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ANALYSIS OF TRANSFER PRICING RELATED TO TRADEMARK ROYALTY COST (CASE STUDY OF PT X COURT DECISION)

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ANALYSIS OF TRANSFER PRICING RELATED TO TRADEMARK ROYALTY FEES (CASE STUDY OF PT X COURT DECISIONS)

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ABSTRACT

This study aims to evaluate the characteristics of trademarks based on international standards and domestic regulations. In addition, the study also considers whether the distributor company should pay royalties on trademarks. This study also assesses the tax dispute decision of PT X. Analysis was conducted on the criteria and identification of brands, determination of the characteristics of the taxpayer's business, and evaluation of the case of tax disputes over trademarks between PT X and the tax authorities. The method in this study uses a qualitative approach by analyzing documentation and interviews with regulators at the Directorate General of Taxes, Head of Objections and Appeals Section, Tax Auditors, and Tax Consultants. The results show that the existence of a trademark can be proven based on domestic and international regulations, the party entitled to remuneration must be by the contribution of the trademark formation, and business characterization is no longer relevant in determining the imposition of royalties. Another result is the royalty charge must be resolved through a functional analysis by comparing the contractual agreement with the actual conditions.

Keywords: arm's length principle; royalty; transfer pricing; tax dispute; trademark

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1. INTRODUCTION

Transfer pricing is "the price in a related transaction" (PMK 22/PMK.03/2020). Transfer pricing, in the perspective of taxation, according to Darussalam (2013, 9), "is a price policy in transactions carried out by parties who have special relationships." The definition of transfer pricing is neutral because it maximizes company profits by determining the price of goods or services by an organizational unit from the company to other organizations within the same company. Therefore, transfer pricing is very reasonable for companies, but what is not allowed is if the purpose of transfer pricing is solely to minimize or reduce the tax payable. In determining the value of transactions between related parties, the criterion commonly used is the arm's length principle. The arm's length principle is difficult to apply on the ground if the company conducts transactions only with affiliated parties (paragraph 5.1.3 UN TP Manual, 2021). One example of a transaction that is difficult to measure in determining the fair value of a transaction in transfer pricing is related to the use of intangible assets.

According to OECD Transfer Pricing Guidelines/TPG (2022), difficulties arise in transfer pricing analysis due to either too narrow or too broad a definition of intangible assets. If a too-thin description is applied, either the taxpayer or the tax authority can argue that the item falls outside the report, even though such use or transfer would result in compensation if it were in a transaction between independent companies. If too broad a definition is applied, either the taxpayer or the tax authority could argue that the use or transfer of an item in a transaction between associate companies should require compensation in circumstances where such payment not be provided in a transaction between independent companies.

According to Silberztein (2011), transfer pricing in this aspect of intangible assets raises many questions related to the definition, identification, allocation among affiliated companies, and their valuation. The author is interested in researching the application of arm's length principles to intangible assets, especially royalty payment transactions for trademarks included in the category of marketing intangibles. Previous research by Puspanita and Septriadi (2021) concluded that legal ownership is determined by analyzing the terms and conditions of agreements, registrations, license agreements, and other relevant contracts. Meanwhile, in Hukamawati and Andriani's research (2016), economic ownership can be seen in companies that bear the costs and risks of developing the trademark.

Research by Muhamadi, Ahmed, and Habib (2016) found that the tax auditor has difficulty in determining the fair price of intangible assets due to the lack of transparency in the taxpayer's books; limitations in providing data and documents; current regulations; and issues related to organization and human resources. Sari and Hunar's research (2015) shows that three inter-company transactions allow Starbucks UK to minimize tax bills, such as coffee fees, royalties on intangible assets, and intercompany loan interest. Juraneck, Schindler, and Schjelderup (2017) found three things. Namely, the first is that traditional transfer pricing methods do not affect investor behaviour. Different results are obtained when using the transactional net

margin method (TNMM) method (promoted by the OECD) triggers higher profit shifting behaviour. Second, the royalty tax effectively reduces massive profit shifting but harms investment. Third, the imposition of a royalty tax rate below the corporate tax rate causes overinvestment in the tax system with an allowance for corporate equity (ACE).

Based on previous research, we will analyze the dispute over determining the fair price of intangible assets by compiling criteria based on previous studies. The difference with Hukamawati & Andriani's (2016) research is that in addition to identifying trademarks based on specifications and asset ownership, this study also evaluates function, asset and risk (FAR) analysis conducted by taxpayers and according to tax examiners. The next difference is that the object in this study is a distributor company, while the research of Puspanita and Septriadi (2021) is related to manufacturing companies. They conducted this research on the court's decision related to the tax audit of PT X from the fiscal year 2005 to the fiscal year 2015. PT X is always subject to tax audits from 2005 to 2015, as stated in table 3. In this tax audit of PT X, there are differences in interpretation between the tax authorities and the taxpayer regarding the imposition of royalties on trademarks of PT X, which has business characteristics as a distributor. For the corrections made by the tax authorities in those nine years, PT X has appealed eight times and has always been rejected by the Tax Court. PT X revoke its appeal to the tax court for the 2015 FY.

