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DOUBLE TAXATION AVOIDANCE AGREEMENT (TAX TREATY) AGAINST INTERNATIONAL TRANSACTIONS ACCORDING TO THE ISLAMIC ECONOMIC PERSPECTIVE

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| Information | Abstract: |
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| Article History: Received : 15.01.2023 Revised : 18.06.2023 Accepted : 30.06.2023 | <i>Holding a Double Taxation Avoidance Agreement (P3B) or a Tax treaty is to avoid double taxation. The presence or absence of this tax treaty greatly affects investors' profits in international trade transactions. International transactions are needed by every country because with international transactions a country will have the opportunity to increase its economic growth. Through this international trade, a country will have the ability to expand its consumption possibilities. In the agreement, the avoidance of double taxation must also meet the principles that apply in taxes and must also meet the principles of Islamic economics and the conditions of tax collection according to Islamic principles. The purpose of this research is the analysis of double taxation avoidance agreements in international transactions according to the perspective of Islamic economics. In this research, the researcher uses the type of library research. The data collection method is in the form of documentation. The documentation that the author does is looking for documents or data that the author considers important to be taken, in the form of newspaper/magazine articles, journals, libraries, brochures, the internet, and books. This study concluded that the taxation method as part of the method in increasing state revenue administratively must be viewed as a universal method that should not be diverted towards favoring a particular person or entity. Simply, double taxation has unfair treatment because there are still unilateral methods that do not provide justice for citizens who have dual citizenship. The principle of justice is an important pillar in Islamic economics.</i> |
| Keywords: Double Taxation Avoidance Agreement, Tax Treaty, International Transactions, Islamic Economics | |

A. INTRODUCTION

Realizing a just and equitable general welfare is the main goal of national development, in its implementation, it must be sustainable to improve the welfare of the people, both materially and spiritually. To achieve this goal, the government needs to explore sources of funds, either from taxes or income other than taxes. The implementation of development in the unitary State of the Republic of Indonesia is intended to accelerate the process of achieving the goals of the State as stated in the preamble to the 1945 Constitution, the realization of a just and prosperous society. In order to achieve the implementation of development as one of the goals of the State, a number of funds are needed, especially the funds allocated in the revenue and expenditure budgets for each country (Hatta, 2018).

The geographical condition of Indonesia, which is part of the international community, requires that Indonesia needs to establish relations with other countries to be able to enter into mutually beneficial cross-border transactions and enter into foreign entities to carry out economic activities and earn income in Indonesia. Indonesian country (Prabu et al., 2021). One of the largest sources of state revenue is the tax revenue sector, where taxes are one of the vital instruments of state revenue sources. Without taxes, the state will not be able to finance development programs and government operations. Not only the State of Indonesia, taxes are a source of state revenue, but other countries also prioritize taxes as the most central source of state revenue. The tax problem at this time is not only a problem for one country but occurs in certain countries in terms of the state budget of revenues and expenditures (Hatta, 2018).

Along with the expansion of international relations, there are various aspects, both from economic, monetary, and legal aspects. In the economic aspect, the progress of communication and transportation has contributed and helped to ripen a conducive climate for economic relations, initially international economic relations were only characterized by the exchange of goods, then the migration of human resources, cross-border service transactions, and then the flow of capital and financing between countries as well as the flow of information. increasingly at war in the international economic arena (Princess, 2014).

In international transactions, competition and dependence occur which can lead to advantages or threats. When viewed from the side of tax revenue, income arising from international transactions will make a large contribution to driving the domestic economy and at the same time increasing sources of state revenue from the tax sector, but on the other hand, very rapid progress in technology and information, tariff differences taxes, and the provision of tax facilities and tax planning on a global basis will cause problems, namely the imposition of double taxation on the same object arising from international transactions or the imposition of double taxation on the same subject (Ahmadi, 2007).

There are two authorities that have an interest in the imposition of taxes related to the right of income taxation on ownership/beneficial owner, namely the country of origin of the taxpayer (principle of domicile) and the country where the taxpayer earns income (principle of source). Tax problems arise when the two countries want to tax the same type of income (passive income). If the taxation is based on domicile, the aspects of equity and investment efficiency will be more certain. But on the other hand, it is very difficult to determine with certainty the income of taxpayers who come from abroad. On the other hand, if the tax imposition is based on the source principle, it will be easy to determine with certainty the value of the income to be taxed.

