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Research Paper

The Application of International Taxes in relation to International Law

Muh. Takdir (BC201120014) [1]
Fs Bahari (BC201120017) [2]
[1] *Graduate in Institut STIAMI, Jakarta*
[2] *Graduate in Institut STIAMI, Jakarta*

ABSTRACT
The purpose of this study is to sharpen the deepening and development of knowledge and insight related to International Taxation which is related to International Law. This study uses normative juridical method, which is a legal research conducted by examining library materials or secondary data and is carried out in the form of descriptions, measurements, and accurate reporting of the characteristics of some of the phenomena under study. The findings of this study are the non-uniformity and disparity of international law between countries that can have an impact on the relevant Taxpayers as happened to International Double Taxation. Apart from that, the author hopes that the miscommunication of the legal rules of each country can provide relief for certain taxpayers so that tax certainty occurs.
INDEX TERM: *The Avoidance od Double Taxation, International Tax, Omnibus Law/Job Creation Act*

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I. INTRODUCTION

International tax is a taxation agreement between countries that has The Avoidance of Double Taxation Agreement (P3B) and is carried out in accordance with the provisions stipulated in the form of the Vienna Convention. As an impact of this agreement, the tax regulations which applied in a country became not applicable to foreign residents or organizations, if a special bilateral agreement has been agreed between the two countries involved in the agreement.

International tax is an aspect of taxation that does not just exist suddenly. This is regulated and agreed upon by the countries conducting the transaction. Thus International Tax will be related to International Law. This condition will create an agreement which aims as follows:

1. To improve the economy and trade between the two countries.
2. Remove barriers in foreign investment due to tax imposition that are burdensome for taxpayers from both countries.

However, international transactions are certain to pass various kinds of regulations in accordance with the regulations of each country and it is certain that they will not be separated from international law and taxation.

II. METHODOLOGY

This study uses normative juridical method, which is a legal research conducted by examining library materials or secondary data (Soekanto & Mamudji, 2006: 13-14) and is carried out in the form of descriptions, measurements and accurate reporting of the characteristics of a study, population or phenomena studied (Babbie, 1986: 81). The steps taken in this research are as follows: literature review, examining secondary data in the form of: primary legal materials and secondary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, the Draft Omnibus Law / Job Creation Law. (OL / JCA), and various other related laws and regulations. Meanwhile, secondary legal materials are obtained through the study of research results, books, scientific journals and jurisprudence, as well as other library materials that discuss Omnibus Law. In order to improve the data carried out by the study, several comparisons of data from various sources are presented in this journal.

III. LITERATURE REVIEW

In general, there are two factors which affect a country's international tax provisions, as follows:

1. Personal Connecting Factor

The connecting factor that links a country's tax rights based on the country's tax subject status. For an individual tax subject, the provisions are based on the criteria of residence or existence.

2. Objective Connecting Factor

Linking the tax rights of a country based on the existence of economic activity or tax objects connected to the territorial area of a country. Its enforcement is regulated in international tax law.

National External Tax Law is a tax law containing provisions regarding the tax imposition which have legal force beyond national borders because there are foreign elements, both regarding foerign tax sources and foreign tax subjects. International tax law is a tax rule based on law between countries and is well accepted by countries in the world to regulate taxation between countries of interests.

In relation to tax collector jurisdiction by a country, there are 2 principles used by the state as the basis for collecting taxes, as follows:

1. Taxpayer status
2. Source of income

Countries that use taxpayer status as the base, usually base their tax collection on the relationship between taxpayers and the state so that several principles are known, namely:

1. Principle of Domicile

Principle of domicile is a tax collection principle in which the country of domicile of the taxpayer is authorized to collect taxes on all income / assets of the taxpayer who is domiciled in that country regardless of where the income is obtained / on the wealth is located. The principle of domicile is not that easy, especially if there are people who have residences in various countries, or there is an agency whose domicile is in one country, but it turns out that their leader and business are in another country. In the field of international law there is a basis that is widely accepted by countries in the world, which is known as the Tax Treaty.

2. Principle of Resources

Principle of resources is a tax collection principle which gives the state, the place where the resources is located, a right to collect taxes on the income which comes out of the resource owner, regardless of where he resides outside the country.

