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ARM'S LENGTH PRINCIPLE TO PREVENT THE PRACTICE OF THE ABUSIVE TRANSFER PRICING AMONG MULTINATIONAL COMPANIES IN INDONESIA

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ABSTRACT

The rapid growth of multinational companies in Indonesia marks its prosperous of investment and industrial climates. However, on the other hand, the growth of these companies is also used to deceive the government in terms of tax payments by abusing the transfer pricing to manipulate the company's financial statements. Thus, a system to prevent those kinds of lawlessness is indispensable. This study aims to comprehend the implementation of the Arm's Length Principle (ALP) that is stipulated in the laws and regulations of the Republic of Indonesia to prevent the practice of the Abusive Transfer Pricing (ATP). Besides, it also aims to find out the characteristics of the ALP that is internationally stipulated in preventing the ATP practice. This study uses the normative and perspective methods to understand the characteristics of the ALP in preventing the practice of the ATP. The analysis is carried out by scrutinizing both primary and secondary legal sources. The primary legal sources include rules of law, legal principles, and legal doctrines to achieve the coherence truth. The secondary sources, moreover, comprise books, journals, and other sources related to the issue. This study further applies the statute, comparative, and conceptual approaches in carrying out the analysis. In the Indonesian Taxation Law, the ALP and other technical regulations stipulated in Article 18 paragraph (3) and Article 18 paragraph (3a) of the Law Number 36 of 2008 on Income Tax have the similar characteristics with the Organization for Economic Cooperation and Development (OECD) Model Tax Convention and the United Nations (UN) Model Double Taxation Convention. However, the Indonesian ALP is more complexly stipulated to meet the interest of state taxation. It is affirmed that even though the implementation of the principle is

different due to the diversity of the principles of taxation and each country's interests, the ALP's characters still apply in general and cannot be separated in their application.

INTRODUCTION

The globalization in the economic sector increases cross-border transactions and the development of multinational companies. Brigham and Houston argued that one of the reasons for multinational companies to settle down in Indonesia is to avoid government regulations or policies, particularly on taxation (Sutedi, 2008). In Indonesia, a case of transfer pricing was performed by PT. Adaro Indonesia (Adaro), which resulted in Indonesia, losing 30% of the income tax and 13.5% of the royalty that Adaro should have paid. In consequences, these losses caused Indonesia to suffer a loss for 400 million rupiahs every year. This kind of situation occurred due to the practice of transfer pricing as a strategy employed by multinational companies to determine the price of cross-border transactions among the corporation members (Rugman & Eden, 2017).

The transfer pricing carried out by domestic companies (domestic transfer pricing); otherwise, it is not overly troublesome since the government will automatically have jurisdiction or rights to collect taxes from the advantaged companies in practice. Transfer pricing, thus, will have the potential to be detrimental if multinational companies do it because the country will be at a loss due to tax transfers through diversion or profit manipulation (Clempner, 2019; Jafri & Mustikasari, 2018). Multinational companies implement the transfer pricing used as a tax motive by relocating their global income to the countries which tax values are low and shifting the vast numbers of costs to the states with a high tax value. In other words, it can be argued that the shifting of tax obligations from the high-tax value countries to the low-tax value countries is intended. Such circumstance is what is called as the Abuse of Transfer Pricing (hereafter, ATP) (Santoso, 2005). Back to Andaro's case, according to the agreement between Andaro and Coaltrade, it is mentioned that start from October 2005, Coaltrade has been rightful to purchase up to ten tons of coal from Andaro with the maximum price of 32 USD per ton. Whereas, at the end of 2007, the cost of coal reached 95 USD per ton (Ahmad Munjin, 2008). The coals then were sold under the reasonable price, which, undoubtedly, had an impact to Andaro's financial statements, which showed that Andaro suffered from a loss (Ortax (observation and Research of Taxation), 2008). This how was done merely to avoid the company's tax and increase the profitability of the group companies owned by shareholders. The Andaro case, however, could not be solved at that time, given the government encountered hardship in collecting the transfer pricing proofs by Adaro and the absence of the precise legal protection on the ATP (Ortax (Observation and Research of Taxation), 2008).