This study aims to evaluate the characteristics of trademarks based on international standards and domestic regulations, determine whether distributor companies should bear royalties on brands, and assess appeal cases against PT X. The results of this study are expected to provide input to the Directorate General of Taxes (DGT) for policy improvement and implementation of tax audit of transfer pricing transactions in the future and recommendations to taxpayers regarding royalty disputes over similar trademarks.

The research analyses are based on the OECD and UN framework documentation and Indonesia's documentation of tax provisions. They are then compared by juxtaposing them with the arguments submitted by the taxpayer and the tax auditor in the case of PT X's tax dispute. Then analyzed by conducting interviews with policymakers at the DGT, Head of Objections and Appeals Section, Tax Auditors, and Tax Consultants to gain a deeper understanding. It also compared the documentation analysis with the results of the interviews to obtain a comprehensive analysis.

2. LITERATURE REVIEW

2.1 ASSOCIATED ENTERPRISE AND THE ARM'S LENGTH PRINCIPLES

A country is allowed to exercise its domestic authority in transfer pricing adjustment if: (1) there are transactions between entities that have an associated enterprise; and (2) the transaction is not following the arm's length principles (Article 9 of the OECD Model). An associated enterprise, according to Article 9 of the Model United Nations (UN) and Article 9 of the OECD Model, is defined " as where an

enterprise of a Contracting State participates directly or indirectly in the management, control, or capital of an enterprise of the other Contracting State, or the same persons participate directly or indirectly in the administration, possession of a company of a Contracting State and an enterprise of the other Contracting State". According to the Indonesian tax provisions in the PMK 22/PMK.03/2020 Article 4 Paragraph (1) Associated Enterprise is a state of dependence or attachment of one party to another caused by: ownership or equity participation; mastery; or blood or marriage relationship.

The OECD (2022, 23) defines the arm's length principle concerning Article 9 of the OECD Model as "a condition when two companies that have an associated enterprise that carries out transactions that are different from those that should occur between independent companies, then any profits that will be obtained under these conditions, or that should be accepted received parties". One of the companies, but with the associated enterprise, cannot be received, can be considered in the company's profits, and can be taxed according to the applicable provisions (tax authorities can make primary adjustments). In the context of taxation provisions in Indonesia, the arm's length principle is a principle that applies in sound business practices that are carried out as independent transactions (PMK 22/PMK.03/2020). In the case of PT X, made adjustments to the royalty fees related to trademarks because the Tax Auditor proved that there was an associated enterprise, and the transaction is not following the arm's length principles to shift profit.

2.2 INTANGIBLE ASSET

Transfer pricing for intangible assets is transfer pricing related to issues of identification, valuation and transfer of intangible assets. Intangible asset transactions can be in the form of transfer of know-how, exploitation of trademarks, purchase of patents and others (Hukamawati and Fibriani, 2016). Paragraph 6.1.6 of the OECD TP Guidelines (2022) distinguishes intangible assets into two, namely trade intangibles and marketing intangibles, namely:

- a. Trade intangibles are intangible assets developed through research and development (R&D), with high risks and costs. Developers generally try to recover expenses for these activities and get greater returns through product sales, service contracts, or license agreements.
- b. Marketing intangibles are intangible assets such as trademarks and trade names that can assist in commercializing a product or service, customer lists, distribution networks, and unique characters, symbols, or images with promotional value.

In terms of ownership, the OECD Guidelines divide into two ownership concepts, namely the concept of legal ownership and economic ownership. The two images in Darussalam, Septriadi, and Kristiaji (2013) will be explained as follows:

1. Legal ownership

Legal ownership is associated with the legal title assigned to the asset. It generally relates to the legal protection based on intellectual property law, for example, patents, copyrights, registered trademarks, and others.

2. Economic ownership

The concept of economic ownership recognizes the owner of an intangible asset as the party that has borne most of the costs and risks associated with developing or maintaining the value of the intangible asset.

Trademarks are part of intangible marketing assets. Paragraph 6.21 of the OECD TP Guidelines (2022) states that a trademark is a unique name, symbol, or image that the owner or licensee can use to identify specific products or services from a particular manufacturer and prohibits its use for the same purpose under the protection of domestic and international law. Trademarks can give valuable market status to the goods they are branded. In this case, PT X is charged with royalty fees related to the use of trademarks belonging to its associated enterprise.

