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IDENTIFICATION WITH DEMPE IN
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The Implications of Intangible Assets Identification with DEMPE in the Indonesia's Transfer Pricing Tax Regulations

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Abstract

This study is focusing to analyze the implications of implementing the concept of function identification in the intangible assets that is discussed in Action 8-10, known as DEMPE, in the Indonesia's transfer pricing regulations. This research method is descriptive research with more priority to in-depth interview as primary data source. The result of this research is that there is relevance to apply BEPS Action Plan 8–10 in Indonesia, DEMPE concept can be applied effectively in Indonesia to overcome various problems, and its implementation only requires less significant adjustment because implicitly DEMPE concept has been applied mainly as basic inspection. Implementation in Indonesia's pricing transfer rules can create new regulations that are generally described in PMK and the details will be explained in PER by adjusting to the relevance in Indonesia that allows added "marketing" function in the DEMPE concept. This implementation is expected to be able to get closer to each stakeholder's perspective regarding to the procedure of identifying intangible assets that emphasizes the analysis of economic ownership.

JEL Classification: H25; H26

Keywords

Transfer Pricing — OECD — BEPS — Action Plan 8-10 — Intangible Asset — DEMPE

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1. Introduction

Intangible assets as one of the main factors in forming the value of a business group are also gaining deep attention. The Arm's Length Principle before BEPS adopted by many countries in the world is, in fact, be considered as unable to accommodate a fair remuneration allocation the parties who directly contribute to the formation and development intangible assets. The majority of business group design various transaction schemes that involving intangible assets to utilize loopholes of the arm's length principle. As a result, some of the schemes are detrimental to the tax bases of some countries that supposedly get the proportion if a transfer pricing analysis is limited only from the legal ownership perspective. This can be seen from some cases that constitute the economic substance from the contribution in the intangible assets, i.e. cases of Google, Amazon, or Starbucks where the state is severely disadvantaged from the tax sector because of a transaction scheme that utilizes intangible assets.

Aside from that, the intangible assets also turn into a major source for the company in maintaining a sustainable competitive advantage. It is marked by a significant development of information and communication technology every year, thus offering ease of improvement in business processes and accelerating the acquisition of information for businesses. The development of this technology makes intangible assets a key driver for business profit (UN, 2017). The BEPS Action Plan 8 is then adapted in the OECD Trans-

fer Pricing Guidelines (TP Guidelines) 2017. It provides development, enhancement, maintenance, protection, exploitation (DEMPE) analysis as a guide to judge those who play an important role in creating the value of an intangible asset owned business group. The DEMPE analysis becomes a tool for determining the level of remuneration that must be accepted by each member of a business group for the contribution of developing an intangible asset.

Before the DEMPE concept is introduced, the owner of an intangible assets has the right to obtain full remuneration legally for the exploitation of the intangible assets. In other words, if the legal owner of an intangible asset in a business group is an entity inside the tax-haven state, the income derived from the royalties imposed on the intangible property is entirely belongs to the entity in the tax-haven state. In the end, the business group will be able to make tax savings or known as tax avoidance. This is of course not applicable after the DEMPE concept is implemented because the entity entitled to obtain remuneration from the intangible asset, is an entity that performs the DEMPE activity against such intangible assets. An entity that performs DEMPE activity partially is entitled to obtain a remuneration partially, in accordance with its contribution to the value of intangible property. Therefore, the BEPS Action Plan 8 - 10 and OECD TP Guidelines 2017 requires business groups to identify activities and functions with the DEMPE concept. Such an analysis allows the involvement of members within a business group as reflected in the proportion of value and remuneration derived from intangible assets for

each contributing party.

Some countries have adopted the concept of DEMPE in the taxation provisions, including China, Vietnam, India, Australia and Hong Kong although not directly adopting the DEMPE concept in its taxation provisions, but have actively considered DEMPE concepts related to the analysis of intangible assets in the company. The country has implemented DEMPE in accordance with the characteristics of each country, for example China's efforts in applying DEMPE by adding Promotion factor in it into DEMPEP. It is based on the condition of the country where the majority of multinational corporations perform marketing functions in the country and the intangible value of intangible assets in the function is significant (Huibregtse & Wang, 2016).

If it is associated with Indonesian tax laws, PER-22/PJ/2013 and SE 50/PJ/2013 explain the procedures for examining the fairness of intangible property transactions. Although these guidelines do not address the DEMPE concept explicitly, these guidelines have directed testing of transactions towards DEMPE where some of the ideas or philosophies of the DEMPE concept are in field inspection. However, the standard guidance on the procedure for inspection of intangible assets, in particular associated with the DEMPE function, has not yet existed in the development of intangibles belonging to a business group. There is no standard guidance on what activities are included in DEMPE, which parties should engage in DEMPE activity, the most important weight of DEMPE activity, and the DEMPE allocation process for profit sharing resulting from the utilization of the intangible assets. Tax Auditors Indonesia also has difficulty in identifying intangible assets due to lack of taxpayer transparency, unclear regulations and inadequate human resources in the process (Muhammadi et al., 2016). This condition becomes the basis of tax disputes related to the payment of royalty which is still dominant in Indonesia.

Previous studies have not specifically addressed the application of the DEMPE concept in a country's tax laws. The majority of existing research focuses more on the adoption of a common Action Plan such as the one that has been done by Shelepov (2017) regarding the implementation of Action Plan 13–15 in Indonesia and several other countries. The focus of this study leads to the implications of the application of DEMPE concepts in Indonesia in the analysis of intangible assets by discussing the development of non intangible property analysis starting from the view of arm's length principle, legal ownership, economic ownership, and finally the concept of DEMPE as applying the concept of value creation to intangible property. This writing emphasizes on the readiness and adjustment of transfer pricing rules in Indonesia in the implementation of DEMPE as a form of implementation of BEPS Action Plan 8–10 in the disclosure of intangible assets of a group of companies in embracing the arm's length principle as a basis for disclosure of transfer pricing practices. Indonesia as one of the G20 members will be required to implement BEPS Action Plan 8–10 in 2018 and identify readiness and renewal of existing tax pricing transfer regulations in Indonesia for the impact of its implementation.

2. Theoretical Review

2.1 Basic Concept of Transfer Pricing: Arm's Length Principle

When there is transfer pricing transaction, the one thing that need to be measured is the truth of transaction's nature and value. It can be done using arm's length principle. The application of the arm's length principle has three basic pillars: separate entity approaches, relevance to contractual arrangements, and the degree of matching of the transactions (Lang et al., 2016). Regarding the approach of a separate entity, an entity within a multinational group of companies will be treated as a separate entity and has its own objectives. Then, in relation to the contractual arrangements, an analysis of the legal arrangements that occur between the two entities must be based on the legal structure adopted among the related parties. The degree of comparison is also one of the valuations through comparison between transactions conducted between parties with special relationships with transactions conducted between independent parties.

From a practice perspective, the use of one-sided methods in an arm's length principle, facilitates administratively for business groups to regulate the form of transfer pricing and also allows control of the money flow of the overall corporate value chain (Edesten & Almling, 2016). This condition is also utilized by business groups in applying aggressive tax planning where this method is misused to allocate unnecessary profits on economic activities that are able to maintain or increase profits.

