

Perpajakan atas penghasilan dari pengoperasian kapal luar negeri berdasarkan ketentuan domestik dan perjanjian internasional : suatu kajian untuk meningkatkan kepastian hukum dan mencegah penghindaran/penyelundupan pajak = Taxation upon foreign ship operating income under domestic regulations and international treaties : a study to improve law assurance and prevent tax avoidance/evasion

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Abstrak

Compared to the domestic shipping companies, the role of foreign shipping companies in Indonesia's economy is Very dominant. The large demand of export and import transportation could not be handled by domestic shipping companies due to many weakness, such as the inadequate of high-quality ships, lack of financial institution Support, and management skill in international competition. Until this day the potency of national's cargo for domestic or international still dominated by foreign shipping companies. According to the Indonesian National Shipowners Association (INSA), the effect of that unequal at least US\$ 12 billion of yearly potential income goes to foreign shipping companies. Those amounts are the total of international shipping expenses shipping companies. Those amounts are the total of international shipping expenses (US\$ 10.5 billions) and domestic shipping expenses (3 trillions Rupiah). The 95% from average 450 millions ton/year of total export cargo from Indonesia are carried by foreign ships, as for domestic ship is 5%. For domestic cargo, the national shipping companies only obtained 89.9 millions ton or 59.99% as for foreign shipping companies they obtained 59 millions ton or 40.01%. Related to that, the author is interested to analyzing the taxation upon foreign shipping companies income. The subjects in this research is the implemetation operation of the tax levied of income tax based on the taxation policy subject to Indonesian taxation related to the foreign shipping companies income. As for the subject of this thesis is how to create assurance regarding the implementation of the tax levied of income tax from the foreign shipping companies income in Indonesia, in order to prevent tax avoidance or if taxpayer perform a tax evasion, it could be known as violation to the act of Income tax. The data compilation used qualitative method with descriptive analysis approach, which is describing and analyzing the completed data. The data that used in this research were obtained by library research and field research techniques.

All addition to economic capability shall taxable, including the addition to economic capability, which received or obtained by the operations of foreign ships in Indonesia. In this sector of business, the income could be in the form of freight, terminal handling charge, document fee, fuel adjusment factor, income from charter transaction by means of fully manned basis or bareboat basis, income from transactions of bareboat hire purchase, income from ship leasing, income from used ship overtaking, prolit from exchange rate, and income from fish shipping operation. Need synergy from income tax elements, that is tax policy, tax law and tax administration in order to taxed the income from foreign ships operation. Those elements shall be based on good taxation goal and principle, which contain principle of equity and certainty. Certainties are very important to create justice for taxpayers and tax personnel, whether the certainties in Tax Subject, Tax Object, tax tariff or tax procedure.

Indonesia has own domestic rules regarding the foreign ship operating, but the origin country of that foreign ship also had their own domestic rules, so the conflict of taxation jurisdiction could be occur. Therefore, double tax prevention agreement is needed between the two countries in order to prevent the occurrence of tax evasion. The prevention of that double tax is obtained by agreement regarding with: a) elimination of dual residence, b) jurisdiction of each countries as domicile country and as source country, c) the prevention method for double tax must be applied by domicile country and d) establish the Mutual Agreement Procedure (MAP).

From the results of field study shows that are several kinds of income from foreign shipping Companies which has not been clearly arranged, so there is no law certainty which are terminal handling charge, document fee, fuel adjustment factor, bareboat basis charter fee, income from bareboat hire purchase, income from used boat overtaking, profit/loss from rate exchange, and income from operation of foreign fish ship. There are several operation modus of tax evasion which done by taxpayer caused by more than one agent authorization which is spreading in several city port in Indonesia, the situation when agent is been replaced and the previous agent felt no more responsibility, even in the tax levied by other party and taxpayer it self did not pay the withholding income tax.

The ongoing analysis regarding the tradition of international taxation is the tradition of international taxation is the tradition is not placing the permanent establishment as tax requirement for the source country and Indonesia did not implemented those tradition. Analysis were also performed regarding the existence unclearly tax regulation for several kinds above mentioned income, the inappropriate name of article 15 Income tax, the income scope which has to be arranged in Indonesia's domestic regulation, the tax procedure and operation modus of tax evasion.

The conclusion based on the analysis is the tax rights of source country upon the profit of ships operation on international traffic not based on the concept of permanent establishment, the name of article 15 income tax is inappropriate since it is not include in tax procedure criteria, the particular calculation norm for net income shall be clearly stating the income variables which is included in norm calculation and which is exclude in the tax treatment. Indonesia's domestic regulation have got to be changed to not placing the requirements of permanent establishment and in case of effective management existence in Indonesia, then the tax treatment is equal with domestic shipping companies taxpayer, the name article 15 Income Tax is changed to appropriate type of tax, regulation of income variable subjected to Income Tax which is final and not, single NPWP for one taxpayer, the use of term "tax levied" for fully manned basis charter and eliminated the uncertainty of regulation to create law certainty.