2.3 TRADEMARK IDENTIFICATION

In general, following domestic regulations (PMK 22/PMK.03/2020) and OECD TPG, the identification of intangible assets (preliminary stage), including trademarks, must meet the following evidence:

- a. existence of intangible assets both in legal and economical form;
- b. the type of intangible asset and the value of the intangible asset;
- c. parties who own the intangible assets legally or economically;
- d. utilization or right to utilize intangible assets;
- e. parties who contribute and carry out DEMPE activities on intangible assets; and
- f. economic benefits obtained by those who use the intangible asset

The proof is then continued with functional analysis to identify the characteristics of the type of business of the taxpayer, both in terms of legal agreements or the actual conditions that occur, and industrial research related to the taxpayer's business activities.

Function, asset and risk function analysis (FAR) is stated in S-153/PJ.4/2010 as "an analysis of the functions performed by each entity involved in a transaction, taking into account the assets owned and used and the risks borne, to apply the principle of fairness and business practice". The purpose of implementing FAR analysis is to:

1. identification of differences in the core business activities of the entities participating in the compared transactions, including transactions that are affected by related relationships or independent transactions, which involve the outcome of the transactions and;
2. We are formulating the characterization of the entities involved in the transaction as a basis for concluding the entity's core business activities (characterizing the subject).

This provision provides guidelines for conducting business classification for companies that perform manufacturing and distribution functions based on an analysis of the characteristics inherent in the company based on function, assets and risk. From

the analysis of the characteristics inherent in the company, then the company is classified into:

- a) full function manufacturing/distributor company,
- b) limited function manufacturer/distributor, or
- c) tolling service company/low-risk distributor (commissioner).

The function, asset and risk (FAR) analysis must be carried out based on reliable data that can be shown from the contribution of costs by each party involved in the transaction and how to determine its reliability through auditing by the tax authorities. The provision states that the FAR analysis must be carried out accurately and thoroughly because it will be the basis for allocating compensation or remuneration from the parties involved in a transaction.

The classification of the business substance of the company that performs the distribution function can be divided into 3 (three) groups, namely: Fully Fledged Distributor, Limited Function Distributor (Contract Distributor), and Low-Risk Distributor- Commissioner (Commission Agent).

After that, it is continued by making a comparability analysis, determining the transfer price method, applying transfer pricing and determining the fair value of transactions affected by related relationships. The analysis discussion will only use the preliminary stage and functional analysis because it adjusts to the corrections made by the tax office regarding the PT X tax dispute.

3. RESEARCH METHODS

The research method used in this research is a qualitative method with a case study approach. According to Stake in Creswell (2018), a case study is a research strategy where the researcher explores a particular phenomenon in-depth. The phenomenon discussed by the author is the evaluation of tax disputes in court decisions related to the correction of royalties. The qualitative approach is that this study seeks to explain the data, information, and facts obtained regarding appeal disputes associated with the adjustment of intangible assets. These are then analyzed to provide a recommendation analysis problem.

Sources of data in this study use primary data and secondary data. Primary data is data obtained directly from the research object through interviews. Secondary data has been documented and published, such as data on tax regulations, journals, research related to transfer pricing on intangible assets, or official news releases. The primary and secondary data collected and analyzed in this study are the regulations or instructions for the tax treatment of transfer pricing transactions.

In collecting information through interviews, the informants were divided into three categories:

- a. Tax Analyst at Directorate of Tax Audit and Collection and MAP/APA (Mutual Agreement Procedure/ Advanced Price Agreement) Analyst at

Directorate of International Taxation from Head Office of the Directorate General of Taxes (DGT)

- b. Tax Consultant with experience in transfer pricing cases and appeal courts, also;
- c. Head of Objections and Appeals Section and Senior Tax Auditors from Jakarta Special Regional Tax Office.

Employees at the Head Office represent the transfer pricing policymakers at DGT, while informants from the Jakarta Special Regional Tax Office and Foreign Investment Tax Office Five act as implementing regulations in the field, and tax consultants act as parties representing taxpayers. Table 1 describes the number of interviewees for each category, the object of research, and the total.