Regarding to intangible property transactions, the arm's length principle approach sometimes still results in an imbalance of revenue allocation (Huibregtse & Grigoryeva, 2016). Situations that cause the imbalance of allocation of income, such as:

1. **Comparative search is done from one side only**
Example: entities with routine functions that are remunerated with a fixed operating margin, so that there remains residual profit assumed to have been allocated to one or more entities in one other group of business or to its affiliates;
2. **The structure of intangible assets without any "significant people function"**
Example: when an entity in Bermuda or Malta is the legal owner of a brand, the country claims that all royalties from a business group must be paid to Bermuda or Malta, in the absence of any significant activity performed in Bermuda or Malta on such intangible property;
3. **The owner of intangible assets that do not absorb the associated costs of ownership of intangible assets**
Example: when the costs of research in the division of research and development (R & D), the reality is charged in full to the parent company despite the parent company is not the owner of the intangible asset of the R & D.

Disadvantages of the arm's length principle methods that led to the allocation of income in which do not correspond to economic substance, then BEPS was introduced as a tools that has the main purpose to allocate profits according to economic activity and value creation (G20, 2013), BEPS Action Plan 8–10 on Transfer Pricing Outcomes Aligning with Value Creation was introduced in identifying

intangible fixed assets. BEPS Action Plan 8–10 aims to ensure some of the following:

1. Identifying an actual business transaction, not only based on contractual agreement which cannot reflect the economic reality;
2. Contract risk allocation is recognized only if supported by decision-making activities;
3. A capital/non-functional asset is only remunerated based on risk-free-return;
4. Ensure that no refunds are allocated to cash boxes in the absence of relevant substance.

2.2 General Overview of “DEMPE” Concept

All members of a business group may engage in the formation of the value of an intangible asset not only limited to the owner of the intangible asset of the law. Group members may perform functions, use assets, and bear the risks that contribute to the formation of the value of an intangible asset. In the case of transfer pricing involving intangible assets, the appointment of members of a business group entitled to a principal remuneration for the exploitation of intangible property is of paramount importance. VCA is used as an analysis of the value chain based on the process flow within an organization or company. It is capable of seeing a company as a system consisting of a separate sub-system with input, process transformation, and output. Broadly speaking, VCAs can encourage effectiveness in the identification of parties involved in the process flow in line with the DEMPE concept.

OECD TP Guidelines in 2017 explained that in conducting the identification of the owner of the intangible asset in a business group, consideration of the functions performed, assets used and risks assumed by the look of the activities DEMPE an intangible asset, or parties contribute to development activities, enhancement, maintenance, protection, and exploitation of an intangible asset are needed. From the other side, the OECD did not provide a detailed description of activities, functions and constraints in which an entity can be said to do DEMPE. The interesting fact that DEMPE have high levels of activity or a different function to follow the type of industry.

BEPS Action Plan 8–10 reiterates the need for alignment of both legal and economic substance, that is the reality of the relationship between the entities involved with the terms of the transaction are set. Therefore, identification of the entities involved in accordance with the terms of the contract that has been set is an important point. In such cases, further analysis needs to be emphasized to determine the exact terms of the transaction. DEMPE analysis should be considered in reviewing the agreement on intangible assets in the group effort, especially in the process of allocation of roles, responsibilities, and risks borne by each entity involved. In addition, the UN in the Practical Manual on Transfer Pricing for Developing Countries 2017, defines the activity on intangible assets in DEMPE, comprising:

1. **Development** (Development), which allows also Acquisition from independent parties on the intangible asset;
2. **Enhancement** (enhancement);
3. **Maintenance** (maintenance);
4. **Protection** (protection);

5. **Exploitation** (Exploitation), better exploitation directly or indirectly such as through licensing.

There is the addition of “acquisition” in the definitions established by the UN does not refer to the above DEMPE aberrations introduced by the OECD. However, the UN argues that an intangible asset may be obtained from development activities or through acquisitions made from independent parties. Then, OSLO manual also says that the sphere of innovation in the development of the intangible asset may be the acquisition of goods, services, and knowledge gained from external parties (OECD and Statistical Office of the European Communities, 2005), This shows the application of the concept DEMPE increasingly widespread with the development of business and technology. Application of the concept that carries the risk allocation DEMPE become relevant because (Lang et al., 2016):

1. A holistic perspective on the formation of values in a group effort to consider the selection of a business model in accordance with certain industry while OECD testing begins with an assessment of the type of transaction;
2. With the risk profile to identify responsibilities among the entities on human resources (HR), it can depict a group control and its role in the effort to give full attention to the functions, assets and risks, and not only contemporary;
3. Becoming a starting point to map the contributions between the entities in the group in the process of creation or value of business and be able to assess the bargaining value (*bargaining power*) of each entity.

In fact, according to the OECD, DEMPE application becomes a challenge in itself considering the facts of particular cases in developing the intangible asset. Those challenges include (OECD, 2017):

1. The lack of proportionality between the intangible asset transactions between affiliated parties to transactions carried out between independent parties;
2. Possession and / or use of the intangible asset differs across party affiliation with an independent party;
3. Given the difficulty allocating impact of intangible assets on the Group revenue overall business;
4. The fact that the various entities within the business group can perform activities related to the development, improvement, maintenance, protection and exploitation of intangible assets, in the manner and level of integration is not observed between independent companies;
5. The fact that the contribution of the various entities within the business group to the intangible asset may occur in different years from the year in which any related returns realized.

2.3 Implementation of the DEMPE Concept

The fact that the structure of the taxpayer may be based on the terms of the contract between the entities that separates ownership, the risks covered and/or funding, function, risk control and decisions regarding investments in a way that can not be observed in a transaction independent parties, and can cause their crushing and the diversion of profits. Even if so, the concept can be applied in a fixed DEMPE to help in identifying value creation of intangible assets and

has been implemented by several countries in Asia.

DEMPE concept has been implemented by several countries, but there are two Asian countries that directly apply, namely China and Vietnam. It applies through a variety of adjustments to the conditions of the country in order to be contained in the regulations related to transfer pricing taxation in each country. In addition, the implementation of this concept as the first step of these countries to implement BEPS Action Plan 8–10 that requires VCA to regulate transfer pricing policy results of the use of MNEs intangible assets.

China through the Bulletin 6 has emphasized the importance of DEMPE function in addressing the issue of transfer pricing and has become effective in the form of transfer pricing regulations in China in May 2017. In implementation, the Chinese tax authorities make adjustments where there are additional functions in the allocation of the return on intangible assets. DEMPE concept turned into DEMPEP where the last “P” reflect the function of “Promotion” for the Chinese tax authorities, see this additional function has significance in the value creation in intangible assets in China (Yuan & Zhao, 2017), This change is driven also by market conditions in which the Chinese have a huge market demand and many subsidiaries of MNEs in China conduct marketing activities and the promotion of a high level. With this concept, identification reasonableness of remuneration for the use of intangible assets can be applied in accordance ALP and support the implementation of the BEPS Action Plan 8–10.

The second country is Vietnam has also become one of the participating countries applying the concept DEMPE. Through the Draft Decree related to transfer pricing regulations issued in November 2016, Vietnam tend to start adopting some of the recommendations in the Action Plan BEPS 8–10 and 13 and made into law in February 2017 with an emphasis on the analysis of substance over form (Nguyen & Du, 2017), DEMPE alluded to in the SE-41 related to the analysis of the intangible asset so that the transfer pricing policy in order to conform with the value creation of each party contributing.

Indonesia has yet to apply the concept of DEMPE directly, but it has been implied in the regulation of the SE-50/PJ/2013 related the identification of the parties involved in the formation of the value of intangible assets in the group effort and determination of remuneration or royalty reasonable with respect to the risks and functions are covered. However, this rule still has a limited scope and does not directly apply the concept DEMPE so that the issue of transfer pricing can still occur and still great potential BEPS practices through risk allocation. Indonesia is still too fixated on legal ownership so that the still weak economic substance analysis. By that, this research will emphasize the implications of implementing the concept of DEMPE against transfer pricing regulations in Indonesia in the future because it is the first step to do.

