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LEGAL RECONSTRUCTION ON DOMESTIC RELATED PARTY TRANSACTIONS

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Article	Abstract
<p>Keywords: legal reconstruction, related party, tax</p> <p>History of Article: Received: April 2, 2022; Reviewed: April 10, 2022; Accepted: April 12, 2022; Published: April 14, 2022</p> <p>DOI: https://doi.org/10.56282/jtlp.v1i1.61</p>	<p>It is necessary to conduct a juridical study to minimize the transfer of income or the basis of imposition of taxes and fees from one taxpayer to another, which can be engineered to reduce the total amount of tax payable on taxpayers who have speuniquelationships within the country. Based on distributive justice and corrective justice concepts and the hierarchy of laws and regulations (stafenbau theory). This article applies a normative juridical method with an evaluative and prescriptive thought. This method uses a positive legal inventory approach, an approach to legal principles, an approach to legal systematics, and a vertical and horizontal synchronization approach. Tax disputes related to unique relationships still occur. Even related parties' transactions Domestic transactions are often complex business transactions between companies and their managers, directors, shareholders, or affiliates, making state tax revenues suboptimal. This paper requires an in-depth socio-legal research study, but this paper can enrich empirical research. This paper produces two novelties in the form of legal reconstruction. First, the rules for domestic-related transactions still rely on the arm's length principle (ALP), which is adequate to apply to cross-border transactions between related parties. Domestic special relationship transactions have their complexities. Second, there is a need for legal reconstruction of domestic related party transactions oriented towards increasing compliance (reporting certain transactions) and providing access to tax authorities in jointly taking responsibility for preventing and overcoming suboptimal state tax revenues.</p>

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1. INTRODUCTION

Related party transactions, including the mining and oil palm plantation sectors. Although the transaction is considered not to violate tax regulations when using the transfer pricing method, the action is not in the spirit of tax laws and

regulations, making state tax revenues not optimal (Suparno and Sawarjuwono, 2019).

Indeed, there is Article 18 paragraph (4) of Law Number 7 of 1983 concerning Income Tax as last amended by Law Number 7 of 2021 concerning the Harmonization of Tax Regulations (*UU HPP*) (from now on referred to as the Income Tax Law). However, tax disputes still occur in its application. For example, the decision of the tax court number PUT-50613/PP/M.XII/B/15/2014, which shows a correction by the Fiskus (tax officer) on transactions made by Taxpayers (*WP*) that are not fair, where the comparison used by the tax authorities is conditions are not comparable to those used by the Taxpayer. Then, the decision of the tax court number Put. 42731/PP/MI/15/2013, which shows a dispute regarding the amount of mark up value used for correction and which parties have a special relationship, where according to the Taxpayer, the markup value used by the tax authorities is too high, and part of the sales considered a sale to a party that has a special relationship by the appellant is a sale to an independent party (Sadjiarto, 2014)¹.

Every transaction of goods and services in related parties between taxpayers needs to be investigated to minimize the possibility of efforts to transfer resources and avoid taxation between parties with a special relationship. Typical forms of tax avoidance often occur in tax avoidance and tax evasion. (Sadjiarto, 2014)². However, the tendency to apply the rules so far has only revolved around Multinational Enterprises (MNE), which seem to be the main actors in international trade business transactions. This trend can be seen in MNEs operating in more than one country under the control of a particular party whose transactions between related parties often involve transfer pricing issues to maximize profits globally³ (Darussalam, Septriadi, and Kristiaji, 2013; Faruq and Nugrahanto, 2020)⁴.

It is necessary to examine in-depth related to the special relationship of goods and services transactions that occur within a sovereign state, in this case, the sovereignty of Indonesian law, which may arise between agencies within a group

¹ Sadjiarto, HW, and Arja, "Analysis of Variations in the Scheme of Tax Court Decisions on Transactions to Related Parties", *Tax & Accounting Review*, Vol. 4, No.1. 2014. Sinaga, HDP, and Sinaga, BRP. Reconstruction of Accountability Models in the Taxation and Customs Sector, PT. Kanisius, Yogyakarta. 2018.

² Sadjiarto, HW, and Arja, "Analysis of Variations in the Scheme of Tax Court Decisions on Transactions to Related Parties", *Tax & Accounting Review*, Vol. 4, No.1. 2014. Sinaga, HDP, and Sinaga, BRP. Reconstruction of Accountability Models in the Taxation and Customs Sector, PT. Kanisius, Yogyakarta. 2018.

³ Faruq, Umar, and Nugrahanto, Arif. Application of the Cup Method on CPO Transactions Between Parties Having a Special Relationship. *Journal of Taxes and State Finance*, Vol. 2, No. 1. 2020.

