ANALYSIS OF THE CONFLICT OF TAXATION: EXPLORING MULTI-NATIONAL CORPORATIONS INCOME TAX CRITERIA IN INDONESIA

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ABSTRACT--*This study was conducted qualitatively to resolve tax conflicts between Contracting States related to MNC taxes, which are usually carried out with tax approval and resolution related to company income, which is contained in a tax agreement. The goal is to find out the income tax criteria at the company. Qualitative research methods that describe the relationship between conflict and different Contracting States and will be used by multinational companies. The results of this study, found that tax agreements cannot be completed in accordance with existing provisions, due to several reasons. First, the tax problem between Contracting States, each of which has different political and tax objectives. Second, competition arises among Contracting States in fighting over the proportion of tax revenue from MNCs. Third, there is a tendency for MNCs to avoid taxes. Further research is needed to assess the effectiveness of tax agreements between Contracting States. In conclusion all the criteria related to MNC foreign capital taxation become clear which are stated in the overall agreement n the supervision of the tax and investment authority by the coordinating institution.*

Keyword--*Conflict, Taxation, Income Tax Criteria, MNCs*

I. INTRODUCTION

The central conflict of interest over tax policy arises because people are indifferent economic positions or different geographical jurisdictions. The essential possible economic differences are based on the volume of wealth or income, which is reflected in a conflict of interest over the progress of taxation [1].

The complex tax rules cause another reason for taxation conflicts and regulations to add to the difficulty in making sense of income criteria MNCs. That is how that can be taxed. Moreover, it concerns the jurisdiction, principles of taxation differences between countries, and the tax rates between countries. Some countries consider the principle of tax collection based on the principle of domicile the other States based on the principle of a source, and there is also based on nationality or residency [2].

These MNCs are very easy to access changes that occur. However, some of them persisted or at least changed the location of their operations at a gradual pace. Some multinational companies often live in unique and closed places with unique infrastructures- such as Silicon Valley for microprocessors, Tsukuba City for miniaturization,

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and London for the stock exchange. More and more, such groups can even be found in developing countries like India, where Bangalore has become the center of the software industry. These immovable resources consist of networks of specialized companies, often small, and independent companies that supply important materials/inputs and are difficult to replicate elsewhere. Leading multinational companies must interact with this group so that they can obtain and maintain access to the latest thinking to achieve a competitive advantage [3].

On the other hand, the practice of multinational transfer pricing is considered as international tax management and strategy instrument used by MNCs to maximize profits and minimize their tax obligations in the countries where they operate by one or more subsidiaries, divisions, or affiliates. MNCs can choose to exploit differences in tax policies, transfer pricing rules, import duties, and restrictions on profit reparations, to transfer profits from one jurisdiction to another to minimize tax, thereby eliminating tax revenues from the countries in which they operate [4].

Transfer pricing can occur due to several reasons, i.e. (1) to divert profits between jurisdictions by using transfer pricing because it is the difference in corporate tax rates. With the underpricing of intra-company sales and overpricing of intra-company purchases, subsidiaries in high-tax countries can increase the overall profits of multinational companies because profit after tax is higher than net income after tax. [5]. (2) to set an artificial transfer price is the existence of tariffs. If rates are based on commodity prices, under-invoicing intra-company sales might be a means of saving tax. (3) to use transfer prices to change the profits that arise when the international tax code implies the existence of double taxation on the deposited earnings of the subsidiary. This is the case when the state of the affiliate company collects withholding taxes on dividends that are not credited in the country of origin.

According to Sri Mulyani [6], the tax challenges faced by Indonesia are related to tax avoidance. Then the trend of tax growth has declined, commodity prices have not sufficiently improved, and import performance has not fully recovered. With a large tax ratio growth target, the government will formulate a tax policy to increase tax revenue by optimizing tax collection and controlling the consumption of certain goods through extensification. For this reason, Indonesia needs to the revision of the General Provisions and Tax Procedures Act, Income Tax Act, Value Added Tax Act.

