining Income Tax Article 26 paragraph (4).

Therefore, through research that analyzes normative sources, namely the tax court decision Number: Put-099239.13/2009/PP/M.XVIB Year 2019 and the decision Number: 886128/PP/M.VIIIA/36/2017 as well as the applicable tax rules, will encourage legal certainty so that the Panel of Judges of the Tax Court will encourage the Panel of Judges of the Tax Court to provide legal certainty to determine the Tax Treaty as a legal source to use the Income Tax rate of Article 26 paragraph (4) in accordance with the Tax Treaty. The legal certainty of the determination of the tariff can also be minimized through the early stages in the Directorate General of Taxation agency since the time of the examination of objections before the taxpayer submits an appeal to the Tax Court, so that it can be analyzed if the taxpayer is proven to be entitled to use the tax treaty rate, then the provisions of the tax treaty should be established as a source of law. On the other

hand, if it does not comply, then the Indonesian domestic taxation rules apply as the basis for determining the rate of Income Tax Article 26 paragraph (4).