⁴ Darussalam, Septriadi, Danny, and Kristiaji, B. Bawono. Introduction: Ideas, Strategies, and Practical Guides. In Darussalam, Septriadi, Danny, and Kristiaji, B. Bawono (Ed.). *Transfer Pricing: Ideas, Strategies, and Practical Guides in an International Tax Perspective*. Jakarta: Danny Darussalam Tax Center Publisher. 2013.

of companies or between divisions within a company or between companies that are mutually exclusive. have affiliations. Domestic related relationship transactions are often complex business transactions between companies and their managers, directors, shareholders, or affiliates that are fraught with potential conflicts of interest that can jeopardize the responsibility of management agencies to the state, in this case, the tax authorities (Gordon, Henry, and Palia, 2004)⁵.

An example of a case study is the occurrence of a particular relationship transaction between taxpayers in the following illustration. Incorporated Company A is trading goods C sold domestically and exports. Incorporated Company A entirely purchases goods C from Incorporated Company B, which is an affiliated party, during Incorporated Company B sells and distributes about 94% of its production to Incorporated Company A. Even though Incorporated Company A has Transfer Pricing Documentation (TP Doc), but based on the allocation of each cost, it is known that the percentage of net profit on trading C's goods is only 0.13%. The calculation example shows the importance of the ideal domestic special relationship transaction rules in Indonesia's tax laws and regulations, considering that the existing loophole causes non-optimal tax revenues due to unique domestic relations. Thus, it is necessary to answer the two current problem formulations by carrying out legal reconstruction as a reconstruction based on philosophical and juridical studies is expected to produce prescriptive thinking (providing suggestions to overcome problems) and evaluative (assessing the application and implemented laws and regulations) (Soekanto, 2010)⁶, so that it can overcome violations or crimes that harm (financial) the state through actions or processes that rebuild, recreate, or rearrange existing legal constructions⁷ (Sinaga and Sinaga, 2018; Sinaga, Pramugar & Wirawan, 2020). First, what are the applicable tax laws and regulations regarding domestic-related party transactions in Indonesia? Second, how is the ideal tax law reconstruction for domestic related party transactions in Indonesia?.

2. RESEARCH METHODS

Considering that this paper aims to construct tax laws and regulations related to domestic-related party transactions and produce an ideal tax law reconstruction concept in related parties about domestic transactions, this paper is sufficient to use the normative juridical method. The adequacy of the process is because the normative juridical process works to find the correct answers by proving the truth

⁵ Gordon, EA, Henry, E., and Palia, D., "Related Party Transactions And Corporate Governance", in *Corporate Governance*, Advances in Financial Economics, Vol. 9, p. 1-27. 2004.

⁶ Soekanto, S., *Introduction to Legal Research*. Publisher University of Indonesia, Jakarta. 2010.

⁷ Sinaga, HDP, and Sinaga, BRP. *Reconstruction of Accountability Models in the Taxation and Customs Sector*, PT. Kanisius, Yogyakarta. 2018.

that is sought to produce legal prescriptions (Wignjosoebroto, 2020; Wignjosoebroto, 2009)⁸.

The Method in this study uses secondary data whose legal materials consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials are binding legal materials; secondary legal materials are legal materials that can explain primary legal materials, while tertiary legal materials are legal materials capable of providing instructions and explanations of primary legal materials and secondary legal materials used (Soekanto, 2010)⁹. The primary legal materials used in this paper, among others, are the Income Tax Law, the PPN and PPnBM Law, the Harmonization of Tax Regulations (*UU HPP*), and Law Number 12 of 2011 concerning the Establishment of Legislation, Regulation of the Minister of Finance (*PMK*). Number 22 / PMK. 03 / 2020 concerning Procedures for Implementing an Advance Pricing Agreement, Decree of the Minister of Finance Number: 417 / KMK.04 / 1996 concerning the Special Calculation Norms for Net Income for Shipping Company Taxpayer and overseas Aviation, Regulation of the Directorate General of Taxes Number PER-32/PJ/2011, Circular Letter of the Directorate General of Taxes Number SE-04/PJ.7/1993. Then, the secondary legal materials used in this paper include, among others, textbooks, articles, and research results. At the same time, the tertiary legal materials used in this paper can be in the form of, among others, legal dictionaries, Indonesian language dictionaries, encyclopedias, and websites.