Law Number 7 of 1983 as lastly amended by Law Number 36 of 2008 on Income Tax or Law Number 8 of 1983 as lastly amended by Law Number 42 of 2009 on the Value-Added Tax (hereafter, VAT) do not consider transfer pricing as a criminal act. Thus, at times, the penalties for the action in the existing regulations are still administrative. For that reason, to solve the issues on transfer pricing, the Indonesian government has stipulated the Director General of Taxation Regulation Number Per-22/PJ/2013 on Tax Audit Procedures for Taxpayers with Related Party Transactions and the Minister of

Finance of the Republic of Indonesia Regulation Number 7/PMK.03/2015 on the Formation and Implementation of an Advance Pricing Agreement (APA).

The change of the Director General of Taxation Regulation Number Per-43/PJ/2010 on the Application of the Arm’s Length Principle in Transactions between Taxpayers and Related Parties (hereafter, the Director General of Taxation Regulation Number Per-32/PJ/2011) has stipulated the application of ALP in transactions by using the APA approach. The ALP is the basic international-standard rule for the implementation of transfer pricing to determine the transfer price for the tax purposes as stipulated in Article 9 of the Organization for Economic Cooperation and Development Model Convention with Respect to Taxes on Income and Capital (hereafter, OECD Model Tax Convention) and Article 9 of the United Nation Double Taxation Convention for Developed and Developing Countries (hereafter, UN Model Double Taxation Convention). However, those principles are varied in different countries, as it is in Indonesia (OECD, 2018).

In the application, the ALP, even though through the APA, can cause problems for both the Government to Government or the relevant state tax authorities and the issues of legal certainty and protection of the taxpayers themselves (Shakhov, Chernov, Kalashnikova, Sanginova, & Katsiev, 2019). Due to the background elucidated above, it is believed necessary to understand the ALP fully, both the concepts and the contexts, to prevent the ATP. For that reason, this study aims to analyze the ALP's characteristics and its implementation in Indonesia in an attempt to stop the ATP.

MATERIALS AND METHODS

This study applies to normative research. Legal research is a type of perspective research, which means that other than a know-about, it is more of know-how research that is conducted to solve the issue. Furthermore, as legal research, this study is meant to discern the characteristics of the ALP implementation in preventing the ATP practice performed by multinational companies by analyzing legal sources, including rules of law, legal principles, and legal doctrines related to the issue to achieve the coherent truth.

This study applied three approaches, namely statute approach, comparative approach, and conceptual approach. By using the statute approach, the writer analyzed the national regulations (the Director General of Taxation Regulation Number Per-32/PJ/2011 and the Director General of Taxation Regulation Number Per-22/PJ/2011) and international regulations on the ALP implementation to prevent the ATP practice. Second, to that, the comparative approach referred to the comparison of the provision in Article 9 of the OECD Model Tax Convention, Article 9 of the UN Model Double Taxation Convention, and other countries’ regulations, namely China, Germany, India, Japan, and Australia, in handling the same problems. Lastly, the conceptual approach referred to the library study of the existing legal doctrines to the concept and defined the current issue (Philipus M Hadjon, 2008).

RESULTS AND DISCUSSION

Characteristics of the Arm's Length Principle in Preventing the Abuse of Transfer Pricing (ATP) Practice

Transfer pricing is an activity to determine the price of a transaction between affiliated companies to control expenses and profits of the group company (Hsu, Xiao, & Xu, 2019). If seen from the business perspective, the activity is efficient and legally not prohibited; yet, the implementation is prone to the ATP practice. One example of the ATP practice is the G Group, a company in Uruguay, which was not directly transacted with its subsidiary in Indonesia but sold it first to the subsidiary based in Myanmar. Then, from Myanmar, the goods were sold to a company in Vietnam. After that, the latter company carried out transactions with the subsidiary in Indonesia (PT. Gemas), which caused the price to increase many times over when the goods arrived in Indonesia. Based on the description, it is clear that PT. Gemas was to suffer losses since it had to pay a much higher price for the raw materials. This way, the tax potential that should have been paid by PT. Gemas to the Indonesian government could not be paid because the company noted that the losses or profits had decreased due to the ATP practice.

