

ANALISIS PUTUSAN PENGADILAN PAJAK SENGKETA *TRANSFER PRICING* ATAS PENJUALAN PRODUK KEPADA PERUSAHAAN AFILIASI DI LUAR NEGERI DITINJAU DARI UNSUR KEPASTIAN HUKUM (Studi Kasus Putusan Pengadilan Pajak Nomor Put.xxx/PP/M.IIIB/15/2014)

Wisamodro Jati¹, Anugrah Anditya²

INTISARI

Tujuan penelitian ini adalah memahami penalaran hukum oleh hakim Pengadilan Pajak dalam memutuskan sengketa koreksi *transfer pricing* atas penjualan produk dari PT. A ke perusahaan afiliasi di luar negeri pada Putusan Pengadilan Nomor Put.xxx/PP/M.IIIB/15/2014 tanggal 21 Mei 2014 ditinjau dari unsur kepastian hukum menurut Rochmat Soemitro serta mengetahui upaya yang dilakukan oleh otoritas pajak dalam mendukung hakim Pengadilan Pajak menciptakan kepastian hukum dalam memutuskan sengketa *transfer pricing* di Indonesia.

Metode penelitian yang digunakan adalah yuridis normatif. Data penelitian merupakan data sekunder yang terdiri atas bahan hukum primer, bahan hukum sekunder dan bahan hukum tersier. Metode analisis data yang digunakan adalah kualitatif.

Penelitian ini menunjukkan bahwa penalaran hukum yang dilakukan hakim dalam memutuskan sengketa *transfer pricing* atas penjualan produk PT A kepada pihak afiliasi di luar negeri tidak sepenuhnya memenuhi kepastian hukum menurut Rochmat Soemitro. Kriteria kepastian hukum yang telah terpenuhi adalah subjek pajak dan objek pajak. Hakim di dalam pertimbangannya tidak memberikan penjelasan yang komprehensif mengenai kriteria penggunaan pembanding internal maupun eksternal serta penentuan metode *transfer pricing*. Hakim disarankan dapat lebih menjelaskan dasar penalaran hukumnya sehingga memberikan kontribusi untuk meningkatkan kepastian hukum atas *transfer pricing*. Otoritas pajak telah berupaya membuat aturan mengenai *transfer pricing* yang lebih rinci sehingga dapat mendukung hakim Pengadilan Pajak menciptakan kepastian hukum dalam memutuskan sengketa *transfer pricing* di Indonesia. Tercatat 5 peraturan diterbitkan oleh Direktur Jenderal Pajak dan 2 peraturan diterbitkan oleh Menteri Keuangan Republik Indonesia yang terkait langsung dengan pelaksanaan ketentuan *transfer pricing* sejak tahun 2010. Otoritas pajak disarankan untuk membuat panduan *transfer pricing* yang lebih komprehensif dengan mengharmonisasikan OECD *Transfer Pricing Guidelines* sesuai dengan kebutuhan perpajakan di Indonesia. Lebih lanjut, otoritas pajak juga dapat mendorong pembuatan *database* perusahaan pembanding yang berbasis di Indonesia dalam rangka meningkatkan kualitas analisis kesebandingan.

Kata kunci : *transfer pricing*, hubungan istimewa, sengketa pajak

¹ PSS Consult, Jakarta

² Fakultas Hukum Universitas Gadjah Mada, Kota Yogyakarta, Daerah Istimewa Yogyakarta.

**ANALYSIS ON TAX COURT DECISION ON TRANSFER PRICING DISPUTES
ON SALES TO OFFSHORE AFFILIATED COMPANY ASSESSED FROM
LEGAL CERTAINTY PERSPECTIVE
(A Case Study Decision of the Tax Court No. Put.xxx/PP/M.IIIB/15/2014)**

Wisamodro Jati¹, Anugrah Anditya²

ABSTRACT

The aim of this research is to understand the legal reasoning by Tax Court judges in deciding the transfer of pricing transfer dispute on the sale of products from PT. A to offshore affiliated companies as mentioned on Court Decision Number Put.xxx/PP/M.IIIB/15/2014 dated May 21, 2014, which is assessed from legal certainty perspective according to Rochmat Soemitro criteria and to get insight the efforts made by the tax authorities in support of Tax Court judges building legal certainty in deciding transfer pricing dispute in Indonesia.

The research is a juridical normative approach. Data of the research included secondary data obtained from literature research consists of primary, secondary and tertiary legal materials. Methods of analysis used is qualitative.

This research reveals that the legal reasoning conducted by judges in deciding dispute transfer pricing on the sale of PT A products to overseas affiliates does not fully meet the legal certainty according to Rochmat Soemitro. Criteria of legal certainty that has been fulfilled is on tax subject and tax object. The judges in their considerations did not provide a comprehensive explanation of the internal and external benchmarking criteria and the determination of the transfer pricing method. The judges are advised to further explain the basis of his legal reasoning so as to contribute to improving legal certainty on transfer pricing. The tax authorities have sought to create more detailed pricing transfer rules in order to support Tax Court judges creating legal certainty in deciding on transfer pricing disputes in Indonesia. There are 5 regulations issued by the Director General of Taxes and 2 regulations issued by the Minister of Finance of the Republic of Indonesia that are directly related to the implementation of transfer pricing provisions since 2010. Tax authorities are advised to issue a more comprehensive transfer pricing guidelines by harmonizing the OECD Transfer Pricing Guidelines in accordance with taxation requirements in Indonesia. Furthermore, the tax authorities may also encourage a comparable company database that refers to Indonesian companies in order to improve the quality of the comparability analysis.

Keywords: transfer pricing, related parties, tax dispute

¹ PSS Consult, Jakarta

² Faculty of Law, Gadjah Mada University, Yogyakarta City, Daerah Istimewa Yogyakarta.