3. ANALYSIS AND DISCUSSION

A. Relationship Overview

The Circular Letter of the Director-General of Taxes Number SE-04/PJ.7/1993 concerning Instructions for Handling Transfer Pricing Cases has emphasized that universally transactions between taxpayers who have unique relationships can abuse transfer prices where transfer pricing can result in a transfer of income or the basis of imposition of taxes (*DPP*) and fees from one Taxpayer to another by suppressing the total amount of tax payable on the related Taxpayers. Furthermore, the definition of a special relationship has been explicitly regulated in Article 1 number (4) of the Regulation of the Director-General of Taxes Number PER - 32/PJ/2011 concerning Amendments to the Regulation of the Director-General of Taxes Number PER-43/PJ/2010 concerning the Application of the Principles of Fairness and Business Ordinance. In Transactions Between Taxpayers and Parties Having a Special Relationship, which defines a Special Relationship as the relationship between the Taxpayer and other parties as referred to in Article 18 paragraph (4) of the Income Tax Law or Article 2 of Law

⁸ Wignjosoebroto, S. Varieties of Legal Research, in Irianto, S., & Sidharta (Eds.), *Legal Research Methods: Constellation and Reflection*, Yayasan Obor Indonesia, Jakarta. 2009.

⁹ Soekanto, S., *Introduction to Legal Research*. Publisher University of Indonesia, Jakarta. 2010.

no. 42 of 2009 concerning the Third Amendment of Law no. 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods (VAT and PPnBM Law).

Article 18 paragraph (4) of the Income Tax Law formulates a unique relationship in terms of:

1. Taxpayers have direct or indirect equity participation of at least 25% in other Taxpayers; the relationship between Taxpayers with a minimum investment of 25% in two or more Taxpayers; the relationship between two or more Taxpayers mentioned last.
2. A Taxpayer controls another Taxpayer, or two or more Taxpayers are under the same control either directly or indirectly; or
3. A family relationship is either by blood or by marriage in a straight line and sideways one degree.

Further explanation of the special relationship is contained in the Elucidation of Article 18 paragraph (4) of the Income Tax Law, which confirms that: "a) a special relationship between Taxpayers can also occur due to control through management or use of technology even though there is no ownership relationship, b) a special relationship is considered exists when one or more companies are under the same control. Likewise, the relationship between several companies under the same control." Then, Article 2 of the PPN and PPnBM Law regulates unique relationships whose formulation is:

"(1) If the Selling or Replacement Price is affected by a special relationship, the Selling or Replacement Price shall be calculated based on the fair market price at the time the delivery of the Taxable Goods or Taxable Services is made. (2) A special relationship is deemed to exist if: a. Entrepreneurs have direct or indirect participation of 25% (twenty-five percent) or more to other Entrepreneurs, or a relationship between Entrepreneurs and participation of 25% (twenty-five percent) or more in two or more Entrepreneurs, as well as the relationship between two Entrepreneurs or more of the latter; or b. Entrepreneur controls another Entrepreneur, or two or more Entrepreneurs are under the control of the same Entrepreneur either directly or indirectly or c. There is a family relationship either by blood or marriage in a straight line of one degree and one degree aside."

A special relationship which is a condition of dependence or attachment of one party to another caused by ownership or participation in the capital, control, or blood or marriage relations, has also been confirmed in Article 4 PMK Number 22 / PMK. 03 / 2020. The state of dependence or attachment between one party and another is defined as the state of one or more parties: controlling the other party or not standing free. The special relationship due to ownership or equity participation is deemed to exist if the Taxpayer has direct or indirect equity participation of at least 25% in other Taxpayers or a relationship between a

Taxpayer and an investment of at least 25% in two or more Taxpayers or a relationship between two or more last-mentioned Taxpayers. Then, a special relationship due to control is deemed to exist if: (a) one party controls another party or one party, directly and indirectly, (b) two or more parties are under the direct control of the same party. And indirectly, (c) there is this same person, directly and indirectly, involved or participating in managerial or operational decision making on two or more parties, (d) parties who are commercially or financially known or identified are in the same business group, or (e) one party claims to have a special relationship with another party. Furthermore, a special relationship due to blood or marriage relations coexists here is a family relationship either by blood or marriage in a straight line and sideways and degree. Special relationships unique marriage relations can occur through individual taxpayers, for example, between father, mother, children, siblings (biological), in-laws, stepchildren, and in-laws, as in SE-04/PJ.7/1993 has anticipated that the relationship privileges through the Individual Taxpayer may result in unfair prices, fees or other rewards realized in a business transaction.

The understanding of unique relationships in the context of the PPh Law and the PPN and PPnBM Law is then followed up by explaining the meaning of transactions that are affected by unique relationships, as stated in Article 1 number 15 of the Regulation of the Minister of Finance (PMK) Number 22 / PMK. 03/2020 concerning Procedures for Implementing an Advance Pricing Agreement (Advance Pricing Agreement) confirms that transactions that are affected by a special relationship are transactions that include affiliated transactions and transactions conducted between parties who do not have a special relationship but are Affiliated Parties of one or both parties who are The transaction determines the counterparty and the transaction price. As for what is meant by affiliated parties, parties that have a special relationship with each other, while affiliated transactions are transactions made by Taxpayers with Affiliated Parties.