Table 1. Interview Resource Profile

Object of research	Institution	Informant	Number of Informants
Head Office of the Directorate General of Taxes	Directorate of Tax Audit and Collection (DTAC)	A. 1	2
	Directorate of International Taxation (DIT)	A. 2	
Tax Consultant	ABC Consultant (TC)	B. 1	2
	XYZ Consultant (TC)	B. 2	
Jakarta Special Regional Tax Office	Divisions of Objections and Appeals (SR)	C. 1	2
	Foreign Investment Tax Office Five (SR)	C. 2	
			6

Source: processed by the author

This research begins by analyzing the framework documentation according to the OECD and the UN, including trademark identification, FAR analysis (function, assets and risk), comparability analysis and determination of the fair price method, then compared with documentation of tax regulations applicable in Indonesia. The analysis results were then juxtaposed with the arguments submitted by the taxpayer and the tax auditor in the case of PT X's tax dispute. The triangulation used in this research is source triangulation and technique triangulation. According to Sugiyono (2016), source triangulation is used to test the credibility of the data by checking the data obtained through several sources. The information the researcher has analyzed produces a conclusion juxtaposed with the data source. While technical triangulation is used to test the credibility of the data by ensuring the data is from the same source with different techniques. Technical triangulation is carried out by disclosing data on PT X's appeal decision and then confirming it with data documentation and interviews with various perspectives and backgrounds of the informants. The list of planned interview questions can be seen in Table 3

Table 2 List of Planned Questions

No.	Analyzed elements	The substance of the question	Reference	Respondent
1	Trademark Specifications	a. Trademark Types and Values	OECD (2022)	DIT
			Government of the Republic of Indonesia (2020)	DTAC
		b. Knowledge and Opinions regarding DEMPE	OECD (2022)	DIT
			Government of the Republic of Indonesia (2020)	DTAC SR TC
c. Adoption of the DEMPE Approach in Domestic Terms	OECD (2022)	DIT		
	Government of the Republic of Indonesia (2020)	DTAC		
d. OECD Guidelines Position on Domestic Provisions	OECD (2022)	DIT		
	Government of the Republic of Indonesia (2020)	DTAC		
2	Ownership	a. Ownership Identification	OECD (2022)	DIT
			Government of the Republic of Indonesia (2020)	DTAC
			Directorate General of Taxes (2011)	SR
			Hukamawati & Andriani (2014)	TC
		b. The Concept of Ownership and Its Urgency	Intan & Septriadi (2016)	DIT
			OECD (2022)	DIT
		c. Economic Benefit Criteria	Government of the Republic of Indonesia (2020)	DTAC
			Directorate General of Taxes (2011)	SR
		d. Identification of Economic Benefits	Hukamawati & Andriani (2014)	TC
			OECD (2022)	DIT
		Government of the Republic of Indonesia (2020)	DTAC	
			Directorate General of Taxes (2011)	SR
Hukamawati & Andriani (2014)	TC			
3	FAR Analysis analysis	a. Characteristics of Business Type	OECD (2022)	DIT
			Government of the Republic of Indonesia (2020)	DTAC
			Directorate General of Taxes (2011)	SR
			TC	
		b. Analysis of the Functions, Assets and Risks of the Transactional Parties	OECD (2022)	DIT
			Government of the Republic of Indonesia (2020)	DTAC
		Directorate General of Taxes (2011)	SR	
			TC	
		c. Opinions on Determining the Characteristics of the Type of Business	OECD (2022)	DIT
			Government of the Republic of Indonesia (2020)	DTAC
		Government of the Republic of Indonesia (2016)	SR	
			Directorate General of Taxes (2011)	TC
d. Basic Opinion on Correction of the Characteristics of the Type of Business	Directorate General of Taxes (2011)	DIT		
	DTAC			
SR				
TC				

Source: processed by the author

After analyzing the documentation related to the determination of trademark criteria and functional analysis, the writer then examined the results of the interviews to gain a deeper understanding. It also compared the results of the documentation analysis with the discussions to obtain a comprehensive analysis. Data analysis on interviews was carried out using the Miles & Huberman (1994) model with the following steps:

1. Data were collected through interview recordings and transcripts from each participant by data reduction, which was carried out to reduce information on answers from participants that were not relevant to answering research questions.
2. We identified, classified, organized and compiled the results of interview transcripts based on the themes determined as the evaluation framework.
3. The results of the analysis of each theme are used to draw conclusions and recommendations. The result is in line with the purpose of this research as a type of evaluation case study research whose ultimate goal is to provide advice and suggestions regarding the settlement of transfer pricing cases on intangible assets, especially trademarks.