On the other hand, it does not meet equity and investment efficiency is also uncertain. In addition, the tax rate imposed for the same tax object also differs between the imposition of taxes based on the source principle and those based on the domicile principle. Another thing to note is that the right of a country to impose taxes on income based on its residence jurisdiction, but on the other hand it is also the right of other countries to collect income taxes based on the source jurisdiction. This gives rise to international double taxation because taxpayers are subject to double taxation on the same income by different countries in the same period. In addition, the tax rate imposed for the same tax object also differs between the imposition of taxes based on the source principle and those based on the domicile principle. Another thing to note is that the right of a country to impose taxes on income based on its residence jurisdiction, but on the other hand it is also the right of other countries to collect income taxes based on the source jurisdiction. This gives rise to international double

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Simultaneous taxation by the two countries has led to double taxation (tax treaty) which can be an element causing the high costs of investment and transnational business and therefore is an obstacle to their mobility. The relief from the tax treaty granted by the country of domicile of the investor or the place of investment through domestic provisions or taxation agreements is a very important solution to improve the investment climate and facilitate resource mobility. Treaties in international double taxation are mostly young. Previously known only as friendship agreements, residence agreements, trade agreements, and service agreements which sometimes included a provision that had to do with several kinds of taxes. These agreements usually cannot be used to eliminate or eliminate double taxation. Approval is more of a guarantee for every person/business not to be treated arbitrarily, which in fact has benefits (Princess, 2014).

Islamic economics aims at realizing long-term levels of economic growth and maximizing human welfare (*falah*). In other words, *falah* means the fulfillment of the individual needs of the community without neglecting the macroeconomic balance (social interests), ecological balance and still paying attention to family values and norms. As a consequence, a number of basic ethics in economics are needed so that *falah* is realized (Sudarsono, 2003).

The issue of *muamalah* is an important matter and an important goal of Islam in an effort to improve human life. On that basis, the Shari'a of *muamalah* was revealed by Allah in a global and general form, by presenting various principles and norms that can guarantee the principle of justice in *muamalah* between fellow human beings (Al-Kaf, 2002). The most basic principle of the Islamic social order is the creation of economic justice. Economic justice is the rule of the game about economic relations based on ethical principles, which principles in turn are rooted in God's law or on human social nature (Mubyarto, 1990). From the research of Muhammad Rifky Santoso, it can be concluded that there are multiple interpretations of income tax regulations regarding foreign losses when compensated with domestic income. Conceptually, foreign losses cannot be compensated for by domestic gains, because foreign losses can be compensated for by income in the same source country. If these foreign losses can be compensated with domestic gains, then these losses can also be compensated in the source country. To reduce this multi-interpretation, DGT needs to revise the unclear rules regarding compensation for foreign losses (Muhammd Rizky Santoso, 2021).

In addition, the research of Kunka Petkova concluded that of all the double taxation treaties that took effect in 2012, about 41% were symmetric (single rated) and 59% asymmetric (rated), i.e., they set different dividend tax withholding rates depending on the holdings of foreign investors fractions (Petkova, 2021). From the above background, a more in-depth discussion is needed about the tax treaty in Indonesia and how the problem is analyzed from an Islamic economic perspective

B. LITERATUR REVIEW

Tax

Tax is a contribution to the state (which can be enforced) owed by the taxpayer, who pays it according to regulations, without getting performance back, which can be directly appointed and its purpose is to finance general expenditures related to the state's duty to administer the government. Law Number 28 of 2007 concerning General Provisions and Tax Procedures states that "Taxes are mandatory contributions to the state owed by individuals or entities that are coercive under the law, without receiving direct compensation and are used for state purposes for the greatest prosperity of the people" (Liberti Pandiangan, 2008). Taxes are people's contributions that go into the State treasury based on the law (coercive nature) without compensation, which will be used to pay expenses from the public interest. Tax as a mandatory contribution to the State that is owed by an individual or corporate taxpayer which is coercive in nature based on the law does not receive direct compensation and is used for the purposes of the State whose purpose is for the prosperity of the people (Mardiasmo, 2008).

Double Tax

There is a juridical understanding of double taxation and economic double taxation. Juridically double taxation refers to a situation where a tax subject is taxed by more than one country on the same income in the same period. Meanwhile, the definition of economic double taxation according to the Organization for Economic Cooperation and Development (OECD) is: "Double taxation is economic if more than one person is taxed on the same item". Economical double taxation refers to a situation where the same income is taxed more than once in two or more different tax subjects. Based on this understanding, there is an economic double taxation on dividend income which is the object of tax received by individuals and entities (Fitriandi et al., 2019). International double taxation is a major problem in international tax law or a tax that is imposed more than once on the same object by more than one country, double taxation can occur because there is more than one country that collects taxes and is imposed on the same tax object. Double taxation

avoidance agreement is one of the main sources of international tax law besides national tax laws because this agreement is essentially a reconciliation of two different tax laws (Risa, nd).

