

## **Kajian atas windfall profit yang diterima kontraktor bagi hasil ditinjau dari ketentuan pajak penghasilan**

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### **Abstrak**

The sharp increase in oil price automatically will benefit the oil producer, in Indonesia they are production sharing contractor. They receive excess profit from the high sales price in access of increasing oil price. The excess profit usually called as windfall profit, which is an unearned, unanticipated gain in income through no additional effort. This favourable condition on the contrary cause unequal income distribution, where the fairness rationale was strongly influenced by impact of higher energy prices on poorer consumers, where there will be more money on energy expenditure. This condition indicates the declining of government's ability to do their duty in giving transfer payment for citizen, especially petroleum subsidy.

This condition had ever hapenned in Indonesia in 1974, when arising oil prices generated windfall profits for the oil company. The political climate at that time dictated that if there was a windfall, then most of that windfall should benefit the government. In order to comply it, negotiations were started through New Deal Agreement. In another country, this happened in United States of America in 1980, where the Federal Government enacted a special federal excise tax called the crude oil windfall profit tax. The tax was enacted basically to recoup much of the large increase in oil industry profits that was anticipated from the decontrol of oil price. The tax was imposed on the difference between the market price of oil, which was called as removal price and the base price that was adjusted quaterly for inflation and state severance tax.

Since the fourth generation of Production Sharing Contract in Indonesia, there has not been regulation yet accomodated windfall profit, also in the section of contract. By looking at the history and taking a look at nowadays situation, the government of Indonesia can consider to enact regulation about windfall profit received by production sharing contractor. This research try to study the windfall profit received by production sharing contractor observed from income tax regulations, especially the concept of income. This research uses qualitative approach descriptive type by using literature, in depth interview, and historical analysis. After all, it shows that windfall profit is excess income received because of the increasing of oil price. So naturally windfall profit is a kind of income according to income concept contemplated by Schainz, Haig, and Simon (SHS Concept) which also adopted by section about Income in Indonesian Income Tax Regulation. By looking at the history, it is recommended for the government of

Indonesia to give special treatment in calculating the windfall profit as part of production sharing contractor's income. To calculate windfall profit, it depends on the government regulation regarding how to define windfall profit. What kind of price or threshold price will be used as the base price in determining profit which generates windfall profit.

For now, windfall profit can be resulted from the difference between realized market price and Indonesian Crude Price (ICP) multiplied by contractor share. It is caused by ICP which supposed to be a market price of Indonesian oil can not reflect it, because the fact is the ICP always stand below the realized market price, like market price determined by OPEC. This will generate loss potentation for Indonesia, where the contractor pay the tax with ICP meanwhile they sell their oil from Indonesia based on realized market price. This recommended formula also to reflect the tax payment of contractor is according to arm's length price. If the windfall profit included in part of contractor's income and multiplied with 44% which is the tax rate applied for contractor, it will raise the change in production sharing, which in favor of government of Indonesia. This thing need the government's attention, calculation, and consideration about this recommended formula. Another several things needed to be considered by the government of Indonesia is the economic, law, and political aspects. So if this policy will be applied, it will reflect the equity between government of Indonesia and the contractor as foreign investor. And Indonesia will not be harmed any more by the condition of the sharp increase in oil price so it will help to enhance the prosperity of Indonesian citizen.