The analysis is organized based on the following themes:

a. Trademark Characteristics

This theme consists of 2 sub-themes, namely specifications and trademark ownership. Analysis of the specifications will determine the type and value of trademarks based on the OECD framework and implementation in Indonesia using domestic regulations. The trademark ownership both according to the OECD framework and Indonesian tax provisions, the urgency of the current ownership concept, the criteria for economic benefits, and its identification. The analysis of the trademark criteria is then juxtaposed with the court decision of PT X for evaluation.

b. Royalty Obligation on Trademark on Distributor Company

We will discuss determining the characteristics of the type of business, comparability analysis, and determining transfer pricing methods according to the OECD framework and Indonesian tax provisions. Analysis research also carried out the proper tax authorities' corrections and the taxpayers' arguments PT X court dispute case compared to the current regulations and standards.

c. Evaluation of PT X .'s Appeal Case

Based on the results of the study, a comprehensive evaluation was carried out regarding the case of tax dispute over a trademark that occurred between PT X and the tax authorities, which consisted of an explanation analysis of the case, the arguments of each party compared to the application framework and provisions.

The analysis of each theme will draw conclusions and recommendations to be an excellent practical excellent to reduce the occurrence of tax disputes over royalty payments, especially related to trademarks in distributor companies.

4. ORGANIZATION PROFILE

The research object is the decision of the PT X tax dispute in table 1. PT X is a subsidiary of the LSA Group, present in Indonesia since 1979. In 1985, LSA cooperated with a local company and established a manufacturing company, PT ABC Indonesia. In 1993, LSA took over all of its operational supervision in Indonesia and, starting in 2000, formed the entity PT X. Until now, the LSA Group's business activities in Indonesia are focused on these two entities; PT X, which handles marketing and distribution of brands owned by LSA, and PT ABC Indonesia which produces skin and

hair care products in the mass market segment to meet the needs of the domestic and Southeast Asian markets. The LSA Group is currently present in Indonesia with 15 brands divided into categories; luxury, consumer, and professional (salons through various distribution channels ranging from traditional stores to premium department stores).

PT X is the legal licensee of LSA's technology and trademarks under a valid license agreement. The license agreement between LSA and PT X concerns granting permits to exploit licensed products using LSA's technology and trademarks. In this case, PT X is given the right to produce or instruct other parties to produce and distribute the products in Indonesia. Without a license granted by LSA, inevitably, PT X cannot order the manufacturer to create products that PT X wants to distribute and sell in Indonesia. Therefore, according to PT X, royalty payments made by PT X include costs for obtaining, collecting and maintaining income. PT believes that the expense of the royalty is following the arm's length principle so that it can be charged as a deduction from PT X's income in Indonesia. However, according to the tax auditor, the transaction of royalty payments on trademarks to LSA is a shifting profit because the products made are intended for L Paris. At the same time, the owner of the L Paris brand is LSA. This contract applies to both locally produced and foreign products. PT X does not have a manufacturing function, so it cannot make its products to be sold. PT X has a manufacturing agreement to sell products made by manufacturers who still have a special relationship with PT X. PT X has the primary function as a pure distributor because it only sells products produced under LSA orders. Therefore, according to the tax authorities, there is no obligation for PT X to pay royalties. The tax auditor then corrected the royalty fee related to the trademark so that it could not be used as a deduction for PT X's income in Indonesia; as a result, PT X's corporate income tax increased, so the tax auditor issued an assessment letter of the corporate tax underpayment.

Table 3. List of Appeal Decisions related to Royalties of PT. X

No	Sentence	Tax year	SKP Value (Rupiah)	Tax Court Decision
1	PT. 24631/PP/M.II/15/2010	2005	5,765,407,467.00	Partially Accepted
2	PT. 41872/PP/M.VIII/15/2012	2007	9,832,852,270.00	Appeal Rejected
3	PT. 89513/PP/M.IIIB/15/2017	2008	22,797,429,972.00	Appeal Rejected
4	PT. 89653/PP/M.IIIA/15/2017	2009	16,015,720,011.00	Appeal Rejected
5	PT. 89654/PP/M.IIIA/15/2017	2010	17,999,066,990.00	Appeal Rejected
6	PT. 002037.15/2018/PP/M.IIIA Year 2019	2011	27,485,507,720.00	Appeal Rejected
7	PT. 002225.15/2018/PP/M.IIIA Year 2019	2013	36,657,171,792.00	Appeal Rejected
8	PT. 113732.15/2014/PP/M.IIIA Year 2019	2014	33,020,814,215.00	Appeal Rejected
9	PT. 015903.15/2020/PP/M. XA 2021	2015	67,800,706,980.00	Granted the request for revocation of appeal from PT X

Source: processed from the Court's Decision on PT X

5. RESULT AND DISCUSSION

5.1 Evaluation of Trademark Characteristics

The evaluation of the trademark characteristics has been regulated by PMK 22/PMK.03/2020 and paragraph 6.21 OECD TPG 2022 regarding the Preliminary Stages used as proof of transactions related to the use of intangible assets, which include existence tests, ownership tests, knowing the parties who contribute and carry out development, improvement, maintenance, protection, and exploitation activities on intangible assets as well as the economic benefits obtained by those who use the intangible assets. The following describes each of the analyses carried out.