In comparison, the terms of a special relationship are also described by the OECD, the Sarbanes-Oxley law, and the tax provisions in the United States. The special relationship refers to Article 9, paragraph 1 of the OECD Model Tax Convention on Income and on Capital, namely, Where :

1. An enterprise of a Contracting State participates directly or indirectly in the management, control, or capital of an enterprise of the other Contracting State, or
2. The same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State....”

In the United States, special relationship arrangements are generally found in the Sarbanes-Oxley Law, while tax arrangements are contained in the Internal

Revenue Code (IRC). The Sarbanes-Oxley law strictly limits and prohibits related party transactions by considering stricter standards or special rules (which apply as internal regulations) based on certain fundamental principles, such as the need to prevent conflicts of interest, one of which is to realize the rules. That must control the special relationship (Gordon, Henry, and Palia, 2004)¹⁰. The special relationship in taxation provisions in the United States is based on 26 US Code 267 (b) and 707 (b)(1), which states that the term related party which refers to "related party" is any person or any party, including entities, which has a relationship with the Taxpayer, among others:

- a. Members of the same family (either siblings, spouses, ancestors, or lineages),
- b. Corporations that are more than 50% of the value of their shares are owned directly or indirectly by or for a particular party,
- c. Two companies that are in one control group,
- d. Giver of grants (funds) (grantor) and fiduciary of a Trust (trust),
- e. Fiduciary from one trust and fiduciary and fiduciary recipient from another trust where the funder of the two trusts is the same person,
- f. A fiduciary of the trust and the beneficiary of the same trust,
- g. Corporations that are more than 50% of the shares owned directly or indirectly by or for a particular trust or by or for a grantor or fiduciary trust,
- h. Education-related organizations or specific charitable nonprofit organizations that are controlled directly or indirectly by a particular person or (if that person is an individual) by a family member of that individual,
- i. A corporation and partnership if the same person or persons own: a) more than 50% of the value of the company's outstanding shares, and b) more than 50% of the capital or profits in the partnership,
- j. Everyone or the same person owns more than 50% of the value of the outstanding shares, S and S-shaped corporation or C-shaped corporation,
- k. Partnership and a person whose ownership, directly or indirectly, is more than 50% of the capital or 50% of the profits in a partnership,
- l. Two partnerships in which the same person or persons own, directly or indirectly, more than 50% of the capital or 50% of the profits in both partnerships.

The theory has been implemented in Indonesia, namely Article 7 of Law no. 12 of 2011 concerning the Establishment of Legislations which confirms the types and hierarchy of Legislations whose legal force from the highest to the lowest in the 1945 Constitution of the Republic of Indonesia (UUD 1945), the Decree of the People's Consultative Assembly (Tap MPR), Laws/Government

¹⁰ Gordon, EA, Henry, E., and Palia, D., "Related Party Transactions And Corporate Governance", in Corporate Governance, Advances in Financial Economics, Vol. 9, p. 1-27. 2004.

Regulations instead of Laws (UU/Perpu), Government Regulations (PP), Presidential Regulations (Perpres), Provincial Regulations (Perdapro), and Regency/City Regional Regulations.

B. Distributive Justice and Corrective Justice in Tax Provisions for Domestic Relations

Related relationship transactions are complex business transactions full of potential conflicts of interest that could jeopardize the optimization of tax revenue. Tax provisions on associated transactions are not based solely on regulatory certainty but must refer to legal certainty. Utrecht (1989) suggests that legal certainty can be understood from two sides: certainty because of the law and certainty in or from the law¹¹. Certainty because of the law will be achieved if the task of law can guarantee legal certainty in the relationships contained in social interactions, namely guarantees of justice and guarantees to remain functional. While certainty in or from the law will be achieved if the law does not conflict with each other in its provisions, for example, there are no terms that can be interpreted differently). Then more specifically, in the field of taxation, Adam Smith emphasized that tax certainty is a tax collection that must be clear or certain regarding tax subjects, tax objects, tax rates, tax payment times, and so on (Brotodihardjo, 2010)¹².

This idea of legal certainty shows that legal certainty in the field of taxation is not only oriented to the certainty of legislation because the validity of tax law which must be enforced through the existence of state power, will have validity in society if it is in line with justice and public benefits (Radbruch, 2006)¹³.