3. Principle of Nationality

Principle of nationality is a tax collection principle which gives the country of origin of the taxpayer's citizenship the authority to collect taxes on all its citizens, wherever they are, from all the income earned by its citizens.

As a country which maintains relations with other countries, Indonesia cannot avoid to conduct various kinds of transactions such as import, export, and various other activities which categorized as international trade activities. These transactions will give earning income to residents of one of the countries. These transactions between countries are subject to international tax.

Indonesia is also a subject of international law since it has followed and signed the Vienna Convention. International conventions have the force of law which binds between the countries that signed the agreement. Therefore, the Avoidance of Double Taxation Agreement (P3B), arises because there is a reciprocal principle and mutual interest from the contracting countries.

Talking about international tax in Indonesia, generally, it applies only to the subject and object of tax that are in the territory of Indonesia. In other words, people or entities which do not reside or domicile in Indonesia are basically not subject to tax based on the legal basis that Indonesia has. However, international tax can be related to subjects and objects that are outside the territory of Indonesia as long as there is a close relationship in terms of economic or state relations with Indonesia.

Consensus on International Taxation Regulations With the increasing importance of the international dimension of income taxation, an international consensus has emerged on the structure of the international income tax regime. Income tax is usually levied by a country on (1) the domestic and foreign income of its residents and (2) the domestic income of non-residents. These basic rules are referred to as the principle of residence and source of tax, respectively. The tax laws of a country should briefly state in several conspicuous places where it is appropriate (either a general provision with which these rules are levied, or the start of a group of provisions relating to international matters, or both) whether and to what extent these rules have been

adopted. If residents of a country derive income from resources in another country, double taxation is most likely occurs because one country will tax that income based on the source and taxes of the other country as a residence. In this case, the internationally accepted regime is that the source country has a prior right to tax (although this right may be limited by treaty), and the country of origin is responsible for exempting the resulting double taxation. Such relief is generally achieved through one of two systems, an exemption system in which foreign income is exempt from tax in the country of origin, and a foreign tax credit system in which the resident country's tax on foreign income is reduced by the amount of the source country's tax on income. Most countries employ some combination of the two systems. The details of the rules needed to implement seemingly simple concepts and their interactions with tax treaties will go into the remainder of this chapter.

Basis of International Tax Law in Indonesia

International tax which applied in Indonesia are fully regulated in several national tax regulations, including:

- The National Tax Regulation which regulates the Avoidance of Double Taxation Agreement (Article 32A of the Income Tax Law) regarding the government being authorized to enter into agreements with governments of other countries in the context of avoiding double taxation and preventing tax evasion.
- National Taxation Regulations (Article 3 of the Income Tax Law) concerning: Excluding Tax Subjects.
- National Taxation Regulations (Article 2 of the Income Tax Law) on Foreign Tax Subjects and Permanent Establishments (BUT).
- National Taxation Regulations (Article 18 of the Income Tax Law) concerning: Related Parties, in case there is Tax Irregularity.
- National Taxation Regulations (Article 24 of the Income Tax Law) concerning: Foreign Tax Credits.

IV. DISCUSSIONS AND RESULTS

The increasingly integrated global economy and the escalating trade between countries have increased attention to the international tax system. The tax systems of various countries are formulated in such a way in order to avoid double taxation or tax evasion. Thus, there are limits for a country in determining the direction of its tax policy.

Formally and legally, it is true that there is no international law regarding taxes which forced every country to comply. However, conceptually, Avi-Yonah explains in an interesting way, how at the end each country must comply to a certain degree of international tax norms.

Quoted from a source, it is stated that each income is ideally taxed only once, no less and no more. If an income is taxed more than once, international trade and transactions will be distorted. However, if an income taxed less than once, it means that there is tax avoidance or tax evasion.

On the basis of those principles, Avi-Yonah, the professor of University of Michigan Law School, outlined how in the end the Avoidance of Double Taxation Agreement (P3B) and domestic tax regulations should be adjusted. For example, many countries are forced to treat taxes which previously paid in other countries (as a source of income) as tax credits. Other examples which also explained are how certain types of income should be taxed and who should have more taxation rights.