5.1.1 Analysis of the Existence / Presence of Trademarks

The existence test of trademarks is regulated in Article 14 paragraph (4) of PMK 22/PMK.03/2020 to the use or right to use intangible assets, including proof of the existence (existence) of intangible assets economically and legally. SE-50/PJ/2013 concerning Technical Guidelines for Auditing Taxpayers who have an Associate Enterprise, there are test steps related to intangible asset transactions, one of which is to identify the existence of any intangible assets that contribute to the success of the product in the market.

Paragraph 7.5 of the OECD TP G 2022 states that in addition to determining the price that has complied with the arm's length principle, the trademark owner must have also transferred it. Meanwhile, according to PER-22/PJ/2013, this identification can be made through function analysis. The Tax Auditor is expected to understand the taxpayer's business in studying functions. The authors try to ask the informants, and the results are as follows in table 4.

Table 4. Respondents' Opinions regarding the Existence of Trademarks

Informant	Opinions regarding Existence Test on Trademark
A.1	"In the category of determination to be considered an intangible asset or not, it must be proven that the asset is registered in IPR in the owner's name."
A.2	"... protected by a protective system, such as a license or something because [...]. This means that it must be registered, and there are supporting documents. It is not only registered, but it must also be clear when it is registered and the period of validity".
B.1	"Trademarks must provide benefits to the company that pays for it; of course, what kind of benefits do these benefits take...".
B.2	"Royalties related to trademark [...] are more related to existence, meaning that the user, the client or the taxpayer as the party paying royalties to our holding feels that with us we should get more benefits than the costs we pay".
C.1	"The existence of Intangible assets, especially trademarks, must have written evidence related to the trademark."
C.2	"On a trademark, there should be a document that proves that it has been registered with the competent authority, for example, the Directorate General of Intellectual Property Rights."

Source: processed by the author

The informants agreed that in testing the existence of royalty payments on trademarks, apart from trying whether there are official (legal) documents, they also looked at whether economic benefits derived from the party paying the royalties. The existence test for trademarks should be easier to prove by taxpayers because it requires legal documents from the authorities than other intangible assets such as know-how. In the case of a tax dispute between PT X and DGT, there is also no dispute regarding this existence test; LSA has exclusive rights over the use of its IPR (intellectual property rights).

5.1.2 Analysis of Trademark Ownership

Paragraph 6.32 of the OECD TPG 2022 states that legal ownership does not solely determine the rate of return from exploiting intangible assets. Meanwhile, the concept of ownership economically recognizes the owner of an intangible asset as the party that has borne most of the costs and risks associated with developing and maintaining the value of the intangible asset. PER-22/PJ/2013 requires auditors to identify the value of intangible assets and determine the parties contributing to the formation of the intangible assets. Each opinion from the informants has been summarised in table 5.

Based on table 5, in general, both the taxpayer and the tax authorities agree with economic ownership, which recognizes the owner of an intangible asset as the party who has borne most of the costs and risks associated with developing and maintaining the value of an intangible asset. In this tax dispute case, the trial facts prove that LSA has legal ownership of the registration evidence at the Directorate General of Intellectual Property Rights and is the economic owner of the technology and trademark.

Table 5 Respondents' Opinions Regarding Trademark Ownership

Informant	Opinions regarding the Proprietary Test of Trademarks
A.1	"From our DGT, we follow generally accepted rules. He who has the associated economic ownership usually has already incurred costs so that it becomes a logical consequence when he expects a reward for this."
A.2	"I do not think there is anything that is most important, but the door for us to do a reliable analysis from start to finish is the legal ownership first, so that is how it is if my answer is OK, for example, for proof in court."
B.1	If we talk about ownership, the main thing is legal ownership [...] now the second thing that is economic ownership of the brand was that of course, who built this brand started to promote it".
B.2	"I think if you ask me to choose the strongest, which one is called the OECD TP Guidelines, it's now it's targeting the economic ownership aspect, right?"
C.1	"If it's possible, let's have a legal one first, then we'll see the contract or agreement if it's for a trademark, right."
C.2	"As an auditor, evidence is needed; therefore, legal ownership is used as evidence."

Source: processed by the author

5.1.3 Analysis of Economic Benefits

When carrying out the preliminary stage (the term used in PMK-22/PMK.03/2020) to test the economic substance of a particular transaction, for example, the existence test and the benefits test for intangible assets, one must consider the perspective of the party delivering and receiving the intangible asset. The following are the informant's opinions on this problem in table 5. Based on the informants' opinions in table 5, we can conclude that the measurement of economic benefits can usually be seen from the role of the trademark in increasing sales. The easiest exmost straightforward using the Starbucks brand; the recipient does not need to insignificant enormous marketing costs in introducing their products because the brand is already known to the public.