3. Methodology

This study uses qualitative approach case study. This approach is considered suitable to obtain more data intensive, in-depth and detailed to an application. The aim of this ap-

proach is to understand the conditions of the taxation laws in Indonesia, in particular transfer pricing regulations so as to obtain more comprehensive data on the phenomenon under review, the implications of applying the concept DEMPE in the identification of intangible assets in accordance with the implementation of the BEPS Action Plan 8–10.

Data collection techniques in this research field study using in-depth interviews Ideal informant in field studies should have the following criteria, namely (Neuman, 2014):

1. *The person who is totally familiar with the culture and is in position to witness significant events;*
2. *The individualist currently Involved in the field. Former members who have reflected on the field may provide useful insights;*
3. *The person can spend time with the researcher;*
4. *Non-analytic individuals of make better informants. A non-analytic informant is familiar with and uses native folk theory or pragmatic common sense.*

Selection of the relevant informant for this study must have the ideal informant four criteria as stated previously. Based on the relevance and criteria that have been described previously, the ideal resource to serve as informants in the study are:

1. Directorate General of Taxation

Interview with the General Directorate of Taxes is done by:

- Joko Galungan as Principal Researcher and Consulting MNEs from KPP Wajib Pajak Besar Dua, the Directorate General of Taxes;
- Ibnu Wijaya as Analyst MAP and APA in the Field of International Taxation Directorate General of Taxes.

2. Coordinating Ministry for Economic Affairs

Interviews were conducted with Mr. Gunawan Pribadil as Assistant Deputy Fiscal.

3. Practitioners/Tax Consultant

Tax consultant is a party not directly involved in the implementation of the concept DEMPE, but has a role in providing tax consultancy providing transfer pricing documentation related to property transactions not berwujud. Interview with a tax consultant is done by:

- Balim Boerman as Transfer Pricing and International Tax Partner Deloitte South East Asia;
- Romi Irawan as Transfer Pricing Partner Danny Darussalam Tax Center.

4. Academicians

Interviews were conducted by academics as a third party who is independent and neutral so that it can provide a more objective insight. Researchers conducted interviews to international tax academics. Academics interviewed are:

- Iman Santoso as Lecturer in Faculty of Fiscal Administration, Universitas Indonesia;
- Andreas Adoe as Lecturer in Faculty of Fiscal Administration, Universitas Indonesia.

5. Taxpayers

The interview focused on the PT AAA as a taxpayer in the automotive field are examined and brought to trial on the issue of transfer pricing in the group effort associated with unexpected errors in the identification

of intangible assets as well as an indication of profit-shifting on the utilization of intangible assets of the group such business in 2016.

Research Site is a place where researchers conducted the study (Neuman, 2014), Environmental taxation is located in Jakarta is the site of this research, in this case the Directorate General of Taxation (DGT) and the Fiscal Policy Office (FPO) as a regulator in the form of transfer pricing regulations in Indonesia. In addition, the transfer pricing practitioners, academics, international tax and taxpayer involved in this study are also located in Jakarta.

4. Research Results

4.1 Implementation of Legal and Economic Ownership Analysis to Support BEPS Action Plan 8–10

UN sets of an analysis related to the ownership of intangible assets in the business group certainly based on the ownership of intangible assets by law (legal owner) and the provisions of the contract on the intangible assets (UN, 2017). While we are talking about Action 8–10, the main idea is using value creation analysis to have more comprehensive analysis which is more focus on finding economic ownership. In fact, the application of Arms' Length Principle (ALP) so far has shown effectiveness in transfer pricing disclosure issues for example in Indonesia where transfer pricing disputes by type of transaction from 2012–2013 increased significantly primarily intangible asset transactions (up 18%) and based on the examination area increased significantly in the area of economic substance (up 10%) and affiliated companies (up 6%) from 2012–2013 (DDTC, 2016). However, the basis of fairness is not merely from the standpoint of his legal ownership as the recipient of the remuneration of an absolute, but rather the need for a view over the parties entitled to such remuneration based on the contributions in the development of the intangible assets in order to obtain the level of fairness of a more comprehensive transaction. This condition is also called his attention to economic ownership. Here's the statement by Mr. Romi Irawan (2018) as Transfer Pricing Partner Danny Darussalam Tax Center (DDTC) concerning his views on economic ownership:

"... like a big fair payment or not we or did we already deserve to be compensated based on our contribution. Our contribution should also be considered in the payment scheme. By that, the economic ownership to be one of the relevant benchmark." (Interview with Romi Irawan, Transfer Pricing Partner DDTC, DDTC Office, March 29, 2018)

This condition is supported by the results of research Feinschreiber, that the right to get a return on the intangible asset can be divided in various ways if there is more than one economic owner of an intangible asset (Feinschreiber, 2004), Even so, there is a view that this is not necessary because of the difficulty to prove in economic ownership perspective. It is also the condition of the country the user or users, such as Indonesia, which was limited to making payments on their use so that more emphasis on its fairness

only in the legal ownership of his as important is the validity of the payment that is not to the fictional company and the proof will be easier with the availability of information. A concrete example in Indonesia, the majority of the problem is based on the existence of royalty payments to the parties concerned, not the fairness of the transaction. The solution can be done by providing the relevant documents such as contracts and legal ownership. As well as to the validity of transactions on the financial side, this can be proved through evidence such as invoices or proof of payment of the transfer to the owner. This statement is in accordance with the explanation of Iman Santoso (2018) as follows:

"... in many cases, when we talk about the existence, purpose of friends at the tax office is whether or not the use of the license or the like. General problem of existence can be fitted between the tax authority and the taxpayer as can be seen from the existence of legal-agreement between the licensee and the licensor. Existence was also strengthened with proof that the licensor is the owner of the IP right or license through its setrifikat. In addition to legal, we can also prove the existence through the financial section. Usually we prove to have it pays royalties to the licensor via bank transfer or invoice evidence indicating payment." (Interview with Iman Santoso, Lecturer in Faculty of Administrative Sciences, Universitas Indonesia, Via Phone, April 19, 2018).

Based on research conducted by Hickman, that BEPS Action Plan 8–10 aims to ensure some of the following things (Hickman et al., 2016):

1. Identifying the actual business transactions happen and not just based on a contract that does not reflect economic reality;
2. Contractual risk allocation is recognized only if it is supported by the decision-making activities;
3. A capital/asset administration without function only receive remuneration based on risk-free-return;
4. Ensure that no refund is allocated at the cash boxes without the relevant substances.

By that, the testing of economic ownership is perceived to be more relevant for developed countries as they should as a recipient of the royalty income due to the majority of the development process such as the activities of Research and Development (R&D) to be there, but the reality may or absence of receipt of remuneration for transfer of the legality of the intangible assets are moved to another country, so his income move to another country and harm the country because developers do not obtain the right to income. This supports the statement in accordance with the words of Andreas Adoe (2018):

"... The most visible of legal ownership, if economic ownership is rare because the proof is difficult. Besides, regular visits are reasonable royalty payments or not, because Indonesia is the source of why royalty is often used as ingredients in the DGT correction until now. It is also used as proof of legal ownership easier.