Furthermore, coordination between countries inevitably becomes more intense. If we look at this time, various initiatives were launched in international consensus, such as the BEPS Action Project, automatic exchange of information (AEoI), and digital economy taxation. With this agreement, countries are bound and must adjust their tax system in order to keep it harmonized with mutually agreed principles.

In this Essay, the author wants to elaborate further about International Double Taxation. There are two ways to avoid International Double Taxation, first is with a unilateral way and secondly a bilateral or multilateral way. [7]

1. Unilateral Way (unilateral)

This method is done by including provisions to avoid double taxation in the laws of a country with a clear procedure. Usually what is included in the law of a country are principles that have become commonplace internationally, such as provisions on tax levies for diplomatic representatives, representatives of international organizations. This tax levitation usually requires the existence of a reciprocal principle, which means that the concerned country will only grant exemption if on the other hand other countries also provide exemption based on the same conditions.

The use of this method is a form of a country's sovereignty to self-regulate tax collection issues in a law. This method of course has the intention of protecting taxpayers in their own country who conduct business or have assets in the territory of another country, follow international customs, attract foreign capital, and so on.

The Indonesian Income Tax Law adopts a method of avoiding double taxation in the form of tax credit method. Article 24 of the Income Tax Law states that taxes paid or payable abroad on income from abroad received or obtained by domestic taxpayers may be credited to reduce taxes payable in the same fiscal year

(article 1). . The amount of tax credit is the actual tax paid or payable in a certain country which the amount may not exceed the calculation of tax payable based on law (article 2).

2. Bilateral or Multilateral Way

Bilateral or multilateral are carried out through negotiations between countries of interest in avoiding double taxation. The billateral agreement is carried out between two countries, while multilateral agreement is carried out by more than two countries, which is better known as tax treaty. The process of the occurrence of agreements bilaterally or multilaterally will certainly take quite a long time since each country has its own taxation principle in accordance with its own country's sovereignty. Bilateral tax avoidance is the most generally practiced by a country. Indonesia, for example, has entered into the Avoidance of Double Taxation Agreements (P3B) with other countries which up to now has reached 49 countries. Meanwhile, tax avoidance agreements that are carried out multilaterally rarely occur which are generally due to the difficulty of conducting intensive talks with several countries at once. For example, in 1922 a multinational agreement was attempted regarding direct taxes, between Italy, Yugoslavia, Austria, Poland, Romania, Czechoslovakia, and Hungary, but failed.

The question now is what is the legal position of tax treaty in the Indonesian national legal system. Tax treaty in the Indonesian national legal system does not need to be ratified by the house of representative (DPR), instead it only need a presidential decree and it is a part of legislation whose position is above the tax law. Tax treaty is required as a lex specialist against existing tax laws.

In the tax treaty model developed by the OECD, the terminology used to state that the right to tax income is only given to one country, which is usually given to the country where the tax subject is registered as a resident tax subject is "shall be taxable only in ... ". Thus, if the taxation rights are only granted to one country, other countries are not allowed to impose taxes. So, the issue of double taxation of an income regulated through the use of this terminology should not occur because the taxation rights are fully granted to the country of domicile and the source country is prohibited from imposing taxes.

On the other hand, the terminology used to state that the taxation rights of an income are shared between the domicile country and the source country is "may be taxed in ...". The meaning of the terminology is that the source country can also impose taxes. Thus, in addition to the domicile country having the right to impose taxes, the source country can also impose taxes. If each country imposes a tax then there is an issue of double taxation. To avoid double taxation, the domicile country is obliged to provide double tax relief through the tax credit method or income exemption method (depending on the domestic provisions of the country of domicile).

Main Issues of International Taxation in Millineal era

1. Digital Economy Tax

It takes a new international tax architect who is able to solve international tax problems. The unified approach is a combination of several proposals that have been designed by tax and international law. First, the user participation proposal in which digital tax is collected based on user contributions and taxation rights are allocated based on the place where the user is located. Second, marketing intangibles proposals where tax imposition is based on where the asset is used, and third, a significant economic presence proposal where tax subjects are considered to have an economic presence if there is interaction with users through digital technology, for example online platforms.

