Analisis Asas Kepastian Hukum atas Timbulnya Constructive Dividend akibat Secondary Adjustment terhadap Transaksi Afiliasi Dalam Negeri = Analysis of the Legal Certainty Principle on the Emergence of Constructive Dividends from Secondary Adjustment on Domestic Related-Party Transactions

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Abstrak

Penelitian ini menganalisis pemenuhan asas kepastian hukum dari ketentuan secondary adjustment terhadap transaksi afiliasi dalam negeri yang menimbulkan constructive dividend setelah diterbitkannya PMK 172/2023. Penelitian ini menggunakan pendekatan berupa paradigma post-positivisme. Teknik pengumpulan data yang digunakan adalah studi pustaka dan wawancara mendalam. Hasil penelitian ini menyimpulkan bahwa hanya dua (2) dari enam (6) dimensi kepastian hukum menurut Rachmat Soemitro (1988) yang terpenuhi, yaitu materi/objek hukum dan subjek hukum. Sementara itu, dimensi lainnya, antara lain pendefinisian, penyempitan/perluasan materi, ruang lingkup, dan penggunaan bahasa hukum masih belum terpenuhi. Dalam konteks perlakuan PPh, frasa “diperlakukan sebagai dividen” menimbulkan keambiguan sehingga memberikan dua (2) penafsiran yang berbeda terkait perlakuan PPh atas constructive dividend di dalam negeri. Di satu sisi, constructive dividend dapat ditafsirkan sebagai non-objek pajak karena diterima oleh WP badan dalam negeri sesuai dengan Pasal 4 ayat (3) huruf f UU PPh. Namun, di sisi lain, terdapat pandangan bahwa perlakuan pajaknya tetap mengacu pada persyaratan dividen yang dikecualikan dari objek pajak yang diatur dalam PP 55/2022. Berdasarkan hasil penelitian ini, disarankan bahwa terdapat penerbitan pedoman yang lebih jelas dalam bentuk naskah dinas, yaitu Peraturan Direktur Jenderal Pajak atau Surat Edaran.

......This study analyses the fulfillment of the legal certainty principle of the secondary adjustment provisions on related-party transactions in Indonesia that result in constructive dividends following the enactment of PMK 172/2023. This research uses a post-positivist approach. The data collection techniques employed were a literature review and in-depth interviews. The findings of this study conclude that only two (2) out of six (6) dimensions of legal certainty as defined by Rachmat Soemitro (1988) are fulfilled, namely legal object/material and legal subject. Meanwhile, the other dimensions, which include definition, narrowing/broadening of material, legal scope, and the use of legal language, have yet to be fulfilled. In the context of income tax treatment, the phrase “treated as dividends” creates ambiguity, leading to two (2) differing interpretations regarding the income tax treatment of constructive dividends in Indonesia. On one hand, a constructive dividend may be interpreted as a non-taxable object since it is received by a domestic corporate Taxpayer, in accordance with Article 4 paragraph (3) letter f of Income Tax Law. Conversely, another view holds that the tax treatment should still refer to the requirements for dividends excluded from tax objects as stipulated in PP 55/2022. Based on these findings, it is recommended that clearer guidelines be issued in the form of an official document, such as a Directorate General of Taxes Regulation (Peraturan Direktur Jenderal Pajak) or a Circular Letter.