Only I think is also not relevant to Indonesia as a country wearer and seen enough truth royalty payments only. BEPS concept will be more suitable for developed countries that are aiming to use it to capture a wide range of revenue diverted from the utilization of intangible assets such as they are as a country that generally as the R&D" (Interview with Andreas Adoe, Lecturer in Faculty of Administration Universitas Indonesia, Kafe Workshop Coffee, March 28, 2018)

4.2 Relevance of Indonesia for Applying of BEPS Action Plan 8–10

The position of Indonesia as the country considered to puts Indonesia as a "victim" of the implementation of international standards of the OECD in the form of BEPS Action Plan. This statement is based on the existence of BEPS Action Plan was originally designed by the developed countries, in particular the G20, to maintain the position of the right of taxation and the tax system equal or fair which has been hampered by tax planning undertaken by MNEs by utilizing the difference domestic tax systems between countries. Indonesia as a donor country income only followed the flow of the application BEPS Action Plan in developed countries as the income recipient country.

Furthermore, Balim Boerman as Transfer Pricing and International Tax Partner Deloitte South East Asia, said that the relevance of the application BEPS Action Plan is quite small for a country user(s). It is based on the concept of BEPS Action Plan 8-10 which aims to clarify a complex transaction in order to prevent their tax planning schemes by transferring legal ownership of the intangible asset or the Intellectual Property (IP) from a high state to a low tax rate tax rate on the results of its use, primarily of royalty payments that could lead to tax avoidance. This shows the weakness of the use of the principle of legality of ownership as a benchmark for measuring the fairness of a transaction utilization of intangible assets. By that, BEPS Action Plan 8–10 is a "weapon" for the tax authority in the developed countries, generally as the development of IP, against tax planner who moved the legality of ownership of IP to obtain tax savings that the direction of the analysis focused also to its economic ownership of the transaction. Under this concept, there is a separation between legal ownership and economic ownership. Here is a statement from Balim Boerman (2018):

"In my opinion, his urgency to be relevant to countries that there are many IP owners. If for countries using the IP itself, there is but little relevance. Because if understood, this 8–10 BEPS want to prevent tax planning to move the IP legal owner of a high state to a low tax rate tax rate. Hence separated between the legal owner and the economic owner BEPS is actually only a war between equal tax planner tax authority." (Interview with Balim Boerman, Transfer Pricing and International Tax Partner Deloitte South East Asia, Via Phone, March 27, 2018)

Although small in urgency, the relevance of the application of BEPS Action Plan 8-10 in Indonesia remains high to be adopted in taxation in Indonesia. This statement is supported by the initial issue of transfer pricing practices is the reasonable value of a transaction that is indicated as the apportionment of the related entities, primarily with affiliates as tax planning schemes a business group or MNEs. The main problem lies in the assessment of reasonableness of the profit distribution, as noted earlier, that the proof of reasonableness will be more difficult due to the lack of information and is still dominated by the outlook on its legal ownership as the ultimate recipient. By that, the contribution of each party can be a benchmark in the distribution of a reasonable profit. This is stated by from Romi Irawan (2018):

"I agree that this is already urgent, in a sense, from the beginning of this TP issues clear that this issue profit-sharing allocation for each entity concerned. If you see this TP definition right is a matter of division of a reasonable profit. Well, a reasonable division is determined by the contribution of each entity. Well seen from this newly defined contribution reasonable division. Although this is not a new thing, through BEPS 8–10 there have been term of significant repo function and role of the contractual agreement that we have the right tools to map the contribution of each solution in the supply chain and how big a part that should each received, At least in BEPS 8–10 has many useful tools to help map these things." (Interview with Romi Irawan, Transfer Pricing Partner DDTC, DDTC's Office, March 29, 2018)

The relevance of implementing BEPS Action Plan 8–10 gets higher because it is associated with significant influence on the delivery of resources from the use of intangible assets in the form of royalty payments. This affects the payment value to the level of income of companies in Indonesia that can reduce the potential tax revenue for developing countries often as users like Indonesia utilized as a cost center of MNEs or business group. The scheme is able to generate a double tax for MNEs saving for the recipient country subject to a lower tax and tax in Indonesia is also reduced due to the burden of royalty payments that are deductible. By that, truth needs to be seen from the amount of the payment to the recipient of remuneration based on its contribution in the development of the intangible assets. This is consistent with the statement of Romi Irawan (2018) as follows:

"It is precisely from the Indonesian side, with their royalty payments will affect the profit received by Indonesia. So the Indonesian authorities must ensure that compensation is awarded to those who contribute or to identify the reasonableness of royalty payments. So I think the relevant tetep although viewed from the perspective of the user." (Interview with Romi Irawan, Transfer Pricing Partner DDTC, DDTC Office, March 29, 2018)

Other special close attention is the role of Indonesia itself in the development of the intangible assets. There is a possibility that Indonesia also has a role and should pay for the use of intangible assets is not for it or should not have to pay depends on the contribution in the intangible assets. The most common scheme is the party that contribute to its development and then resell the intangible assets and re-used in the presence of royalty payments to the holder is legal, so there is a part of the royalty payments that should be paid on the contributions the company pays. Here is the statement of Ibnu Wijaya (2018) and Romi Irawan (2018) related discussion above:

”There was related to the transfer of intangibles, namely the Indonesian side to develop the intangibles and then sell to other parties at a cheap price then in-license back and charge royalties foreign companies mengclaim affiliates where there are valuable intangibles and to charge royalties on the Indonesian side. This case is most often found in the context of a royalty payment to the affiliate.” (Interview with Ibnu Wijaya as Analyst Mutual Agreement Procedure & Advance Pricing Agreement, Division of International Taxation, Office of Directorate General of Taxation, April 12, 2018)

”... for example, there are companies that pay royalties already 15–20 years. Definitely will be asked why pay for it and usually answered that the technology is still maintained by an outside company or the like. In fact, it turns out we contribute to and bear the expenses for the development of these technologies, we should be paying less or even we got a royalty.” (Interview with Romi Irawan, Transfer Pricing Partner DDTC, DDTC Office, March 29, 2018)

4.3 Application of BEPS Action Plan 8–10 in Indonesia to the Indonesian Tax Regulations

From the Directorate General of Taxation, International Taxation section in particular, they have confirmed that their use of OECD Guidelines and UN model in the context of a more comprehensive examination of transactions mainly related to the reasonableness of the use of intangible assets, particularly related to the reasonableness of royalty payments. Indirectly, the regulator has adopted the Action 8–10 in examination by not only focusing on the legal ownership per se, but try a more comprehensive taking into account its economic ownership.

This application refers to the OECD guidelines on value creation, where the value of the transaction will look on its fairness when understand how these values were acquired by a group and then independently look at the functions held by each party associated in the group and the contributions made in the context of the establishment of these values (OECD, 2015), Value Creation emphasized on implementation of Action 8–10 in taxation laws in Indonesia can be an initial step in the prevention or preventive stage for the development of Indonesia in the future that allow Indonesia's involvement in such transactions, particularly in the

development of intangible assets, can be of significant value and affect the fairness of transactions that were analyzed. This is consistent with Galungan Joko (2018) statement as follows:

”In my opinion, the application of BEPS Action Plan 8-10 can be a preventive measure if later Indonesia will enter a period of a role in its development or the more complex of a transaction, in particular relating to these intangible assets.” (Interview with Joko Galungan, Head of Research and Consulting MNEs, KPP Wajib Pajak Besar Dua, April 26, 2018)