From the description above, it is seen that each country has tax rights and interests on sources of income for MNCs operating in their countries and other countries. So that the taxation criteria and taxation principles between countries often collide and cause taxation conflicts between countries where the establishment of MNCs (the principle of domicile) and the country where the income is generated (source principle) both in terms of tax subject and income tax object [7]. These two principles often lead to multiple tax issues and, on the other hand, lead to conflicts between States regarding MNC's income taxation rights.

This paper argues that analysis of tax conflicts, specifically income tax from multinational companies operating in Indonesia, must be linked to Indonesian domestic legal criteria. [8].As an effort to reduce tax conflicts in multinational companies, and to encourage amendments to tax laws to increase national tax revenue.

This paper consists of several parts. [9]. Part I is an introduction. Part II will discuss an analytical framework. Part III discusses the methods. Part IV discusses taxation conflicts between state parties. Part V discusses the types of tax rights conflicts between State Parties. Part VI discusses the resolution of international tax conflicts, and the last section contains conclusions.

II. ANALYTHICAL FRAMEWORK

The analytical framework used addresses the conflict between the Contracting that is likely to be used by MNCs to maximize profits by avoiding taxes in the country of income or where MNCs operate. [10]. In this case, Indonesia, as a developing country where MNCs operate, is trying to find solutions in limiting tax conflicts that are likely to reduce tax revenues from the international tax sector.

III. METHOD

The research method used is qualitative research [11], which illustrates the relationship between conflicts and different States Parties that are likely to be used by multinational companies to maximize profits by avoiding taxes in source countries or where multinational companies operate. [12].

IV. RESULTS AND DISCUSSION

1. Taxation conflicts between the Contracting States

T*axatio*n conflicts between the contracting states are usually rare. However, what often happens is the practice of people and legal entities, especially MNCs originating (residents) from the Party-State of the agreement [13]. Companies and MNCs usually commit tax avoidance by using loopholes or weaknesses in domestic taxation and tax treaty laws between countries. Moreover, the countries where the company's domicile and MNCs have not carried out a tax treaty with Indonesia have a probability of taxation conflicts.

For example, Google has reached an agreement with the Indonesian government regarding tax payments for 2016 after the company was deemed not to pay taxes according to their advertising revenue in Indonesia. In 2016, Google Indonesia was examined by the Directorate General of Taxation because it was deemed not to pay taxes according to their advertising revenue in Indonesia. According to Muhammad Haniv, as the Head of the Special Jakarta Regional Tax Office, stated that internet advertising revenues in Indonesia amounted to the US $ 830 million (IDR 11 trillion), and an estimated half came from Google [14]. However, Google Indonesia only pays advertising revenue of 4% of advertising revenue in Indonesia, which is referred to as a fee or payment to Google Indonesia as the Google representative office based in California. Haniv asserted that Google Indonesia is a Permanent Establishment in Indonesia so that it will be subject to 25% corporate tax and retroactive so that the 2015 tax that is being examined can be subject to normal corporate tax rates. Corporate tax rates in Indonesia are 25% of taxable profits. [15]. Based on Haniv's estimates, Google's advertising revenue can reach Rp. 5 trillion. Assuming a margin of 35% of total revenue, Google's taxable profit is Rp1.75 trillion. Thus Google's corporate tax estimates can reach Rp.437.5 billion.

2. Type of conflict of taxation rights between the Contracting States Editorial Policy

The reason that is usually the taxation of State party taxation is the imposition of double taxation internationally. This conflict occurred due to differences in international taxation principles adopted by each country. This difference in principle results in a conflict of jurisdiction between one State and another. Although each State has a unilateral method of avoiding double taxation, this does not fully guarantee that there is no double taxation [16].

Jurisdictional conflicts arise from the fact that each State is free to determine its own tax jurisdiction outside its territory. Usually double taxation is caused by three types of jurisdictional conflicts which will be discussed below.