By referring to the elucidation above, to avoid the ATP practice, thus, a price controller is needed so that it can be used as a reference to determine whether a company has committed the ATP. Seen from its practice, the ATP can be categorized into tax avoidance and tax evasion (S. Aditya, 2017). Transfer pricing, furthermore, is considered tax avoidance, providing there is an attempt to avoid paying taxes by taking the flaws of the tax regulations for granted and is potential to put the country at a loss. On the other hand, transfer pricing can also be categorized as tax evasion, given its form in avoiding paying taxes by violating the existing rules, for instance, by not giving away related documents or by falsifying financial statements (Liu, Schmidt-Eisenlohr, & Guo, 2017). Whether as tax avoidance or tax evasion, the ATP practice must be prevented. Therefore, the OECD stipulated the ALP mechanisms to determine the standard price to avoid ATP practice.

Characteristics of the Arm's Length Principle (ALP)

The ALP is the basis or foundation in dealing with international tax problems which the first appearance was in Article 9 Paragraph 1 of the OECD Model Tax Convention, which stated that a country is allowed to make corrections for the first time (primary adjustment) of transactions of the affiliated companies with commercial purposes that are suspected of harming the country. The commercial relationship promises different things if the agreement is made between companies without affiliation, which results in the taxed profits not to be obtained (Lei, Ding, Li, & Zhao, 2019). The benchmarks used in this comparative analysis are the price, benefits, or other conditions of the similar transactions between independent companies, which also known as the ALP.

According to Paragraph 2 Commentaries of Article 9 of the OECD Model Tax Convention, this approach is carried out by focusing solely on the transactions' characteristics among members or affiliated companies and whether the conditions will be different if it involves other independent companies. Furthermore, by referring to Article 9 of the OECD Model Tax Convention, it

can be noticed that the ALP's characteristics comprise as the affiliation control mechanism, as a means to avoid the occurrence of double taxation, and as a means to apply the fair prices in international transactions. The OECD formulated the principle by adapting the United Nations (hereafter, the UN) with several adjustments to accommodate the resolution of two main problems in international taxation, namely the imposition of tax in every state jurisdiction and international double taxation (Kato & Okoshi, 2019).

ALP as the Control Mechanism of the Multinational Companies Affiliations

The fundamental key to succeeding the transfer pricing in taxation is the existence of transactions that is based on affiliations. The ALP is also applied by comparing the company's transaction that has affiliations. The definition of affiliation in the international law itself has been stipulated in Article 9 of the OECD Model Tax Convention, that is: (1) an enterprise of a Contracting State participates directly in the management, control, or capital of an enterprise of the other Contracting State, or; (2) the same persons participate directly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State.

The special relations or affiliations between a domestic company and an international company often raise problems regarding tax rights received in each state jurisdiction. The issues may arise due to the business policies implemented by the companies to gain profits, which result in unreliable reports caused by the intended loss by income transfers or fees impositions on a transaction from one party to another. In other words, the policies are designed to create imagery that the company located in a high-value tax country suffers from deficits; thus, it can be free from paying taxes of the state jurisdiction.

Based on the description, therefore, if a company does not gain profits or suffers from losses as a result from the affiliation transactions in its financial statements, it will not be subject to income tax, providing the income tax object does not exist. Moreover, the ALP implementation that is based on the market price in the business transactions of affiliated multinational companies is believed to decrease the possibility of price shifts or manipulations and tax avoidance.

Arm's Length Principle as the Control Mechanism of International Double Taxation

Article 9 paragraph 2 of the OECD Model Tax Convention stipulated that;
"Where a Contracting State includes in the profits of an enterprise of that State — and taxes accordingly—profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard

shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other."