The digital economy era in Indonesia itself is shown by the number of e-commerce businesses that are able to provide access to the procurement and supply of goods and services needed by the community online.

According to a platform research entitled "Global Digital Reports 2020" conducted by Hootsuite and We Are Social which was quoted from the Kumparan website, research conducted at the end of January 2020 showed that internet users in Indonesia had increased by 17 percent compared to the previous year. This research shows that the number of internet users in Indonesia has reached 175.4 million people.

With the increase in internet users, the growth of e-commerce in Indonesia is predicted to continue to increase. As the opinion of the Chairperson of the Indonesian e-Commerce Association (idEA), Ignatius Untung S. in 2019, quoted from the Kompas website, said that in the last four years the growth of e-commerce has reached 500 percent, one of the international tax issues that will be a topic of discussion at throughout 2019 is the issue of taxation in the digital economy. It is undeniable that the development of the digital economy has brought many changes to the face of the business world as well as challenges to the world of taxation.

In recent years, the challenge of digital economy taxation has become the object of public debate (particularly in Europe) and has led to intense discussions between policymakers, both at the national and international levels (Bacache-Beauvallet and Bloch, 2017). This challenge is mainly due to the mismatch between the current international tax system and business models in the digital era.

2. Minimum Tax Amount

Things that need to be considered are aspects of fairness, efficiency, transparency, simplicity and support for global consensus. This is a key issue for reaching mutual agreement and avoiding race to the bottoms. The determination of the minimum tax also needs to pay attention to the interests of the state in providing infrastructure financing and does not hamper economic growth, especially in developing countries and emerging economies. Other considerations, not only related to fiscal issues, but also politics, as happened in the European Union.

In a meeting related to the tax issue, France said that each country had different proposals. However, France proposes that the minimum tax rate of 2.5 percent is considered fair enough and is close to the tax system in America, which called tax guilty.

3. Tax certainty

Each country must agree to the standardization of the international tax system (single international tax system) so that global companies operating internationally have certainty in calculating their taxes.

Juridical double taxation can occur for various reasons. These reasons can occur because of a conflict of interest between one country and another in the form of differences in taxation systems or principles between these countries. According to Kevin Homes (2007), conflicts between a country and another that can cause double taxation are as follows:

- First, a conflict between a country and another country to become the source country of a certain income (source-source conflict);
- Second, the conflict between the country of domicile and the source country to impose a tax on certain income (source-residence conflict);
- Third, a conflict between a country and another country to become a residence state for certain tax subjects (residence-residence conflict); and
- Fourth, conflict between the country of domicile and the source country over the characterization of a certain type of income (characterization of income conflict).

With regard to the rights of the source country, the reason why the country of source of income feels entitled to impose taxes is based on the benefit theory of taxation. Namely, the benefits that have been provided by the country of source of income for the income earned in the country. The Taxation Service Provides legal certainty for entrepreneurs. So this is a reciprocal relationship and this aspect of certainty is what entrepreneurs want when investing in other countries. One example of this certainty is related to the determination of the taxpayer to be the resident of a country and the testing tool through the tie breaker rule. This is one of the aspects regulated in P3B so that there is no tax treaty abuse or treaty shopping.

The government finally revised the tax treaty related to the Avoidance of Double Taxation Agreement (P3B) with a neighboring country, Singapore. Several aspects of the reforms are concerned with dividends, capital gains, and anti-tax evasion.

Director of International Taxation at the Directorate General of Taxes (DJP), John Hutagaol, explained that tax treaty provides incentives both in monetary and non-monetary terms. From the monetary side, the government provides incentives in the form of lowering rates, capital gains incentives, and so on. Meanwhile, from the non-monetary side, this P3B policy provides legal certainty to the business and investment world.

4. Dispute

One thing that minimizes the occurrence of problems based on double taxation is that a mutually agreed mechanism is needed to resolve problems between companies and the state, even between companies and companies. With this mechanism, the problem does not have to be resolved through international arbitration.

With regard to the safe harbor approach (a government policy that separates the responsibilities of online trading site providers with the concept of a User Generated Content (UGC) based marketplace from the sellers who use their services), however, it needs to be discussed more deeply because it is considered inconsistent with the commitment to achieve global consensus.