Ibnu Wijaya as of the regulator confirmed that there still exists the view that these guidelines are not binding on its application and should be confirmed as a rule. However, there are considerations of DGT to maintain regulatory conditions are considered more flexible because it can follow the development of the OECD guidelines for use are often renewed. However, they do not rule out the possibility of increasing the existing regulations at this time in the form of PER and SE to the PMK to give a stronger legal basis, especially for taxpayers. Even if so, the conditions today TAXPAYERS rated has accepted the role of the guidelines as a basis for correction aside from the additional rules. The following statement of Ibnu Wijaya (2018):

”Well it probably exists, at the beginning of our many cases related to transfer pricing, there is only taxpayers who oppose the use of guidelines or PER or SE. But now was a general understanding that it could be used as a basis for correction. Already recognized as a basic argument for the correction ... I think from our side is relatively more flexible and can follow the development, so when the OECD to make changes, for example, we can directly refer me over there. So I do not think too there are problems regarding the regulation ... According to our view, the current one is enough. But we're working to make PMK as well as efforts for greater certainty over their stronger basis.” (Interview with Ibnu Wijaya as Analyst Mutual Agreement Procedure & Advance Pricing Agreement, Division of International Taxation, Office of Directorate General of Taxation, April 12, 2018)

The condition was also approved by the relevant Gunawan Pribadi response to raise the existing regulations to adopt with 8–10 BEPS Action Plan as a form similar PMK compliance, as it is considered a strong current regulations have not been legally and still high incomprehension and disobedience of taxpayers reflected in the many disputes transaction tax intangible asset assembled or following IP, statement of Gunawan Pribadi (2018):

”Comments like that will always be dynamic. Even if you can it is raised to the PMK, he suggested it to me.” (Interview with Gunawan Pribadi, Assistant Deputy Fiscal Policy Agency, the Central Office of Fiscal Policy Agency, April 5, 2018)

In the process of establishing a regulation, there are two (2) points that must be considered. First, it must be the willingness or political willingness in establishing and developing a rule that can be precisely targeted and timely implementation. The second is the need for the participation of all stakeholders such as regulators, tax consultants and tax payers so that there is the consent of all the parties who will implement it so that the implementation process can run effectively. Iman Santoso (2018) stated as such:

"If you talk about regulation, it will depend on two things. The first is the political will of the DGT. If DGT has the political will, it should be done. The second is a stakeholder, as taxpayers, tax consultants, and business associations. Stakeholders should be involved in making regulations so that the result not only of the next party. Because if only from the regulator alone, DGT for example, the field would be difficult in practice. Could many do not understand, or even unworkable since what is regulated and practiced in different field ... fast and slow implementation depends on two things." (Interview with Iman Santoso, Faculty of Administrative Sciences, Universitas Indonesia, Via Phone, April 19, 2018)

4.4 Relevance on the Implementation of DEMPE Concept in Intangible Assets Identification in Indonesia

During this time, identifying intangible assets has been discussed in several taxation laws in Indonesia, such as PER-22/PJ/2013 and SE-50/PJ/2013. In these regulations, ordinances transaction identification of intangible assets has been submitted by implication, not directly, to avoid tax avoidance practices of affiliate transactions. In addition, the OECD and UN Guidelines Practical Model is used as a reference in a more comprehensive analysis to see to the details which are not delivered within the existing tax laws, according to Ibnu Wijaya (2018) statement as follows:

"... there is a PER of 22 and SE 50. However, for the intangible asset is not regulated in detail, because the variables are so many. In practice, we usually refer to the OECD guidelines and the UN practical models. So the general rule but the details refer to this guideline. It's become a sort of guide." (Interview with Ibnu Wijaya as Analyst Mutual Agreement Procedure & Advance Pricing Agreement, Division of International Taxation, Office of Directorate General of Taxation, April 12, 2018)

The application of the concept of DEMPE itself already implicit in Indonesia Taxation laws, especially in the SE-50 which addresses the fairness of transactions related with the identification the disclosure of the parties involved in the intangible assets in order to mitigate the transfer pricing practices. Consequently, it is not a new concept, but has not been detailed to be discussed and implemented in full in the regulations in Indonesia. The proof in tax disputes in this regard, if not contained in the regulations may be

riveted to the UN Model or OECD Guidelines as the basis for strengthening checks which have embodied the concept DEMPE so as their implementation need not wait for any changes in tax regulations.

"I think because the concept has always been there, so it actually fits and may be made. So, it should not be necessary to delay the grounds that this new thing." (Interview with Romi Irawan, Transfer Pricing Partner DDTC, DDTC Office, March 29, 2018)

"Actually, in principle we often use it. Even before it was adopted in the OECD guidelines, we have been using the argument that BEPS Action Plan 8–10 has to strengthen our correction. This means that if asked unlikely, it is possible, without having to wait for the rules to change." (Interview with Ibnu Wijaya as Analyst Mutual Agreement Procedure & Advance Pricing Agreement, Division of International Taxation, Office of Directorate General of Taxation, April 12, 2018)

The actual application of the DEMPE concept emphasis on advanced analysis is the analysis of value creation that emphasizes disclosure of economic ownership where more in-depth look into the contributions made on the development of the intangible assets (Hickman et al., 2016), Problems arising from the differences between the parties hold legal ownership and economic ownership which is often those who hold legal ownership is only contributing a minimum or do not contribute to its development but gained full rights to remuneration, so that the economic ownership of his being in a place or a different country. This condition shows the shape of reasonableness as IP Owner or holder of intangible assets is actually supposed to contribute or run the DEMPE concept so as to reduce the potential for manipulation. This condition is consistent with the statement related Balim Boerman (2018) as follows:

"The case that is usually happened is a difference between legal owner and economic owner. Supposedly, we should pay to the economic owner even though IP is on behalf the legal owner. In fact, it is the opposite. ... Now that the IP is considered to have a party that manages the IP itself though more fair and to avoid manipulation as I said earlier in which a party can be said IP owner when he did the DEMPE." (Interview with Balim Boerman, Transfer Pricing and International Tax Partner Deloitte South East Asia, Via Phone, March 27, 2018)

In accordance with the OECD TP Guidelines 2017, in the case of an entity wants to get the full remuneration for the exploitation of the intangible asset, there are three necessary conditions (OECD, 2017):

1. Conducting and controlling all functions (including the essential functions) associated with DEMPE of intangible assets;

2. Providing all of the assets required for financing and other essential assets required in order DEMPE activity of the intangible asset; and
3. Bear risks associated with DEMPE of the intangible assets.

By that, DEMPE relevance consist of three things, there is to know Indonesian position on the intangible asset development, preventing from exploitation as cost center country, and to reduce tax dispute which is relate it. The Indonesian involvement in the proof of the intangible assets as common problems that arise in Indonesia. Especially, if there any re-development activities of the intangible asset to use it. This condition raises a question the fairness of the payment of remuneration for the use of intangible assets such as the Indonesia still contribute, so if you see him there are economic ownership of a portion of the remuneration payment to the Indonesian side on the basis of their contribution to the intangible assets. By that, the concept of this DEMPE can clarify the position of Indonesia if not involved or do not contribute to the formation or development of the intangible assets. This statement is in accordance with the results of an interview with Balim Boerman (2018):

”Agree if only applied to prove that the Indonesian parties not involved in the process DEMPE. So, it is still relevant in Indonesia. In addition, Indonesia will also be able to enhance for the market necessities in Indonesia.” (Interview with Balim Boerman, Transfer Pricing and International Tax Partner Deloitte South East Asia, Via Phone, March 27, 2018)