According to the provision, to respond the primary adjustment of a country, the OECD Model Tax Convention requires other countries to make the appropriate correction of the first correction to ensure the compliance of tax collections and avoid international double taxation. In brief, there are several elements of international double taxation, for instance, the existences of tax-collecting countries, conflicting regulatory norms, object subjects to the same tax, the basis for imposing the same tax and being subject to the same tax or alike. The correction made by the countries where multinational companies are built or do their business transactions, generally, concerns to whether the company is subject to taxes of the county where the company is established (domicile/residence principle). Hence, at the same time, the company is also subject to taxes of the country in which the business transaction is occurred (source principle). Therefore, both the OECD Model Tax Convention and the UN Model Double Taxation Convention, regulate the mutual correction between the related countries.

Furthermore, if needed, the taxation authorities in those countries can carry out further coordination regarding tax implementation through a mutual agreement. This mutual agreement is then expected to become the legal protection for the associated countries in implementing the taxation to multinational companies. Also, the agreement further aims to prevent the occurrences of tax avoidance besides being non-discriminant and providing certainty, information exchanges, dispute settlements in double taxation agreement avoidance, guidance in tax collection, and savings in cash flows.

The ALP implementation, moreover, is mostly objectified to achieve the goals of international double taxation agreements due to the role of the ALP as the agreement foundation. Besides providing the legal certainty for tax payers, the ALP also helps the country to prevent the practice of tax avoidance through the ATP. Lastly, the ALP gives opportunities to the related countries to avoid the occurrences of tax problems between jurisdictions in the future.

Comparability Analysis and Transfer Pricing Methods to Obtain Normal Prices

To determine transfer pricing methods, it requires a standard for the comparison. An appropriate comparison can be chosen by looking at the economic character of the compared situations that should be quite comparable. Comparable means that there is no difference between materials of the compared conditions. The comparability analysis concept, furthermore, is used to choose an appropriate comparison besides to determine a suitable transfer pricing method so that the transfer price can be under the ALP. Below is the comparison of the standard characteristics in the application of comparability analysis.

Table 1. Differences between OECD Guidelines and UN Manuals

OECD Guidelines	UN Manual

ALP implementation, in general is based on the price comparison, profit margins of the controlled transactions, and profit margins of the transactions between independent companies. The benchmarks of those comparisons for instance; property characteristics, or; transferred services; business functions; clauses in the contract; and economic situations and applied business strategies.	Comparability analysis can be carried out by two steps, namely; 1. Understanding the characteristics of the economic transactions of related companies, and the roles of each controlled transaction by analyzing several factors. 2. Comparing the controlled transactions and uncontrolled transactions. The factors that can influence the price of profit in both controlled and uncontrolled transactions, namely; (1) the characteristics of the transacted properties or services, (2) functions performed by the parties and the assumed risks, or functions analysis, (3) the contract's clauses, (4) the economic condition, and (5) the performed business strategies.

The standard to determine the comparative characters in the comparability methods above is also applied in Australia and Malaysia. After finding the comparative company, the next to be analyzed is the transfer pricing methods to be applied appropriately. Both the OECD and the UN, however, do not regulate and give a full right to each jurisdiction to determine the suitable method in determining the transfer price for each transaction. Nonetheless, given the different implementations of the ALP in each country, in practice, the application of this principle is often varied in different countries.

Table 2. Basic Implementation Comparison of the Arm's Length Principle in Several Countries

No.	Country	Convention Adopted	Basic Implementation of the ALP
1.	China	UN Model Double Taxation Convention	The decrease of taxable income of foreign companies because they do not apply the ALP.
2.	Germany	OECD Model Tax Convention	Income from taxpayers is reduced because the transactions with affiliated parties are not using the ALP.
3.	India	UN Model Double Taxation Convention	The income from international transactions if the proofs, information, and documents indicate that the methods that should be

			applied to determine the price are not employed, or do not have adequate documentation, then the documentation given to the tax authority along with the data to count the cost are considered invalid.
4.	Japan	OECD Model Tax Convention	The transactions done with the ALP are not for tax purposes.