Examining the existing rules of notable relationship transactions based on justice is sufficient to explain them based on Aristotle's distributive justice and corrective justice. Distributive justice is identical to justice based on proportional equality (Tanya et al ., 2010)¹⁴, so people who have the same position should receive equal treatment before the law (Rahardjo, 2006)¹⁵. This shows that distributive justice focuses on social resources, wealth, and power that must be allocated in society. Its central premise is that fair distribution must demonstrate that resources are distributed according to rules, and those rules should promote

¹¹ Utrecht, E., Introduction to Indonesian Law, translation by Moh. Saleh Djindang, Sinar Harapan Publisher, Jakarta. 1989.

¹² Brotodihardjo, Santoso. Introduction to Tax Law. Bandung: Refika Aditama. 2010.

¹³ Radbruch, G. "Statutory Lawlessness and Supra-Statutory Law (1946) ", translators Bonnie Litschewski Paulson and Stanley L. Paulson, Oxford Journal of Legal Studies , Vol. 26, No. 1, p . 6. 2006.

¹⁴ Tanya, B. L. , Yoan N.S. , and Mark Y. H., Legal Theory: Orderly Strategies of Man Across Spaces and Generations., Genta Publishing , Yogyakarta. 2010.

¹⁵ Rahardjo, S., Legal Studies , PT. Citra Aditya Bakti, Bandung. 2006.

fairness, equity, and impartiality (Callaway and Hall, 2020)¹⁶. In addition, the definition of distributive justice must refer to efforts to provide minimum access, which must be universal (Hull, 1995)¹⁷.

As for corrective justice, it seeks to provide in carrying out the applicable law (Rahardjo, 2006)¹⁸. Its task is to rebuild equality by focusing on correcting something wrong (Tanya et al., 2010)¹⁹. This justice applies to the imposition of civil and criminal sanctions, which can only be understood within its framework. In the case of civil violations, corrective justice is in charge of providing restoration of losses or adequate compensation for the injured party. Meanwhile, retributive justice will give appropriate punishment to the perpetrator in terms of criminal sanctions. So, corrective justice is tasked with rebuilding equality or balance (Friedrich, 2010)²⁰.

In terms of distributive justice, the domestic special relationship provisions must be able to provide access to the tax authorities to find out early on transactions related to the special relationship of a Taxpayer because this shows equality to all Taxpayers and the state's impartiality in any transaction, which causes tax avoidance and tax evasion. Thus, if there is an attempt by a Taxpayer to carry out tax avoidance and tax evasion through notable relationship transactions, the tax authority can enforce corrective justice by immediately recovering the losses incurred and imposing appropriate sanctions on violators based on the applicable tax laws and regulations apply.

The implementation of distributive and corrective justice can be done through obligations. The obligation to fulfill righteousness and expediency can, at the same time, refer to an obligation due to propriety to act or act and an obligation due to appropriateness not to act or not act (Sinaga and Sinaga, 2018)²¹. In the case of an obligation due to propriety to act/act, there are 4 (four) criteria, namely: 1) carried out in good faith to fulfill his legal obligations, unless a force majeure situation can be proven, 2) carried out because of danger or damage or loss that may be imminent. Occurs and or cannot be avoided, 3) is carried out because there is no better alternative, or if the action is not taken, it will cause even

¹⁶ Callaway, Mary Elizabeth, and Judy Hall. Distributive Justice in Medicaid Capitation: The Evidence from Colorado. *The Journal of Behavioral Health Services & Research*, Vol. 27, No. 1. 2020.

¹⁷ Hull, R., "Distributive Justice and the Minnesota Health Access Initiative", *The Journal of Medical Humanities*, Vol. 16, No. 2. 1995.

¹⁸ Rahardjo, S., *Legal Studies*, PT. Citra Aditya Bakti, Bandung. 2006.

¹⁹ Tanya, B. L., Yoan N.S., and Mark Y. H., *Legal Theory: Orderly Strategies of Man Across Spaces and Generations.*, Genta Publishing, Yogyakarta. 2010.

²⁰ Friedrich, CJ, *Philosophy of Law: Historical Perspective*, translation by Raisul Muttaqien, Nusa Media Publisher, Bandung. 2010.

²¹ Sinaga, HDP, and Sinaga, BRP. *Reconstruction of Accountability Models in the Taxation and Customs Sector*, PT. Kanisius, Yogyakarta. 2018.

more significant harm or damage or loss, and 4) an act or act is purely due to accident (Sinaga and Sinaga, 2018)²². Meanwhile, the obligation due to propriety not to act or not to act is attached to 4 (four) criteria, namely: 1) it is a mala prohibita act, 2) it is not within the scope of its capacity so that it cannot act/act according to its professional judgment, 3) there are still some alternative actions/other actions that are even better that do not violate the applicable laws and regulations, and 4) are actions/actions that enrich oneself/a group and other parties that cause financial losses to the victim (Sinaga and Sinaga, 2018)²³.