This condition is also confirmed from the side of the regulator that there are still many problems of its own that turns the Indonesian side did contribute to the intangible asset be exploited from outside parties. Overall, Indonesia has not been doing a lot of development of intangible assets, such as R&D. However, contributions are common in the use of marketing intangibles such as brand which is manifested in the existence of a marketing or marketing costs are quite high, although the Indonesian side has to pay royalties on the brand. Events like this show that Indonesia had contributed to the intangible assets in particular for the market in Indonesia so that it becomes a question on the fairness and the benefits received from the payment of remuneration for the use of the intangible assets. So based on the Joko Galungan (2018) statement as a representative of the DGT regulator, the condition is often the basis of dispute or tax disputes. The following statement from him:

”Well, our country has yet to develop the lot. But to expand marketing has been great. So I think our problem is a problem most of its marketing intangibles, such as brand, because that's what I think the sector is still no contribution in Indonesia. So if there is a dispute normally be about it.” (Interview with Joko Galungan, Head of Research and Consulting MNEs, KPP Wajib Pajak Besar Dua, April 26, 2018)

The other one relevance is to avoid the exploitation on Indonesia as cost center country. The majority of companies

in Indonesia are subsidiaries of MNEs abroad and mainly the parties who use the capital from the parent company, particularly related to the use of intangible assets. This is consistent with the statement in the OECD that this position is known as a capital importing country. By that, the concept of this DEMPE necessary to avoid their exploitation in the form of companies in Indonesia become a cost center to reduce its revenue in Indonesia so it can be detrimental to potential tax revenues in Indonesia. Specifically, the concept of fairness and DEMPE capable of identifying the prevalence of an intangible asset utilization transactions.

”If we do more as a capital importing country, we should be wary of this concept so our payment out really meets the criteria of reasonable and customary. So that we are not being exploited by outsiders.” (Interview with Iman Santoso, Lecturer in Faculty of Administrative Sciences, Universitas Indonesia, Via Phone, April 19, 2018)

Nevertheless, this implementation DEMPE concept is considered to be more effective in order to document beforehand on the parties involved in the intangible assets, primarily in its development. It can higher the relevance for implementing DEMPE in Indonesia. Accordingly, the existence of DEMPE concept is expected to have a positive impact in the end. The basis of the application of this concept is the disclosure of information that either the regulator or the taxpayer will have a view that is similar to the lack of legal certainty. Thus, the concept is to reduce the number of disputes related to taxation in Indonesia related with this remuneration and provide a win-win for both parties in the presence of a clear, although there will be an additional chore for taxpayers to obey tax laws that exist in the future. Back again, the implementation of this concept could reduce that number according to the interview:

”It's also great to resolve disputes because taxpayers have additional tools to explain the fairness, and the examiner can obtain additional information because it is usually caused by a dispute over the authority that does not have adequate information. So it was a win-win future. Although the taxpayer gets an extra burden but still worth it.” (Interview with Romi Irawan, Transfer Pricing Partner DDTC, DDTC Office, March 29, 2018)

Romi Irawan (2018) also stressed that implementation could be focused first on the documentation so as to encourage the availability of more information and provide guidance in the form of clear regulations to apply. The following statement from him:

”I think the important advance is the documentation to resolve the dispute. As seen from many disputes, primarily related to royalty.” (Interview with Romi Irawan, Transfer Pricing Partner DDTC, DDTC Office, March 29, 2018)

Balim Boerman (2018) also supports the implementation of this DEMPE concept as a starting point for the

development of the analysis of Indonesia against the growing comprehensive IP follow international standards which contains the disclosure of value creation as the following statement:

”As its positive impact, it is a way to assess their value creation of IP.” (Interview with Balim Boerman, Transfer Pricing and International Tax Partner Deloitte South East Asia, Via Phone, March 27, 2018)

From the regulator, DEMPE concept is assessed to be able to assist the examiner in giving a more comprehensive identification results to reduce the subjectivity of investigator assessment of the fairness of the transactions related to the use of intangible assets due to the availability of sufficient information to the examiner. As well, this concept will be able to push toward the same views on intangible assets, in particular in terms of disclosure of the parties who contributed. Finally, the tax dispute can be reduced and can improve compliance levels and the potential loss of the taxpayers on the payment of remuneration practices can be reduced. This statement is in accordance with the results of interviews with Joko Galungan (2018) and Ibnu Wijaya (2018) as the DGT as follows:

”This information is important so that the DGT may see and understand the scope as not to arouse suspicion excessive. I see the disclosure of taxpayer information is increasingly important because it clarifies existing transactions and reduce curiosity DGT. Well I see this DEMPE more towards it. With already described function and each division as well as parts that must be obtained through DEMPE Indonesia, it will reduce the dispute, in my opinion.” (Interview with Joko Galungan, Head of Research and Consulting MNEs, KPP Wajib Pajak Besar Dua, April 26, 2018)

”As long as the taxpayer and the DGT has the same understanding of concepts related to this DEMPE, should a dispute about the intangibles will be reduced. Especially in the case of royalties, will be significant.” (Interview with Ibnu Wijaya as Analyst Mutual Agreement Procedure & Advance Pricing Agreement, Division of International Taxation, Office of Directorate General of Taxation, April 12, 2018)

4.5 Implication Analysis Concept Implementation DEMPE to the Transfer Pricing Regulations in Indonesia

The application of new concepts often encountered obstacles in its interpretation. Their main differences between the regulator and taxpayers is in understanding a concept and implement it. In addition, the new concept is also considered less stable because there are still some changes to adjust conditions so as to be a concept that is ready to be raised into a regulation. Following Ibnu Wijaya (2018) statement who supported the claim above:

”Because this is a new concept, the implementation still not very stable. This means that there are many possible differences in understanding of this concept. This usually happens with new concepts. So between the DGT, the taxpayer, and judges must both learn again that there was interpreting passages of the same.” (Interview with Ibnu Wijaya as Analyst Mutual Agreement Procedure & Advance Pricing Agreement, Division of International Taxation, Office of Directorate General of Taxes, April 12, 2018)

BEPS Action Plan is a product owned by the OECD which set mandatory internationally. In adoption, the OECD allow adjustments, either added or subtracted, follow the urgency of its application in the country. In this case, the concept refers to a fixed amount of BEPS Action Plan 8–10 with details in its application submitted to the relevant countries for the DEMPE customized concepts into legislation. Relevance to Indonesia meant as a developing country which is in the process of implementation can select the points which was considered suitable and significant to be applied in Indonesia, do not need all of them. This is consistent with that described by Romi Irawan (2018) and Iman Santoso (2018):

”Well actually regulated OECD is mandatory in nature, but if a country adopts the concept of it is fine if adjusted, added, or subtracted according to the urgency that existed at the state of it. So, BEPS provides the concept of magnitude but to the details given for each country if you want no addition or subtraction.” (Interview with Romi Irawan, Transfer Pricing Partner DDTC, DDTC Office, March 29, 2018)

”.... Also to be seen among the principles in the OECD with developing countries such as Indonesia are different. So there must be a match between the principle that if a significant difference is too far and potentially harm us, as a developing country.” (Interview with Iman Santoso, Lecturer in Faculty of Administrative Sciences, Universitas Indonesia, Via Phone, April 19, 2018)

There is concern over this practice. Some studies view that this practice will only complicate the performance of BEPS Action Plan itself. This statement underlying by the adjustment that is allowed, so the goal of the OECD is to equalize the taxation standard within the international scope cannot be reached (Lang et al., 2016). As a result, the international consensus becomes less useful as a result in the end tax treatment in each country will remain distinct and practices BEPS will still always use the road because the existing loopholes in the tax treatment differences in each country. This refers to the statement Romi Irawan (2018) as follows:

”... if each country has its own adjustment then what is the use of international consensus.”