Table 3. Differences of Business Profits' Tax Treaty between the UN Model Double Taxation Convention and the OECD Model Tax Convention

OECD Model Tax Convention	**UN Model Double Taxation Convention**
Article 7 paragraph 1 stipulated that "Profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein…" Thus, if a company does a transaction with a permanent establishment company in another country, the country then can collect taxes. This provision is in line with the domicile principle. In paragraph 2 and 3, it is mentioned that the profits mentioned are the profits equivalent to independent company transactions on the same or similar activities. Paragraph 3, moreover, implies that to eliminate double taxations in related countries (in this case is the countries of the permanent establishment companies), the companies can perform tax adjustments and consult with each other.	Article 7 paragraph 1 and paragraph 2 stipulated that "The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to: a) that permanent establishment; b) sales in that other State of goods or merchandise of the same or similar kinds as those sold through that permanent establishment; or c) other business activities carried out in that other State of the same or similar kind as those affected through that permanent establishment.

Indonesia, however, does not ratify either the OECD Model Tax Convention or the UN Model Double Taxation convention. Yet, it has its model in applying the ALP in the tax law. In brief, it can be affirmed that in handling the ATP practice, the ALP is mainly used to control the transactions among companies with exclusive affiliations besides to avoid international double taxation by implementing the reasonable price obtained from the comparison.

Implementation of the Arm's Length Principle within the Laws and Regulations of Indonesia in Attempt to Prevent the Practice of Abuse of Transfer Pricing

Based on the elucidation of Article 18 paragraph 3 of the Income Tax Law, if there is a special relationship, it is possible that the income reported may be less than it should be or that the cost is more than what it should be. In this case, the Director General of Taxation is authorized to reallocate income and/or expenses following the situations among taxpayers that have no unique relationships. In determining the amount of income and/or costs, furthermore, the comparable uncontrolled price method is used along with the resale price method, the cost-plus method, or other methods, namely the profit split method and the transactional net margin method.

The regulations of the ALP in Article 18 paragraph 3 of the Income Tax Law are very identical with the ALP that becomes the basic norms of Article 9 paragraph (1) of the OECD Model Tax Convention and the UN Model Double Taxation Convention. Moreover, Article 18, paragraph 3 of the Income Tax Law stipulated the authority of the Director General of Taxation to redetermine transaction prices among affiliated companies. The price, furthermore, is following the situation in which the taxpayers do not have unique relationships and if there is an indication stating that there is improper deduction or imposition in the referred transactions. Therefore, the concept quoted by Article 18 paragraph 3 of the Income Tax Law implies that the Indonesian government has applied the ALP in its laws and regulations. Even so, there are some differences between the Indonesian laws and both convention models in the ALP application.

Implementation of the Arm's Length Principle

In the Indonesian law, as mentioned above, to determine the proper transfer pricing method of a transaction between affiliated companies, a tax authority must first carry out the comparability analysis. The comparability analysis, according to Article 4a paragraph 1 and 2 of the Director General of Taxation Regulations Number Per-32/PJ/2011, can be done based on the external and internal comparable data, which are defined as – (1) Internal Comparable Data is Fair Price or Fair Profit in comparable transactions conducted by taxpayers with parties who have no Special Relationship; (2) External Comparable Data is Fair Price of Fair Profit in the comparison factors regulated in Appendix I of the Director General of Taxation Regulation Number Per-22/PJ/2013 are the same as the ones regulated ion the OECD Manuals and the UN Manuals on Transfer Pricing.

Moreover, both Article 11 paragraph 8 of the Director General of Taxation Regulation Number Per-32/PJ/2011 and Appendix I of the Director General of Taxation Regulation Number Per-22/PJ/2013 presuppose that the determination of transfer pricing methods must be based on several things, namely the advantages and disadvantages of each method and the suitability of the technique with the fundamental characteristics of each transaction. Both aspects, furthermore, are determined based on the function analysis and the

reliable information availability to determine the method to be applied. The degree of comparability between affiliated transactions and transactions between independent parties also includes in the comparability carried out in an attempt to eliminate the material effects of the differences.

Dispute Settlement of the Arm's Length Principle

The transfer price determination, the comparative selection, and primary adjustment, as well as corresponding adjustment, have the potential to cause disputes, both in the jurisdiction of a country and in terms of double taxation. If such conflicts occur, three kinds of settlements regarding the taxation can be carried out, namely, the one based on the Double Tax Avoidance Agreement (DTAA) as outlined through the MAP, the one based on the Indonesian domestic law that is unilaterally described through the APA, or the one through the appeal mechanism at the tax tribunal (Kata, 2015).