C. Legal Construction (Rules) of Special Relations in The Taxation Framework in Indonesia

The broad horizon of a related relationship shows that a special relationship has the potential to be misused for tax purposes, as the primary motive is to minimize the tax obligations of certain Taxpayers by taking advantage of the complexities inherent in the special relationship. One of these complexities can occur in the case of a Taxpayer conducting transactions with parties who have a Special Relationship who are Domestic Taxpayers (WPDN) or Permanent Establishments (BUT) in Indonesia as referred to in Article 2 paragraph (2) PER-32/ PJ/2011 has anticipated the existence of parties who have unique relationships to take advantage of differences in tax rates due to, among others: a) treatment of final or non-final income tax in specific business sectors; b) the treatment of the imposition of PPnBM; or c) transactions made with Taxpayers of Oil and Gas Cooperation Contract Contractors.

The efforts to take advantage of differences in tax rates carried out by parties who have unique relationships can again be illustrated in the case of Incorporated Company A and B in the above background. This cannot be separated from the imposition of final or non-final income tax in specific business sectors, such as the coal mining sector. For example, the purchase of coal made by the trading company Incorporated Company A from its affiliate Incorporated Company B with Free on Board (FOB) conditions will be transported directly from the Incorporated Company B directly to the warehouse PT. D who made purchases to Incorporated Company A. Transport using barges PT. E, which is an affiliate of Incorporated Company B. Of course, even though the selling price between Incorporated Company A and B according to the Indonesia Coal Index (ICI) price, but the transportation costs are still the responsibility of Incorporated Company A

²² Sinaga, HDP, and Sinaga, BRP. Reconstruction of Accountability Models in the Taxation and Customs Sector , PT. Kanisius, Yogyakarta. 2018.

²³ Sinaga, HDP, and Sinaga, BRP. Reconstruction of Accountability Models in the Taxation and Customs Sector , PT. Kanisius, Yogyakarta. 2018.

makes Incorporated Company A spends more money actually to get the goods ordered during PT. D (even though he is an independent party) also made purchases to Incorporated Company A conforms to ICI standards. Of course, the case study above shows the transactions between Incorporated Company A and B have caused the potential for corporate income tax of 25% of taxable income (PKP) to be not maximized due to increased transportation costs which are only subject to the Final PPh of 1.2% of gross circulation according to the Decree of the Minister of Finance Number: 417/KMK.04/1996 regarding the Norms for the Special Calculation of Net Income for Shipping Company Taxpayer and Overseas Flights. This also applies to interest costs—for example, PT. I made a loan to the bank, but the loan was used by Incorporated Company A to make a prepayment to the domestic shipping company PT. E, even though PT. E instead provides the terms of accounts payable payment to its independent customers. Thus, the loan is a transfer to PT. E whose tax burden is very low, namely 1.2%, is final, while Trading Incorporated Company A bears the interest expense, which reduces his PKP subject to Article 17 Income Tax by 25%.

The things exemplified above have resulted in the transfer of income or the basis of imposition of taxes and fees from one Taxpayer to another whose transactions occur domestically, which can be engineered to suppress the total amount of tax payable on the Taxpayers who have this special relationship. Indeed, there is a provision in Article 18 paragraph (3) of the Income Tax Law which gives the fiscus authority to re-determine the amount of income and deductions as well as determine debt as capital to calculate the amount of PKP for Taxpayers who have unique relationships with other Taxpayers by reasonableness. And the prevalence of business that is not affected by a related relationship using the price comparison method between independent parties, the resale price method, the cost-plus method, or other methods. This is in line with the explanation of Article 18, paragraph (3) of the Income Tax Law, which states:

“The purpose of this provision is to prevent tax evasion because of a special relationship. If there is a special relationship, the income may be reported as less than it should, or the expense may be charged more. In such a case, the Director-General of Taxes is authorized to re-determine the amount of income and expenses according to the situation if there is no special relationship between the Taxpayers. In re-determining the amount of income and costs, the comparable uncontrolled price method is used, the resale price method, the cost-plus method, or other methods such as profit split and transactional net margin”.

However, the provisions of Article 18 paragraph (3) of the Income Tax Law cannot be fully sovereign considering Article 3 paragraph (4) PER-32/PJ/2011 stipulates that Taxpayers who conduct transactions with parties that have a Special Relationship with the value of all transactions do not exceed Rp 10 billion

in one tax year for each counterparty, is exempt from the obligation to apply the Arm's Length Principle (ALP).