(Interview with Romi Irawan, Transfer Pricing Partner DDTC, DDTC Office, March 29, 2018)

Central Office of Fiscal Policy Agency, April 5, 2018)

By that, the application and adjustment of DEMPE this concept can not be implemented unilaterally. This prompted the need for commitments from other countries, as well as the disclosure of information. The initial step to do is synchronizing with other countries, particularly the place that holds its legal ownership. It is intended to facilitate Indonesian step in implementing DEMPE that was based on the disclosure of information where parent companies which generally has all the information related to the process of formation and development of its intangible assets.

If it has become a liability in the country where the parent company is located, the availability of corporate data residing on Indonesian children have been ensured and can be requested because it has available and is expressed in the state holding company is located. Communication with the partner country, had to be ensured from the beginning so that the rules established by Indonesia does not deviate with applicable regulations in the partner country where parent company is located. Otherwise, the existing regulations will only be futile to set up because it is not able to be applied effectively in Indonesia. This statement is supported by interviews with Joko Galungan (2018) as follows:

"That need to recap is in order that we do not run ahead of other countries. This means that whenever possible we adjust to the rules of a country that has a lot of companies in Indonesia such as Japan and the United States so that when they are clicking apply these rules, we will more easily ask the taxpayer because it is required of the state-evident. This will ensure the company's subsidiaries already have the data because it is provided by the Headquarter. Synchronize between us and there becomes an important country. In addition, for companies in Indonesia are open to foreign investment could also provide data as a Headquarter." (Interview with Joko Galungan, Head of Research and Consulting MNEs, KPP Wajib Pajak Besar Dua, April 26, 2018)

4.6 Stages of Implementation of the concept of DEMPE into Indonesian Tax Regulations

In terms of implementation in Indonesia, during this time the existing regulations already contain this DEMPE concept, implied that in its application to the regulation does not require major adjustments, especially following the Action 8 and 9. However, the definition and classification has not clearly portrayed. Revelation presented above in accordance with the Gunawan Pribadi (2018) as follows:

"It has been able to sort out the chapter of international trade mainly to the transfer pricing of intangible assets. Actually, to which in Action 8 already explained about the intangible, but it is not defined clearly. Even so, in my opinion is already defined through existing classification." (Interview with Gunawan Pribadi, Assistant Deputy Fiscal Policy Agency, the

In the bigger picture, the application of this concept will DEMPE into transfer pricing regulations in Indonesia may be general or common. If the matters governed by this rule too specific, this will reduce the flexibility of the concept of this DEMPE because it must be able to follow the change in the existing conditions so that the rule change is not too often so as to maintain the power of the law. The above statement is reinforced by the results of the interviews Iman Santoso (2018) and Ibnu Wijaya (2018) as follows:

"Could we make it a general rule that we are not too long and generally discuss almost anything to be easy to understand." (Interview with Iman Santoso, Lecturer in Faculty of Administrative Sciences, Universitas Indonesia, Via Phone, April 19 2018)

"It's hard, yes. Because in another rule was not specific. Because if it's too specific too will not be flexible with the dynamism of international taxation." (Interview with Ibnu Wijaya as Analyst Mutual Agreement Procedure & Advance Pricing Agreement, Division of International Taxation, Office of Directorate General of Taxation, April 12, 2018)

The initial stage is the formation of PMK which specifically regulates the relevant information that is relevant to identify intangible assets with reference to the application of the concept of DEMPE. After that, the details specifically related to the definition and identification of process steps based on the concept DEMPE can be formulated into a new PER replace the existing one as a form of full adjustment of the concept DEMPE. However, it should be stressed that the position of PER merely as a guide of the application of the PMK that the values contained in the PER PMK not to replace it as the new regulations. Overall DEMPE concept remains contained in the PMK, just technically described in PER. Moreover, this condition is supported with the non-restriction inside the existing regulation regarding DEMPE concept implementation, in which align with the statement from Joko Galungan (2018) and Ibnu Wijaya (2018):

"First, I think PMK should be published. Both must appear PER to explain in more detail ... I think in the PMK can not be very detailed, so you need to ensure is that all concepts that exist in PMK. It detailed in PER. But it must be ensured also that the PER should not create new rules." (Interview with Joko Galungan, Head of Research and Consulting MNEs, KPP Wajib Pajak Besar Dua, April 26, 2018)

"Actually, the current regulations do not prohibit the use of the concept of DEMPE in Indonesia. This means that we are trying to adopt the concept in SE and PER. So we can still be applied." (Interview with Ibnu Wijaya

as Analyst Mutual Agreement Procedure & Advance Pricing Agreement, Division of International Taxation, Office of Directorate General of Taxation, April 12, 2018)

There are few countries in Asia that have implemented the concept DEMPE, for example, is Chinese. Based Bulletin 6 has emphasized the importance of DEMPE function in addressing the issue of transfer pricing and has become effective in the form of transfer pricing regulations in China in May 2017. In implementation, the Chinese tax authorities make adjustments where there are additional functions in the allocation of the return on intangible assets. DEMPE concept turned into DEMPEP where "P" Last reflect the function of "Promotion" for the Chinese tax authorities see this additional function has significance in the value creation in intangible assets in China (Yuan & Zhao, 2017), This change is driven also by market conditions in which the Chinese have a huge market demand and many subsidiaries of MNEs in China conduct marketing activities and the promotion of a high level.

According to Joko Galungan (2018) as a representative of the regulator, he approved the need for adjustment with additional functions such as in China. This is based on a common practice that occurs in Indonesia related to the utilization of marketing intangible assets. Indonesia proved that the party is facing a tax dispute as a result of the contributions of Indonesia to the value creation of intangible assets such as the promotion or marketing through marketing activities to build its brand in Indonesia while still their royalty payments over the rights to use the brand. By that, the fairness of the transaction becomes questionable because the Indonesian side should still contribute significantly and independently as if to develop the brand in Indonesia. Such cases can be a dispute that needed adjustment of additional functions "P" is to identify the general case like this. Here's his statement:

"Allow my opinion. In some cases, too, we have also got a lift and enough bargaining. Evidenced by, first clicking marketing arrange is Indonesian. Besides, the money used also Indonesian people's money." (Interview with Joko Galungan, Head of Research and Consulting MNEs, KPP Wajib Pajak Besar Dua, April 26, 2018)

Keep in mind that in its implementation in the transfer pricing regulations in Indonesia also have to adjust to the regulations in partner countries relating to transactions related to intangible assets. Otherwise, the implementation of this DEMPE concept will only be wasted.