Appeals at the Tax Tribunal

Based on Article 1 number 6 of the Law Number 14 of 2002 on Tax Tribunal, "Appeal is a legal action that taxpayers or tax bearers can take against a decision, which can be submitted for appeal, based on taxation legislation in force." However, before filing for an appeal, taxpayers can make objections to the Director General of Taxes on the Tax Assessment Letter, as stipulated in Article 25 paragraph 1, 2, and 3 of the Law Number 6 of 1983 on General Provisions and Tax Procedures as lastly amended by Law of the Republic of Indonesia Number 16 of 2009, which stated that; (1) Director General of Taxes upon objection request of the taxpayer or due to his position can rectify: a) Underpayment Tax Assessment Letter; b) Letter of Additional Tax Underpayment; c) Nil Tax Assessment Letter; d) Letter of Tax Overpayment; or e) Tax deduction or collection by third parties based on the provisions of tax law. (2) Objections are submitted in writing in the Indonesian language by stating the amount of tax owed, the amount of tax withheld or collected, or the amount of loss according to the calculation of taxpayers along with the reasons that are the basis of the forecast.

Mutual Agreement Procedure

The MAP implementation, according to Article 1 and 2 of the Minister of Finance Regulation Number 240/PMK.03/2014, is carried out by the Director of Taxation Regulations II, who acts as the competent authority of Indonesia and the tax authority of the partner country. Hence, the MAP is a form of the bilateral agreement between Indonesia and DTAA partner countries that are made based on the DTAA rules. One of the regulations is regulating the transactions of the affiliated company through Article 9 of the DTAA Model Indonesia. Otherwise, MAP implementation also has disadvantages. In addition to the provisions regarding legal subjects, MAP requests related to transfer pricing must also consider Article 18 paragraph 3, which stipulated that – the Director of Taxation Regulations II researches DTAA regarding whether or not there are provisions explicitly regulating the Corresponding Adjustment, as consideration for whether or not a request for MAP implementation can be

accepted. In this case, the corresponding adjustment referred to is the clauses of the DTAA corresponding adjustment. However, seen from the facts, not all DTAA regulations in Indonesia have the provisions regarding the corresponding adjustment.

Advance Pricing Agreement

Article 1 number 7 of the Minister of Finance Regulation Number 7/PMK.03/2015 and Article 1 number 14 of the Minister of Finance Regulation Number 240/PMK/03/2014 define the APA as – a written agreement between: a. the Director General of Taxation and Taxpayers; or b. the Director General of Taxation and the Tax Authority of the Partner Country or the Jurisdiction of the DTAA partner that involves Taxpayers, as referred to in Article 18 paragraph (3a) of the Law of Income Tax and its amendments to agree on criteria and/or determine a fair price or fair profit upfront. In other words, the APA, according to those articles, is an agreement between the mentioned parties to agree on the criteria to determine the fair price upfront, which indicates that the APA is preventive. However, the APA can also be submitted to respond to the primary adjustment of the related countries, which is following the MAP functions as previously described, or in other words, it is carried out after there is a tax collection as a result of transfer pricing indications.

Advantages and Disadvantages of the Arm's Length Principle Regulations in Indonesia

The ALP implementation following a country's needs and taxpayers' businesses can fix the relationship between taxpayers and the state by fostering the trust of taxpayers in the Indonesian tax authorities. ALP, on the other hand, is a significant potency for the state to return the country's tax rights to the multinational companies in Indonesia. However, the ALP is not yet maximally implemented in Indonesia due to the country's legal protection system, which regulates the ALP, APA, and MAP implementations through the policies and rules in the form of Minister Regulations and the Director General of Taxation Regulations (*beleidsregel*).