D. A Critical Review of Taxes on Domestic Relations Transactions

Audric (2019) has stated several goals and motivations and the occurrence of a special relationship using the domestic transfer pricing method²⁴. Some of the objectives, among others, are performance evaluation (to measure the operating results of each unit), management motivation (to orientate cost and profit centers in existing units), control of prices to better reflect the " cost " and " margin " that should be received from customers and optimal pricing, and market control to secure the company's competitive position. While the motivations, among others, are to minimize tax objects (especially income tax), reduce the effect of rupiah depreciation, strengthen demands for price increases or protection against import competitors, maintain conservatism regardless of the level of business profits, secure companies from demands for compensation for leadership achievements or welfare. Employees and environmental concerns (ecology and society) minimize the effects of restrictions and uncertainty on the risks of business activities in the national and international scope.

The complexity of goals and motivations and the occurrence of unique relationships within the country indicate that the use of ALP alone cannot be considered as the ultimate weapon as an audit guide to test domestic affiliated transactions, as the steps contained in Article 3 paragraph (2) PER-32/ PJ/2011 will only be adequate in handling transfer pricing with foreign countries, namely : (a) conducting Comparability Analysis and determining comparisons, (b) determining the appropriate Transfer Pricing method, (c) applying the Principles of Fairness and Business Ordinance based on the results of the Comparability Analysis and the proper Transfer Price Determination method into transactions between Taxpayers and related parties, and (d) documenting every step in determining the Fair Price or Fair Profit by the provisions of the applicable tax laws. Efforts to test affiliated transactions with these steps can only accommodate certain authorities to the fiscus in terms of related transactions, such as the authority to determine the debt to capital ratio, the power to determine the price of transactions between parties having a special relationship, the ability to determine the parties who are related. Actually, in the case of a special relationship, and the authority to re-determine the amount of income in the case of a special relationship with a Taxpayer who is not established or domiciled in Indonesia.

²⁴ Audric, Reyhan. "Transfer Pricing Domestic," available on the page <http://nusatax.com/transfer-pricing-dalam-negeri/> . Retrieved 27 July 2021.

The inadequacy of the four ALP steps in testing domestic-related transactions is based on the following considerations. First, the tax laws and regulations related to particular domestic relations have not explicitly regulated the prevention of Taxpayers from using different accounting methods to take the current deduction on the one hand but delaying revenue recognition on the other hand if the relevant Taxpayer belongs to the group that has a state of dependence or attachment from one party to another caused by ownership or participation in the capital, control, or blood or marriage relations. Second, there is no regulation. Transactions between taxpayers who are part of the same consolidated group require the payer and the payee to be treated as single entities. Third, the rules limit related parties' accrued expenses, mainly accrued interests. This is intended to anticipate efforts to take tax benefits from deductions to Taxpayers who bear the costs associated with transactions with associated parties. Most of these cases occur with related party debts transferred by the original creditor, which is associated with the borrower claiming reduced interest to other parties who are not related to the borrower. Fourth, the explanation of Article 6 and Article 9 paragraph (1) of the Income Tax Law, which relates to the principle that a tax object may not be charged as a fee, will become a loophole in the case of a domestic special relationship transaction which seems to be able to justify that a positive correction of the costs incurred by the Taxpayer means a negative correction must be made to the income or income of the Taxpayer's rival.

E. Reconstruction of Tax Provisions on Domestic Relations Transactions

Fair tax rules, legal certainty, and the expansion of the tax base (Fazry, 2021)²⁵ are expected to minimize the impact of tax avoidance and tax evasion in domestic-related transactions, so it is necessary to regulate the obligations of taxpayers to fulfill their legal obligations, namely obligations due to propriety for do or act and the obligation not to do or not to act.

Tax obligations in the event of a particular relationship transaction in the country must be regulated by considering the force of law types and hierarchy of laws and regulations in Indonesia, as held in Article 7 of Law no. 12 of 2011. However, in the case that the kind of legislation includes rules stipulated by the Minister, then according to Article 8 of Law no. 12 of 2011, such laws and regulations just because they are ordered by higher laws and regulations or are formed based on authority so that their existence can be recognized and have binding legal force.

The reformulation of the provisions governing domestic special relationship transactions in line with the concepts of distributive justice and

²⁵ Fazry, R., "Heroes of the HPP Law", Taxes Vol. XCII, pp. 66-67. 2021.

corrective justice must simultaneously realize the voluntary compliance of these taxpayers. Every Taxpayer who conducts a domestic special relationship transaction must have good faith by providing access to the tax authority, in connection with the shared responsibility to try to overcome and repair losses on tax revenues (Sinaga and Sinaga, 2018)²⁶.