1. ***Conflict between the principle of domicile and the principle of source.*** This conflict occurred due to the meeting of domicile with the source principle. [17]. The country of domicile imposes a tax on all income earned by its population, while the source country imposes a tax on income originating from that country. In this right, there is a conflict between worldwide income principles and the concept of authority over the territory.
2. ***Conflict due to different definitions of "resident".*** A person or corporation at the same time can be considered as a resident of two countries. This can occur because the definitions of the "residents" of the two countries are different [18]. This situation exacerbates the imposition of double taxation because the "resident" tax will be set twice. This conflict will appear more clearly if one of the States adopts the principle of citizenship as the second criterion in determining whether a person is a resident of the country. Most countries, except the United States, do not adhere to the principle of citizenship because it will lead to double taxation. For example, an American citizen works in an oil company conducting exploration activities in Indonesia. For him to live in Indonesia. Based on the definition of "domestic tax subject", the American is considered to be a "resident" of Indonesia. Therefore, he is taxed for all his income from Indonesia and abroad.
3. ***Conflict due to the different definitions of "sources of income".*** The third reason that can cause double taxation is if two countries or more treat one type of income as income derived from their territory. This results in the same income being taxed in two countries. For example, an entity is a "resident" of country A, has a Permanent Establishment in country B, and develops a technology which is then given to another Permanent Establishment in country C. [19]. C considers that he has the right to impose a tax on compensation for the technology utilized. Conversely, B will impose the reward as operating income

In Indonesia, for example, Article 26 paragraph (1) of the Income Tax Law Number 36 of 2008 which stipulates that if a domestic taxpayer pays compensation to an "overseas resident" in connection with his services, the fee is very broad because, even though it is done abroad, the service is still regarded as the source is in Indonesia under the Income Tax Act. On the contrary. [20]. according to the country where the "overseas population" that provides the service is located, the source of income is in his country. In this case, the compensation for these services is taxed in two countries.

Whereas according to Rohatgi, the type of taxation conflict consists of (1) conflicts of source, namely two or more countries claim the same income from taxpayers as a source in their country; (2) Conflict of residence, i.e., two or more countries consider the same taxpayers as taxpayers in their country; (3) Conflict of residence-sources, namely the same income is taxed twice, first by the state where the income is sourced, and then in the country where the Taxpayer is under "his place of residence"; 4) Conflict of income characterization, that is, two countries characterize or classify the same income or capital differently and, therefore, apply different tax provisions; (5) Conflict of entities: entities marked separately according to national laws of the two countries and therefore subject to different taxation rules; (6) The conflict of the tax system, which is caused by the two tax systems providing different rules for valuation, the definition of taxable income, or tax calculation [21].

The domestic law must be regulated income tax criteria [22], bilateral investments treaty to minimize conflicts and differences in interpretation of the subject of tax, the object of charge, and parties who have the right to collect taxes.

3. Resolving international tax conflicts

It is essential to determine income tax criteria; for that, we need to explain all aspects of corporation taxation, such as resident, basis, non-resident companies, permanent establishment, taxable income, taxation of dividends, capital gains, losses, and rate of tax among countries [23]. Because higher business tax rates have a negative effect on three alternative measures of MNC activity, after controlling for other determinants of company location decisions; the number of foreign MNCs, MNC Jobs, and MNC fixed assets.

Income tax criteria connected to multinational transfer pricing are considered international tax management and strategy instrument used by MNCs to maximize profits and minimize their tax obligations in the country where they operate one or more subsidiaries, divisions, or affiliates [24].

In fact, taxes from MNCs have a major contribution in contributing to Indonesia's tax revenues. For 2014, MNCs accounted for around 25% of tax revenues. Thus MNCs play an important role in national development funding, and it is expected that the contribution and collaboration of MNCs will increase. However, there are also MNCs s that use tax avoidance schemes that are detrimental to both the country of origin and investment destination countries. [25]. If tax avoidance continues, the perception of injustice has the potential to reduce voluntary tax compliance from other taxpayers.

To prevent and reduce tax avoidance, the Directorate General of Taxes collects and analyzes data and information from various sources, including various government agencies, industry associations, and other data sources. [26]. In addition, the Directorate General of Taxation also actively participates in information exchange schemes with other countries.

Likewise, the G20 organization [27] and OECD are also developing automatic information exchange platforms to reduce tax avoidance practices, including practices known as Base Erosion and Profit Shifting (BEPS). Tax authorities around the world are also developing global standards for exchanging financial information that will greatly assist and monitor tax compliance.