Developing of Perioritis for International Tax and Countries of Transition

The international element of the income tax system in domestic law and tax treaties is a complex topic. Between developing and transitional countries such as among industrialized countries, there will be large differences in the ability of tax administrations to deal with international taxation issues. Although priorities will vary from country to country, this may indicate a development line that must fit many developing and transitional countries.

The priority of any tax system will always be to tax the domestic income of domestic taxpayers. However, with the increasing internationalization of economic relations, even this objective means that attention should be paid to the issue of international income taxes. For better or worse, the globalization of the world economy has an impact on developing and transition countries, and it is impossible for a country to isolate itself or its taxation system. The interdependence of market economies is a recent phenomenon, and transitional countries in particular retain residual confidence in the ability of regulations to deal with problems.

In some developing countries too, the regulatory capacity of the economy in the current economic environment is verified. Developing and transitional countries face international tax problems similar to those of industrialized countries, which means that whatever has happened in the past, it is impossible to take the position that international issues can wait. The incentives for capital flight are strong in developing and transition countries even apart from tax systems. If a country adheres to the source only principle, it is necessary to have strong rules for sources of income to ensure that source-based taxes are not avoided.

Even with such a rule, there would be a strong incentive for residents to move income abroad to avoid taxes, which would be a relatively simple matter for passive portfolio income depending on how to do the foundation stone of investment choice. The principle of residence must be adopted to prevent this form of tax avoidance. After the principle of residence is adopted, measures for double tax relief by means of exemption or simple foreign tax credit are also required. At this stage of development, the country has complied with the basic norms of international tax regulations on which the tax treaty is based.

The ability of residents, again with simple investment options, to generate passive income from foreign sources through non-resident taxpayers such as offshore mutual funds suggests that further action is needed even for the simple purpose of protecting the domestic tax base in case the population is not engaged in active business. . A simple provision indicating an intention to levy taxes in this case, together with law enforcement efforts directed at tax evasion using foreign bank accounts, is the best that can be achieved against various types of capital flight. Residents involved in purely domestic business activities can also use the international tax system to evade taxes. In this case, investment will be rotated overseas and back into the country, creating the potential for techniques such as transfer pricing, thin capitalization, and profit stripping to move profits overseas, usually to tax havens.

The simplest approach to dealing with the problem is a shorthand provision that levies taxes on resident owners of foreign entities. Such a provision is needed at present only to ensure the collection of taxes on the domestic income of residents. With provisions to secure the domestic tax base, perhaps the next priority is tax treaties. This slightly increases the capacity to enforce taxation on the domestic income of the population through the exchange of information although the use of tax havens for most offshore activities limits the effectiveness of tax treaties.

Most importantly, they signal to foreign investors the intention of the state to play by generally accepted international tax rules and not discriminate against foreign investors while providing room if negotiated in a suitable form to provide domestic taxes to foreign investors. Except in the increasingly unusual case of a country that decides not to proceed with tax treaty negotiations, the contents of tax treaties overshadow the way a country should frame its tax laws for the taxation of foreign investors. Throughout this chapter it has been suggested that treaty tax rules should generally be followed in domestic law for greater transparency and simplicity in the application of tax laws to which tax treaties apply.

Many countries offer tax incentives for foreign direct investors. While the effectiveness of these incentives in attracting increased foreign investment may be doubtful, any attempt to tax foreign direct investors effectively involves serious problems in legislating and managing them. The basic provisions for withholding tax on non-residents generally consist of withholding tax on passive and employment income and collection based on valuation of business income. The investment options for foreign portfolio investors and the tax avoidance techniques available to foreign direct investors suggest that these provisions are inadequate and that rules in domestic law regarding transfer prices, thin capitalization, and tax havens are necessary. It will in no way cover the available tax avoidance strategies. General antiavoidance provisions or doctrines will help tax administrations to overcome international tax evasion, but it will take a lot of effort to implement. In short, any serious attempt to levy taxes from foreign direct investors is fraught with setup and administration difficulties, while the taxation of portfolio investors can easily encourage them to shift their investments abroad. For this reason, foreign investor taxation is perhaps the last international tax issue that developing or transition countries should take seriously.