There are several ideas so that the concepts of distributive justice, corrective justice, and the theory of the hierarchy of laws and regulations can be implemented in domestic relations transactions. First, the Taxpayer is obliged to consult and report every transaction of his domestic-related relationship (e.g., for the total of domestic transactions in one tax year amounting to Rp. 10 billion).

Second, provisions for every Taxpayer who, in the event of having a special relationship, does not fulfill the reporting obligations or notification of essential aspects of their unique relationship (other than those contained in the Corporate Income Tax Return, including the list of shareholders/capital owners and the number of dividends distributed, list of management and commissioners, list of equity participation in affiliated companies, list of debts from and receivables to shareholders and affiliated companies, list of related parties, and details of transactions with related parties), one of which is by requiring Taxpayers to fully disclose all domestic-related transactions, which include name, Taxpayer Identification Number (NPWP) and Taxpayer's address, a summary of related transactions by nature of the transaction.

Third, initiating sanctions, either in the form of fines or if a positive fiscal correction is made to a taxpayer's costs, cannot be corrected negatively against the income or income of the Taxpayer's rival. It was fourth, initiating the application of strict liability in the case of domestic special relationship transactions, which can primarily be a means to improve corporate taxpayer compliance. The application of strict liability to corporate violations lies in its criteria related to public welfare activities, risk assessment which relies heavily on information within the corporation, and the effectiveness of its regulation as a *mala prohibita* so that it is not necessary to prove the mental attitude of the perpetrator of the violation (*men's rea*) because it can hinder the purpose of the law. -the invitation itself (Sinaga, Wirawan, and Pramugar, 2020)²⁷. The regulation of strict liability in domestic relations transactions can be emphasized on violations in the form of errors, failures, or omissions to declare or provide and provide information or

²⁶ Sinaga, HDP, and Sinaga, BRP. *Reconstruction of Accountability Models in the Taxation and Customs Sector*, PT. Kanisius, Yogyakarta. 2018.

²⁷ Sinaga, HDP, Wirawan, A., and, Pramugar, RN, "Reconstruction of Corporate Criminal Liability in Indonesia", *International Journal of Advanced Science and Technology*, Vol. 29, No. 8. 2020.

reports that are incorrect or misleading (Sinaga and Sinaga, 2018)²⁸. One example in the PPh provisions is the amount of the ratio between debt and company capital, as regulated in Article 18 paragraph (1) of the Income Tax Law and PMK Number 169/PMK.010/2015 dated September 9, 2015, concerning Determination of the Comparison Between Debt and Company Capital for Income Tax Calculation, Needs. Its strict liability lies in the positive correction of interest expense when debt and company capital ratio exceed four (4:1).

4. CONCLUSION

Two conclusions were drawn based on the background, theoretical framework, research methods, and analysis and discussion. First, the regulation of domestic special relationship transactions is the same as the rules related to transfer pricing with cross-border transactions, namely those that still rely heavily on ALP. Domestic affiliated transactions have complexities and cannot be reached by the ALP, such as the absence of a prohibition on using different accounting methods for all taxpayers who have unique domestic relationships. The lack of transaction arrangements between taxpayers who are part of the same consolidated group to treat the payer and the payee as one unit, the limitation of accrued expenses to related parties has not been regulated. Second, the ideal legal reformulation (reformation) in taxation provisions for domestic-associated transactions can be carried out by adopting the concepts of distributive justice and corrective justice while considering Indonesia's hierarchy of laws and regulations. This reformulation is expected to increase the voluntary compliance of every Taxpayer who has domestic-related transactions, namely in good faith to provide access to tax authorities and always consult with the tax office to be jointly responsible for preventing and overcoming tax losses due to transactions that will occur. Done.

Based on the conclusions presented above, the following suggestions can be given.

- a. Make rules related to the obligation to report and consult all domestic-related transactions that have reached a certain amount (e.g., the total domestic transactions in one tax year amounting to Rp. 10 billion).
- b. Make provisions for every Taxpayer who has a special domestic relationship to fulfill specific reporting or notification obligations related to essential aspects of their special relationship other than those contained in the Corporate Income Tax Return, such as requiring the Taxpayer to fully disclose all

²⁸ Sinaga, HDP, and Sinaga, BRP. Reconstruction of Accountability Models in the Taxation and Customs Sector, PT. Kanisius, Yogyakarta. 2018.

- domestic-related transactions that include the name, NPWP) and address of the Taxpayer, a summary of notable relationship transactions by nature of the transaction.
- c. Initiating sanctions, either in the form of fines or specific treatments, such as applying the principle of positive fiscal correction to costs but not negative corrections to the income or income of the taxpayer's rival.
 - d. Initiating strict liability rules in the case of domestic relations transactions.

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