Because the BEPS problem has also become a global problem [28], each country will do things and strategies that are more profitable for the country, but on the other hand, this strategy can harm contracting states in the tax treaty, especially developing countries.

Globalization is characterized by several things, one of which is the flow of services, goods, and capital that are increasingly unlimited. Indirectly this affects the amount and structure of tax revenues in various countries [29].

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For companies, globalization has enabled them to organize businesses in a single command for a common goal of maximizing profits and minimizing all kinds of costs, including tax expense. In other words, globalization allows them to choose locations and schemes that provide the highest rate of return.

The tax treaty is designed to avoid double taxation, especially for MNCs. In the United States, double taxation is defined as income tax by the United States and at least one other country. U.S. Government will tax its citizens and residents with income throughout the world regardless of the source. Double taxation occurs when (1) U.S. companies doing business in a foreign country or (2) international companies doing business in the U.S. Then, some or all of the taxpayer's income will be taxed in both countries. [30]. Professor Seligman defines double taxation in the purest sense as "taxing the same person or the same thing twice".

The Organization for Economic Cooperation and Development (OECD) has assisted and designed principles in substantive practice, which can reduce tax conflicts. [31]. The model of the Convention is to Avoid Double Taxation and Guidelines for Transfer of Fees, which are two of the main contributions made by the OECD in this field. Such an instrument is to form the basis of global cooperation in handling Double Taxation.

Two important initiatives have been undertaken by the OECD Committee on Fiscal Affairs in the area of procedures. The first is a development called the Advance Pricing Agreement (APA. To deal with potential disputes. [32] One of the most critical issues regarding multinational companies is the allocation of overall income from transactions in the various tax jurisdictions involved. In general, large multinational groups that produce or distributing goods or services using subsidiaries and holding companies located in different jurisdictions will naturally calculate the tax obligations that must be paid, in centralizing lower tax payments.

Regulations should be made so that there is certainty that there is a situation where a dispute arises because of this, the need to develop procedures that can be used to resolve this conflict [33].

With internal accountants, multinational companies can increase corporate profits and reduce overall tax bills, or even avoid taxes in some jurisdictions altogether [34]. However, tax pricing is causing problems. because there is no tax authority that is changed from legitimate tax revenue, and businesses that don't want to pay double tax by the government. With different differences for the same profit.

In Indonesia, therefore, as an effort to cope with international tax conflicts, especially in terms of determining taxation rights between countries, and concern with the loss of its share of the global tax avoidance schemes. Indonesia must have an anti-avoidance rule under domestic law or judicial practices. [35]. These measures include “substance over form” doctrine to prevent sham transactions and the commercial justification rule under the “business purpose test”. In particular, they require that transactions should not have tax savings as they only or dominant purpose.

Some of the other anti-avoidance measures cover transfer pricing rules, anti-haven or anti-deferral measures, thin capitalization rules, anti-treaty shopping provision, and exchange information [36].

V. CONCLUSION

This paper has explained several matters related to tax conflicts between States Parties concerning the income of MNCs. The type of jurisdiction conflict that often occurs in international tax relations especially between countries that apply the resident's principle and sources principle. The Contracting States will establish new tax criteria. Or in other words, tax jurisdiction will approve tax agreements with one another is agree to modify each other's taxation rules.

Tax conflicts cannot be entirely solved by tax treaty because, first, the complexity of tax regulations between States Parties which each have different political and taxation objectives. Second, there is a competition that arises between States Parties over the proportion of tax revenues from the income of MNCs. Third, there is a tendency for MNCs to practice tax avoidance to maximize profits. The strategy used by MNCs to shift profits by manipulating their transfer prices (mispricing transfer) through regulating transaction costs between intragroup. Therefore, it is essential to link between tax treaty and investment agreements agreed upon by the two countries (Bilateral Investment Treaties/BITs). So that all criteria related to foreign capital taxation of MNCs can be clearly stated in a comprehensive agreement to facilitate the supervision of the tax authorities and investment were coordinating bodies.

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