The *beleidsregel* ALP regulations only bind tax authorities to carry out their obligations to correct the ATP actions performed by taxpayers. In its rules, taxpayers are not obligated to file for the ALP on their transactions with the affiliated companies. Due to that reason, there is no incentive for taxpayers to submit the ALP on their initiative. However, the case will be different if the ALP regulation is stated in regaling legal protection, for instance, the Laws. The binding power of the Laws, furthermore, is more potent than is the Ministerial Regulations or the Director General of Taxes Regulations.

CONCLUSION

Although the implementation of the ALP is distinct due to different principles of tax collection and tax interests of each country, the ALP characters are still generally applied. They cannot be separated from its implementation. In the Indonesian Tax Law, the ALP regulated in Article 18 paragraph 3, Article 18 paragraph 3a of the Income Tax Law, and other technical regulations only have

some similar characteristics with the ALP of the OECD Model Tax Convention and the UN Model Double Taxation Convention. Regardless, the Indonesian laws regulate the ALP more complexly for the sake of fulfilling the interest of state taxation.

REFERENCES

Ahmad Munjin. (2008). Adaro Sebuah Contoh Buruk. Retrieved from http://m.inilah.com/news/detail/32798/daro-sebuah-contoh-buruk.

Clempner, J. B. (2019). Optimal level of transfer pricing for profit sharing: a Lagrange regularized game theory approach. *Optimization and Engineering*, *20*(3), 833–852.

Hsu, V. N., Xiao, W., & Xu, J. (2019). The Impact of Tax and Transfer Pricing on a Multinational Firm's Strategic Decision of Selling to a Rival. *Production and Operations Management*, *28*(9), 2279–2290.

Jafri, H. E., & Mustikasari, E. (2018). Pengaruh Perencaan Pajak, Tunnneling Incentive dan Aset Tidak Berwujud Terhadap Perilaku Transfer Pricing pada Perusahaan Manufaktur yang Memiliki Hubungan Istimewa yang Terdaftar di Bursa Efek Indonesia Periode 2014-2016. *Berkala Akuntansi Dan Keuangan Indonesia*, *3*(2), 63.

Kata, A. (2015). *Media Tren Perpajakan - InsideTax Edisi ke 28 - Efek Jera Bagi Penunggak Pajak*.

Kato, H., & Okoshi, H. (2019). Production location of multinational firms under transfer pricing: the impact of the arm's length principle. *International Tax and Public Finance*, *26*(4), 835–871.

Lei, X., Ding, Y., Li, Y., & Zhao, Q. (2019). A study on multinational corporations' fixed cost allocation method with considering subsidiaries' competition and cooperation relationship. *Xitong Gongcheng Lilun yu Shijian/System Engineering Theory and Practice*, *39*(7), 1714–1720.

Liu, L., Schmidt-Eisenlohr, T., & Guo, D. (2017). International transfer pricing and tax avoidance: Evidence from linked trade-tax statistics in the UK. *FRB International Finance Discussion Paper*, (1214).

OECD. Publishing. (2010). Commentaries of OECD Model Tax Convention. Organisation for Economic Co-operation and Development..

Ortax (obersvation and Research of Taxation). (2008). Kasus Transfer Pricing Adaro Tetap Panas. Retrieved from http://www.ortax.org.

Philipus M Hadjon. (2008). *Pengantar Hukum Administrasi Indonesia* (10th ed.). Yogyakarta: Gajah Mada Press.

Rugman, A. M., & Eden, L. (2017). *Multinationals and transfer pricing*. Routledge.

S. Aditya, K. L. (2017). Analysis of transfer pricing as a tax avoidance and proposed suggestion to prevent its disadvantages. *Yuridika*, *30*(1), 137.

Santoso, I. (2005). Advance pricing Agreement dan problematika transfer pricing dari perspektif perpajakan indonesia. *Jurnal Akuntansi Dan Keuangan*, *6*(2), 123–139.

Shakhov, O. F., Chernov, A. U., Kalashnikova, O. V, Sanginova, L. D., & Katsiev, M. A. (2019). Transfer pricing in international markets: Problems of information support. *International Journal of Recent Technology and Engineering*, *8*(2), 3845–3849.

Sutedi, A. (2008). *Hukum Pajak dan Retribusi Daerah*. Ghalia Indonesia.