"So it would be nice if the timing of the application of this DEMPE in line with regulations in partner countries in order not to waste." (Interview with Joko Galungan, Head of Research and Consulting MNEs, KPP Wajib Pajak Besar Dua, April 26, 2018)

When the regulation has been finished and the achievement of coordination with other countries, there will still be a gap or difference of understanding a concept is a natural

thing happens because basically is a judgment in which every person has a benchmark or way of thinking of each. This condition is such that occurs between the regulator with the taxpayer. By that, the effectiveness of the application of this concept in the DEMPE depends on the understanding that the need for an integrated understanding between taxpayers with the regulator or the relevant tax authority. This shared vision became a major factor that must be faced in implementing this DEMPE concept in taxation laws in Indonesia. This is consistent with that presented by Romi Irawan (2018) as follows:

"Of course there will be a gap when this regulation was implemented. So whether effective or not will be seen when the taxpayer submitted all the data will lead to dispute or not. If I parameters like it. Until how long it depends because taxpayers need to understand the process, as well as the authorities. So how fast depends on how the authorities and the taxpayer can either accelerate in understanding the regulation." (Interview with Romi Irawan, Transfer Pricing Partner DDTC, DDTC Office, March 29, 2018)

The socialization process becomes important in its application. Based on research Muti'ah, although the taxpayer is a major actor in its application, the tax authorities still have a role in the tax system, one of which is to provide guidance or counseling activities (Sitorus, 2015), With the example of several other countries, dissemination will be related regulations already done a few years or a minimum of one year before the regulation is applied in the transfer pricing taxation laws in Indonesia. As well, the need for a constructive feedback from all stakeholders so that future regulations will be more effective because it is formed in accordance with the willingness and ability of each of the stakeholders so that the implementation of this regulation can be directly implemented. The above statement in accordance with some of the advice given by Joko Galungan (2018) and Iman Santoso (2018) as follows:

"In other countries many rules that are already applied, run for the new year after it became mandatory. Well it's good it is also applied in Indonesia in order not to be surprised. Because it's not enough to just socialize it." (Interview with Joko Galungan, Head of Research and Consulting MNEs, KPP Wajib Pajak Besar Dua, April 26, 2018)

"... And also to ask for feedback on what roughly need to be included into the regulations in order to create cooperative compliance. Because it is our wish that upon exiting the langung regulation can be used all of them, therefore it is necessary also the understanding of taxpayers." (Interview with Iman Santoso, Lecturer in Faculty of Administrative Sciences, Universitas Indonesia, Via Phone, April 19 2018)

With socialization through consultants, taxpayers can be persuaded to apply for the benefits that can be acquired to abide by the new regulations. The most attractive bid is certainty about a significant reduction on the tax dispute related to the intangible asset transactions, in particular the payment of royalties due to be assessed by the tax authorities has helped in the provision of comprehensive information and is able to equate the views on the transaction so that the potential of the dispute will decrease. These suggestions submitted in accordance with Romi Irawan (2018) as practitioner:

"I think they do not understand the benefits of the data they provide. This makes them hesitant to give it. They are still not sure how crucial the data requested, but not the means they do not want to openly ... I personally, so that the client wants and no motivation to apply this concept, I usually will give examples exist abroad that in using this concept all reports will be clear and it will not make the dispute. It is passable to be persuaded because usually no one wants to dispute." (Interview with Romi Irawan, Transfer Pricing Partner DDTC, DDTC Office, March 29, 2018)

5. Conclusion

The relevance for implementing BEPS Action Plan 8–10 in Indonesia is quite high. Its application is actually aimed to reveal the aggressive tax planning schemes with the differences in legal owner and the economic owner to move income to countries with lower tax rates. Indonesia has an interest in its application as a first step the availability of relevant information, the precautionary measure of Indonesia as a cost center, and at the same evidentiary Indonesian role on the intangible assets. Indonesia also has committed to implement thus increasing urgency.

Also, the application of this concept as a form DEMPE next stage of the fairness of a transaction identification of intangible assets, which do not only see the extent of their existence, but can tell the parties that contribute to the formation of intangible assets in accordance with the DEMPE function. Fairness revenue allocation can also be based on contribution given. The impact will be widespread as mitigation actions over the possibility of profit-shifting practices of such transactions are utilized by MNEs. The level of analysis shows that identification is not just a look at its legal ownership, but also able to reveal its economic ownership which means seeing the value creation of the intangible assets.

Implementation of DEMPE can increase the level of compliance of taxpayer impact on the state losses are significant due to the payment of remuneration or royalty from parties Indonesia, which should not be charged to the income taxpayers in Indonesia. This is to avoid the exploitation of Indonesia as a country cost center in transfer pricing schemes MNEs. Into legislation, it needs to be an adjustment to the tax authorities from partner countries associated with the transaction so that no significant difference with the existing regulations in other countries, particularly where

the parent company as a legal owner resides. Otherwise, the condition will be detrimental to the taxpayers in Indonesia due to the availability of data owned by the parent company can not be obtained and taxpayers in Indonesia still must comply with the information so that led to a growing dispute.

In the implementation phase, it is better for the new legislation that is a form of adjustment of the existing regulations and the elevated status as the PMK to provide legal certainty for all stakeholders, especially the taxpayers. Content contained in the PMK general better, but it covers the whole application of the DEMPE concept. Better technical details added to PER as a guideline. It is intended that the concept DEMPE in the PMK remain flexible to the dynamic conditions of international tax, primarily related to the intangible asset is now worth and have a significant impact on a company until its affiliates in its operations. Moreover, there is an addition function such as promotion or marketing as an adjustment that is relevant with the condition in Indonesia as a market state.

6. Advice and Research Limitations

To make the DEMPE concept can be implemented effectively and achieved throughout the desired destination in the transfer pricing taxation laws in Indonesia, the authors recommend several suggestions, including:

1. Directorate General of Taxes need to improve the status of use of OECD Guidelines which contain DEMPE concept is not limited to the guidelines, but become a rule in particular Finance Minister Regulation (PMK). It makes this concept as the basic concept to provide legal certainty to all stakeholders with a detailed discussion outlined in PER, taxpayers primarily. Content contained in the PMK must be better, but it covers the whole application of the DEMPE concept. Better technical details added to PER as a guideline. It is intended that the concept DEMPE in the PMK remain flexible to the dynamic conditions of international tax, primarily related to the intangible asset is now worth and have a significant impact on a company until its affiliates in its operations;
2. Closer study is needed to identify the functions that need to be adjusted to the role of Indonesia to the intangible assets that understanding the contribution of Indonesia in its development became clear and was able to minimize the potential loss of tax. Also, the need for coordination with regulators from several countries where the legal owner of intangible assets on MNEs. This coordination is necessary in order to facilitate the availability and dissemination of information among regulators of the countries involved. If there is no coordination, the existing regulations, especially in Indonesia as a country the user is not able to obtain the information needed in order to identify the intangible asset related to the role of each party involved in the formation and development, so that hamper its effectiveness in assessing the fairness of a transaction utilization of assets not intangibles in the business group;
3. To improve the effectiveness of the implementation

of the new regulation containing this DEMPE concept, infrastructure is an important factor. Readiness of information systems and human resources that are owned by the DGT to its application as a benchmark for successful implementation of this regulation. Information has become an important source in the application of the concept of DEMPE as the basis of analysis so that the need for adequate information systems to collect and distribute all relevant information required. In addition, the readiness of human resources needed in the analysis of the new regulation containing the concept of fairness DEMPE so that the analysis results related transactions utilization of intangible assets can be more objective;

4. For the application can be run quickly and effectively, the role of the stakeholders into a lock is completely important. Socialization is an important factor in the spread of the understanding of concepts and new regulations are there to be obeyed, especially for taxpayers. Incentives have an important role as taxpayer motivation to comply, one of which is to decrease the potential for tax disputes that may be detrimental to the taxpayers, both in terms of time, money, and energy. Commonality of view on the understanding of the regulations can reduce the potential for dispute because the majority of interest has been fulfilled by the parties involved.

This study has several limitations, including:

1. There have been no previous similar studies related to the application of the concept of DEMPE in tax laws in a country so there are no reference journals from previous research.
2. The view of this research is limited from the domestic perspective or Indonesian practitioner because there are no foreigners as resources.
3. The limited number taxpayer who can be used as a resource because it is confidential and is unable to reflect the condition of the taxpayer from any existing industry.
4. This study did not analyze the results of the tax court related intangible assets in Indonesia and do not include tax trial judge as a resource.

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