Domestic Law Do Not Cover Tax Treaty Issues

Some of the provisions found in tax treaties usually are not reflected in domestic law. This section briefly describes these provisions, together with their impact on domestic law, in particular non-discrimination, exchange of information and assistance with collection, and collective bargaining procedures.

1. Nondiscrimination

The non-discrimination tax treaty clause is designed to ensure that foreign investors in a country are not discriminated against by the tax system in comparison to domestic investors. However, the OECD Model's non-discrimination provisions are narrower than similar provisions found in other areas of international law, such as trade. This distinction is necessary because the international tax system operates on the principle of residence and source and thus differentiates the tax positions of residents and non-residents. Therefore, it would not normally be considered discriminatory to collect gross income tax at a fixed rate from residents of another state without a permanent establishment, if the resident is taxed on the same income on a net value.

2. Exchange of Information and Assistance in Collection

Information exchange also serves as a test for the lowest common denominator for information gathering procedures. Information need not be collected if it cannot be obtained under procedures in both countries. For example, the information file sought could be kept at a taxpayer's home. If the tax procedures law of a treaty country prohibits the entry of domestic (as opposed to commercial) locations to obtain information, then there is no obligation to obtain that information. However, if an obstacle occurs under the laws of the country making the request and if the country that has received the request for information is able to obtain information under its law, that country can but is not obligated to forward the information to other countries under the article of information exchange.

The OECD provides sufficient practical guidance on information exchange. The use of computers in tax administration extends to this area, and the sophistication of the exchange process has greatly increased. The OECD has developed a standard computer format for information exchange. In recent years, exchange articles have given rise to several new extensions of their use, such as for simultaneous audits of the same or related taxpayers by each party to an agreement (and even by more than two countries through the use of exchange provisions in a number of agreements) . The OECD has developed a model agreement for tax administrations to formalize this process. Whether developing or transitional countries will be able to participate in this latest development will depend on their level of computerization and audit capacity.

3. Mutual Agreement Procedure

The final provision of the tax treaty that requires comment is the clause on collective agreement procedures. Under the Model version, this article performs three functions: provides a dispute resolution mechanism related to the application of tax treaty provisions in certain cases; enable states to finalize their general interpretation and application of their tax treaties; and enable them to resolve double tax cases not handled by their agreement.

Some countries find that a third and often second function is difficult to reconcile with their domestic laws and procedures and therefore remove them from their treaties. In practice, dispute resolution for a particular case predominates, regardless of the form of explanation.

The collective agreement procedure has also been the subject of new uses recently. A major development concerns up-front pricing where a collective agreement procedure is used to agree on an up-front transfer price, so that taxpayers and tax administrators avoid disputes after the incident. This is a sophisticated procedure which for now may only be relevant for industrialized countries. Taxpayer dissatisfaction with collective agreement procedures has led some countries to adopt arbitration procedures in their tax treaties for cases where the competent authority is unlikely to resolve disputes. The main purpose of the provision is to put pressure on tax administrations to settle international disputes rather than engage in arbitration.

V. CONCLUSION

International Tax Law is the whole regulation that governs legal order and regulates taxation rights in each country. The definition of international tax law is an understanding that combines the notions of double taxation and national tax law. International taxation has certainly been closely related to international law. Because it cannot be separated from the commercial of a country.

The tax regulations that applied in Indonesia to foreign entities or foreign resident become invalid when there is a bilateral (two country) agreement regarding the avoidance of double taxation with the country of origin or the foreign resident. For an international transaction that provides income for an Indonesian taxpayer or which provides income with a source of income in Indonesia to a foreign taxpayer, the provisions of the Indonesian Domestic Law will always apply if Indonesia and the concerned country do not have a tax treaty.

If Indonesia has a tax treaty, the application of the provisions of the Indonesian Domestic Law must be adjusted to the provisions concerning the same in the Indonesian Tax Treaty. The Avoidance of Double Taxation Agreement (P3B) has an equal position with the law, because in its application it has a complementary function.

Important issues related to international taxation, especially in the Millineal Era such as the Digital Economy, Tax Certainty, Minimum Rates, and Tax disputes or disputes must be a serious concern for the government in preparing to face other recent matters.

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