In the case of PT X's tax dispute, there are two licenses granted by the LSA: the right to carry out or order production using the brand and technology and the right to import, distribute, and sell LSA-licensed products. What is disputed is the license for production using LSA's brand because the Tax Auditor thinks that PT X does not have a manufacturing function, so it cannot produce the products to be sold by itself. Meanwhile, according to PT X, the LSA and PT X license agreement concerns granting permits to exploit licensed products using LSA's technology and trademarks.

The taxpayer is given the right to produce or instruct other parties to produce and distribute the products in Indonesia. Therefore, according to PT X, royalty payments made by taxpayers include costs for obtaining, collecting and maintaining income. However, from the results of several court decisions, according to table 3, the Panel of Judges agrees with the opinion of the DGT that PT X does not have a production function because it is a distributor company, while based on the license agreement, it is known that the use of a licensed brand will only occur if PT X produces licensed products belonging to LSA. Therefore, the panel of judges concluded that PT X did not get any economic benefits for the use of the trademark.

Table 6. Respondents' Opinions regarding Economic Benefits

Informant	Opinions regarding Analysis of Economic Benefits
A.1	"The concept of transfer pricing is whether the price we pay for anything, whether it's intangible, whether it's a service or not, do we have a benefit or not, how to have a benefit or not; it's certainly related to the asset function and risk. We'll link it there."
A.2	"[...] helps when we see what economic benefits intangible assets provide to an entity or group because the intention to buy something of value means that it should provide economic benefits, so [...] Is that the determination of these characteristics? Determine something reasonable but may be helpful when we assess the economic benefit."
B.1	"The benefit that the trademark payer most feels, so he must have a benefit first, right, so how does he prove that he has benefits? a crucial point...."
B.2	".... There are benefits beyond just the fees we pay for the trademark...."
C.1	"The effect of using the trademark is increasing income or decreasing costs."

- C.2 "The substance of economic benefits is the existence of more income than not using the intangible asset."

Source: processed by the author

5.2 Evaluation of Functional, Asset, and Risk Analysis

The essence of the stages of implementing the arm's length principle, as referred to in Article 9 Paragraph (2) of PMK 22/PMK.03/2020, is to make a Function, Asset, and Risk (FAR) analysis with steps that include: identifying transactions affected by affiliated parties; conduct industrial research related to the business activities of the taxpayer, including identifying factors that affect business performance in the industry; identify the commercial and financial relationship between the taxpayer and the Affiliated Parties by analyzing the condition of the transaction; perform a comparability analysis. This functional analysis is also arranged in paragraph B.2 of the OECD TPG 2022 about functions, assets, and risks related to intangibles. The opinions of other informants are presented in table 6.

5.2.1 Is the Distributor Company Entitled to Charge Royalties?

Several informants argued that determining business characteristics in the transfer pricing analysis on intangible assets is not very significant to the decision of royalty charges. The main thing is the suitability of the agreement or contract compared to the actual conditions. According to the latest OECD TPG, some even argue that the determining business characteristics are irrelevant for transfer pricing analysis of intangible assets. The opinions of all respondents regarding this problem are summarized in table 7.

Table 7 Respondents' Opinions regarding FAR Analysis and Determining Business Characteristics

Informant	Opinions regarding Function, Asset and Risk Analysis and Determination of Business Characteristics
A.1	"... from the contractual agreement, we will see what the actual conduct looks like, then we will change the classification according to the actual conditions".
A.2	"If we correct the royalty payment for the use of an intangible, we cannot then look at the characteristics of its business because the transactions that should have been carried out could be different. So, it can't be generalized to a distributor."
B.1	"...the concept of transfer pricing is whether the price we pay for anything, whether it's intangible, whether it's a service or what we have benefits or not, how to have benefits or not, of course, it is also related to the asset function and risk..."
B.2	"It's OK for a distributor company not to charge royalties; if the distributor runs like that, then his function is no longer needed, right? All of them are in charge of the holding; we're marketing it, right, if that's what I agree with."
C.1	"There are still rare cases of disputes over intangible assets that reach the FAR analysis."
C.2	"look at the legal data first, then compare it with field conditions."