The same object is meant, the emergence of taxes imposed on the same tax in several countries due to the existence of multiple domiciles in each country where the two countries adhere to the principle of domicile in imposing taxes. In addition to the domicile principle, the nationality principle is also a factor in the emergence of double taxation, especially when there is a clash between the domicile principle and the nationality principle. In addition to the same subject, the same tax object can result in double taxation. The same object is also part of the income earned or transactions carried out in other countries due to the same tax in more than one country. In addition to clashes between the principle of domicile and the principle of nationality, a clash between the principle of domicile and the principle of source can also result in double taxation (Hatta, 2018).

Tax Treaty

Double Taxation Avoidance Agreement (P3B) or tax treaty is the imposition of tax more than once by two or more countries on the same income. Tax treaty is intended to determine the allocation of taxation rights from a transaction that occurs between the source country (the country where the source of income originates) and the domicile country (the country where the taxpayer resides or resides). There are 5 objectives of the tax treaty, namely avoiding double taxation that will burden the business world, increasing foreign investment, increasing human resources (HR), exchanging information to prevent tax evasion, and equal status between countries (Ministry of Finance, 2020).

One of the ways offered by Indonesia in avoiding double taxation is by entering into a double tax avoidance agreement with other countries. The method adopted by the State of Indonesia in the approval of the Avoidance of Double Taxation (P3B) or tax treaty is through the bilateral method using the OECD model reference for developed countries, United Nations for developing countries and United State for America. Double taxation basically cannot be avoided if each country has a different tax collection principle, but the double taxation can be described in the form of a

diplomatic agreement between two or more countries so that double taxation can reduce the burden of taxpayers in paying the tax (Hatta, 2018).

Indonesia itself in terms of avoiding double taxation uses the bilateral method with the OECD model for developed countries such as Western Europe and North America, the UN model for developing countries and the US model for America. With the enactment of a tax treaty, in a country there are two sources of law in taxation of taxpayers, especially taxpayers who come from treaty partner countries. The most basic in this case is the provision in the tax treaty and the second is the provision in the domestic tax law (Hatta, 2018).

C. METHODOLOGY

In this research, the researcher uses the type of library research. The data collection method is in the form of documentation. The documentation that the author does is looking for documents or data that the author considers important to be taken, in the form of: newspaper/magazine articles, journals, libraries, brochures, internet and books (Mawadah, 2019).

D. RESULT AND ANALYSIS

International business activities, which cross the boundaries of a country's tax jurisdiction, in addition to the risk of causing international double taxation, on the other hand, have the potential to open up the possibility of international tax evasion and smuggling (Jaja Zakaria, 2005). International transactions are needed by every country, because with international transactions a country will have the opportunity to increase its economic growth. Through this international trade, a country will have the ability to expand its consumption possibilities. International trade arises because of differences in supply and demand, which are caused by differences in income per capita, people's tastes, quantity or quality of production factors, and other factors that affect production or supply, as well as excess supply (excess stock) in the market. domestic. The Indonesian state held a tax treaty not merely the desire of our country, but also because there is a principle of reciprocity and a mutual desire of the country that entered into the agreement. Each country applies its own principles in the

legislation that is used as a reference for tax collection. These principles affect the treatment taxation of foreign tax subjects and objects.

In practice, the imposition of taxes by countries often creates a conflict of tax law between one country and another. The tax law conflict arises as a result of a conflict of interest to impose taxes. If there is a conflict of tax law between countries, then the possibility of double taxation is very potential. The occurrence of a tax law conflict is highly dependent on the taxation principles adopted by each country concerned. If two countries adopt different principles, it can lead to double taxation (Jaja Zakaria, 2005). The double taxation avoidance agreement (P3B) has an equal position with the law, because in its application it functions as a complement.

Agreements are considered valid and can be executed by residents of inter-states if they are ratified or confirmed by the competent authority in their respective countries, in this case the DPR or the President. The agreement to avoid double taxation (tax treaty) is regulated in Article 32 A of the Income Tax Law for agreements with governments of other countries in the context of avoiding double taxation and preventing tax evasion. In the explanation of Article 32 A of the Income Tax Law, it is stated that the economy and trade with other countries requires a legal instrument that special application (*lex specialist*) which regulates the taxation rights of each country in order to provide legal certainty and avoid double taxation and prevent tax evasion. The position of the tax treaty in its implementation takes precedence over the Income Tax Law, therefore as long as it is regulated in a tax treaty, taxation on foreign residents or foreign entities follows the provisions stipulated in the tax treaty.

