

**PERMASALAHAN *TRANSFER PRICING* DALAM UNDANG-UNDANG
PAJAK DI INDONESIA**

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ABSTRAK

Transfer pricing adalah kebijakan perusahaan dalam menentukan harga transfer kepada perusahaan lain, namun pada praktiknya *transfer pricing* dilakukan untuk menghindari pajak. Saat ini Indonesia belum dapat mengatasi masalah *transfer pricing* karena pengaturan dan sanksinya yang masih belum jelas. Pelaku usaha sebagai Wajib Pajak membutuhkan kepastian hukum dalam rangka perencanaan pajak maupun persaingan bisnis, sedangkan pemerintah juga membutuhkan kepastian hukum untuk mengamankan penerimaan dari sektor pajak. Kekosongan hukum tersebut menimbulkan ketidakpastian hukum bagi kedua belah pihak sehingga tidak selaras dengan nilai keadilan. Regulasi mengenai *transfer pricing* di Indonesia sebenarnya telah diatur dalam peraturan perundang-undangan, yaitu dalam Pasal 18 ayat (3), (3a), dan (4) Undang-undang Pajak Penghasilan (UU PPh). Namun dalam regulasi tersebut belum diatur secara jelas mengenai *transfer pricing*. Ketidakjelasan regulasi mengenai *transfer pricing* tersebut membuat Pemerintah Indonesia perlu menyempurnakan Peraturan Anti Penghindaran Pajak (*Anti-Avoidance Rule / AAR*) yang terintegrasi dalam UU PPh. AAR tersebut harus memberikan definisi dan perbedaan yang jelas mengenai *acceptable tax avoidance*, *unacceptable tax avoidance*, dan *tax evasion*, sehingga tindakan *transfer pricing* dengan harga di luar prinsip kewajaran akan dikategorikan sebagai tindakan ilegal. Selain itu di dalam AAR harus diatur secara jelas dan tegas mengenai sanksi bagi pelaku *transfer pricing*. Penyempurnaan AAR yang terintegrasi dalam UU PPh memberikan kepastian hukum dan menjamin keadilan bagi Pelaku usaha sebagai Wajib Pajak maupun bagi pemerintah.

Kata Kunci: *Transfer pricing*, *anti-avoidance rule*, *tax avoidance*, *unacceptable tax avoidance*

THE ISSUE OF TRANSFER PRICING IN TAX LAWS IN INDONESIA

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ABSTRACT

Transfer pricing is a company policy in determining transfer prices to other companies, but in practice transfer pricing is done in order to avoid taxes. At present Indonesia has not been able to overcome the issue of transfer pricing because the regulations and sanctions are still unclear. Businessmen as taxpayers need legal certainty in the context of tax planning and business competition, while the government also requires legal certainty to secure revenues from the tax sector. The legal vacuum created legal uncertainty for both parties so that it was not in harmony with the principle of justice. Regulation regarding transfer pricing in Indonesia has actually been regulated in legislation found in Article 18 paragraph (3), (3a), and (4) Income Tax Law. However, the regulation has not been clearly regulating transfer pricing. The unclear regulation regarding transfer pricing lead Indonesian Government to refine the Anti-Avoidance Rule (AAR) which is integrated in the Income Tax Law. The AAR must provide clear definitions and differences regarding acceptable tax avoidance, unacceptable tax avoidance, and tax evasion, so that transfer pricing that breaks arm's length principle will be categorized as illegal. In addition, the AAR must be clearly and explicitly regulated regarding sanctions for transfer pricing doer. Improvement of AAR which is integrated in the Income Tax Law will provides legal certainty and guarantees justice for both businessmen as taxpayers and the government.

Keywords: Transfer pricing, anti-avoidance rule, tax avoidance, unacceptable tax avoidance