Source: processed by the author

Table 8. Respondents' Opinions regarding the Charge of Royalty Fees

Informant	Opinions regarding Royalty Fees charged by Distributor Companies
A.1	"Corrections because distributors are not supposed to bear royalties are wrong ways of working because based on the rules, it is to correct things that are in e with by."
A.2	"If we correct the royalty payment for the use of an intangible, we cannot then look at the characteristics of its business because the transactions that should have been carried out could be different. So, it can't be generalized to a distributor."
B.1	"He as a distributor company when he sells he uses a brand or trademark whose name he can help him in selling, of course, if he is charged a royalty fee he can or he can make payments, it's just that this is a certain note that it should be what if we are an independent company?"
B.2	"It's OK for a distributor company not to charge royalties; if the distributor runs like that, then his function is no longer needed, right? All of them are in charge of the holding, we're marketing it, right, if that's what I agree with."
C.1	"It should be up to FAR analysis to determine royalty rights."
C.2	"The determination of the distributor should not bear the royalties is still based on the available legal evidence and field observations that the Tax Auditor has carried out."

Source: processed by the author

Domestic regulations often used as a reference by auditors are usually S-153/PJ.4/2010, which divides the company's functions according to the character of the business. Even if it bears intangible assets, it is only related to the right to market. Therefore, when it comes to whether the distributor company delivers royalty fees, it must first be seen which category of the three types of distributors following S-153/PJ.4/2010 is included in the category of Commission Agent, Limited Risk Distributor, or Fully Fledge Distributor. Even though recent developments are following the OECD TPG 2022, what is seen is the actual conditions that occur. When analyzing the functions, assets, and risks, suppose the distributor company has evidence that its contribution is related to the production of goods, even though legally, it is a distributor company.

In that case, the company has the right to charge royalty fees for exploiting licensed products using technology and trademarks. In the tax dispute of PT X, from the FAR analysis, it is known that PT is a full-fledged distributor. PT X will pay royalties to LSA based on the proportion of net sales of licensed products with a percentage rate of 1.5% for the rights to use licensed trademarks. Based on the licensing agreement, it is known that the use of licensed trademarks will only occur if PT X produces licensed products owned by LSA. Based on the data and information in the trial, it is known that PT X has used licensed products owned by LSA. The activities carried out by PT X are the distribution of these goods, while the producer is PT ABC Indonesia. The evidence and information above show that the Panel of Judges rejected PT X's appeal.

6. CONCLUSION AND RECOMMENDATION

This study concludes that there is no difference between the characteristics of a trademark in domestic and international regulations, so it is relatively easier to prove its existence and ownership. In this case, there is no dispute between PT X and Tax Auditors about existence and ownership. The conflict occurred on the results of the economic benefit test and analysis of functions, assets, and risks of PT X. Legal ownership is the starting point of the study. Still, legal ownership alone is insufficient to determine the right to compensation for exploiting intangible assets. According to paragraph 6.34 of the OECD TP Guidelines (2022) and PMK 22/PMK.03/2020, payment is given following the contribution related to the formation of intangible assets.

The distributor company is still entitled to bear the royalties. According to the OECD TP Guidelines 2022 and PMK No 22 of 2020, business characteristics are no longer relevant in determining royalty charges. In the PT X Court Decision, it is known that the Panel of Judges and Tax Auditors are still looking at the contractual/agreement documents. The Panel of Judges only looked at the license agreement document for the trademark granted by PT X. Based on the licensing agreement, it is known that licensed brands will only occur if PT X produces licensed products owned by LSA. The Panel of Judges has not seen whether, in actual conditions, PT X acts as an entrepreneur distributor or is it just a pure distributor so that it cannot bear the costs of royalties. Whereas by the OECD TPG 2022 and PMK No 22 of 2020, the royalty charge must be determined through a functional analysis by comparing the contents of the agreement/contract with the actual conditions.

Therefore, this study suggests that the Directorate General of Taxes update regulations according to general guidelines so that regulators and executors in the field have the same policy approach. Suggestions to taxpayers are that if this tax dispute recurs in the future, the taxpayer can submit a request to implement the Mutual Agreement Procedure (MAP) to the Director-General of Taxes as an alternative dispute resolution.

This study takes data from the tax court's decision on PT X from 2005 to 2015 by limiting the disputed material to determining the fairness of transfer pricing transactions over trademarks. The other limitations of this study are only to analyze the existence, identification of legal and economic ownership, and economic benefits from royalties on brands in the tax appeal dispute. We did not conduct the research directly on PT X, so the data and documents obtained were not in-depth. We can display not all data and information from respondents in this study by taking into account the privileged positions of each party.

Suggestions for further research to obtain more in-depth data, it is recommended to conduct direct research on the company as the object of study so that it can provide a clearer picture of the arguments and documentation of the company other than what has been stated in court as well as supporting evidence or documentation. In addition, the number of respondents can be increased to provide a more comprehensive opinion.

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