The tax treaty has a tax avoidance method, namely the unilateral method where this method turns out to still have many advantages compared to the weaknesses it contains. The advantage of using the unilateral method in avoiding double taxation is that it is relatively easier to make provisions because it does not need to involve or depend on other countries. Besides that, its implementation is also easy because it is fully based on the provisions of the National Law. The disadvantage is that there are aspects of international double taxation that cannot be resolved unilaterally. For example, the double taxation that arises as a result of dual residence cannot be resolved unilaterally because it involves the interests and systems and tax laws of

other countries. In addition, the provisions on the avoidance of unilateral double taxation generally only regulate tax avoidance for domestic taxpayers (resident tax payers) and do not regulate tax avoidance for non-resident taxpayers.

In simple terms, double taxation has an unfair treatment because there are still one-sided methods that do not provide justice for citizens who have dual citizenship. The principle of justice is an important pillar in Islamic economics, the enforcement of justice has been emphasized by the Qur'an as the main mission of the prophets sent by Allah. The goal of socio-economic justice and the distribution of income or welfare, is considered an inseparable part of Islamic morality (Takhim, 2016). In the teachings of sharia economics, the principle of justice in *muamalah* must always exist for the sake of creating *falah* for the whole community.

The concept of *falah* refers to the goal of Islamic law which is also the goal of sharia economics, namely the realization and maintenance of the five basic principles contained in *al-maqoshid as-syari'ah* (religion, property, soul, mind and lineage) from everything that is destructive in order to achieve a healthy life. good and honorable (*hayatan toyyibah*) this world and the hereafter. There is a demand for the general benefit, which must take precedence to prevent harm. In certain circumstances (emergency), *ulil amri* is obliged to provide for the needs of the people, in the presence or absence of assets. Without the fulfillment of these needs, it is likely that even greater harm will come. On the basis of this general claim, in accordance with the word of Allah SWT in the Qur'an Surah At-Taubah Verse 60, which instructs the State to fulfill the demands of the public benefit:

إِنَّمَا الصَّدَقَتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَمِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبُهُمْ وَفِي الرِّقَابِ وَالْغُرَمِينَ وَفِي سَبِيلِ
اللَّهِ وَابْنِ السَّبِيلِ فَرِيضَةً مِّنَ اللَّهِ ۗ وَاللَّهُ عَلِيمٌ حَكِيمٌ

"Alms tax is only for the poor and the needy, for those employed to administer it, for those whose hearts are attracted to the faith, for freeing slaves, for those in debt, for Allah's cause, and for needy travelers. This is an obligation from Allah. And Allah is All-Knowing, All-Wise"

Referring to the verse of Al-Taubah 60 above, spending public money from taxes must include three big targets: empowering the weak people (*fuqara, Masakin, mu'allaf, qulubuhum, riqab, gharimin, ibn sabil*), routine government expenses, Amilin, necessities public goods (public goods or *sabilillah*), both physical (such as road construction, irrigation, nature conservation, and so on) or non-physical (such as law enforcement, scientific and cultural development). A state leader may collect taxes because of the harm and public benefit. And to meet the people's needs for security, health and education, *ulil Amri* still has to provide. In determining the tax burden must be fair. Fair in the sense that everyone gets the same tax burden without discrimination or favoritism. The same tax burden does not mean the same percentage of the tax burden, but is based on economic and social considerations, so that the percentage of tax levies is not the same or a multilevel burden. In the avoidance of double taxation treaties in the unilateral method (unilateral) it is still not fair in tax collection.

E. CONCLUSION

The need for such large funds for the development of the Indonesian state should require a clear perspective on the application of taxation methods and policies in the future as a basis for tax collection. The taxation method as part of the method of increasing state revenue administratively must be viewed as a universal method that should not be diverted towards favoring a particular person or entity. In simple terms, double taxation has an unfair treatment because there are still one-sided methods that do not provide justice for citizens who have dual citizenship. In determining the tax burden must be fair. Fair in the sense that everyone gets the same tax burden without discrimination or favoritism. The same tax burden does not mean the same percentage of the tax burden, but is based on economic and social considerations, so that the percentage of tax levies is not the same or a multilevel burden.

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