

Enforcement of Corporate Criminal Offense Against Transfer Pricing Abuse Modus Operandi

Hotlan Wanto Siahaan^{1*}, Yasmirah Mandasari Saragih²

^{1,2} Universitas Pembangunan Panca Budi, Indonesia

Address: Jln. Jend. Gatot Subroto Km. 4.5 Sei Sikambing 20122

Medan City, North Sumatra Province, Indonesia.

Correspondence author: hotlanwanto@gmail.com *

Abstract: *Transfer pricing is the practice of fixing transaction prices between companies that have special relationships within a business group. In the context of the global economy, this practice is often abused by multinational corporations as a mode of tax avoidance, namely by shifting profits to countries with lower tax rates (tax havens). Transfer pricing abuse not only harms state revenues, but also creates unfair business competition. Law enforcement against corporate crime in this case faces various challenges, especially in proving malicious intent (mens rea) and identifying the criminal responsibility of corporate entities. This research aims to identify the modus operandi often used in transfer pricing abuse and analyze the law enforcement strategies that have been implemented in Indonesia. The research methods used are normative and empirical juridical with a qualitative approach. The results show that the common modus operandi includes manipulation of sale/purchase price, use of shell companies, and fictitious contracts. An effective law enforcement strategy requires inter-agency collaboration and firmer regulations regarding corporate criminal liability. Therefore, strengthening the tax audit system and increasing the capacity of law enforcement officers are needed to prevent and crack down on transfer pricing abuse.*

Keywords: *corporate crime, law enforcement, modus operandi, tax avoidance, transfer pricing.*

1. INTRODUCTION

Background

Transfer pricing is a common practice used by multinational companies to determine the price of goods, services, or intangible assets in transactions between companies that have a special relationship. This practice is basically legal if done in accordance with the principles of reasonableness and business prevalence. However, in practice, transfer pricing is often used as a tool to systematically shift profits to jurisdictions with low tax rates, which leads to a form of tax avoidance that harms state revenues. According to research by Wibowo and Putri (2022), around 45% of corporate tax avoidance in Indonesia is done through transfer pricing manipulation.

Transfer pricing abuse by corporations not only results in fiscal losses, but also weakens the integrity of the national tax system and creates economic inequality. Local companies become uncompetitive because the tax burden cannot be manipulated like multinational corporations. The government has responded by tightening tax rules, including the obligation of transfer pricing documentation and the application of the arm's length principle. However, the effectiveness of the policy is still questionable due to weak supervision and the lack of court

decisions that ensnare corporations as the main perpetrators. The results of research from Lestari and Pranata (2023) show that the existing supervisory mechanism is still unable to detect complex and hidden affiliate transactions.

Corporate crime in the context of transfer pricing presents serious challenges in law enforcement. Corporations as legal entities have complex management structures, making it difficult to prove the elements of guilt. Identification of perpetrators, proof of malicious intent, and the imposition of criminal liability to non-human entities require a different legal approach from conventional criminal offenses. Santoso (2023) emphasized that the Indonesian criminal law system is still oriented towards individual perpetrators and is not fully prepared to deal with transnational corporate crime.

Indonesia's positive legal framework has actually provided space to ensnare corporations as subjects of criminal law, for example through Law No. 40/2007 on Limited Liability Companies and Law on General Provisions and Tax Procedures. However, its implementation has not run optimally due to the limited capacity of law enforcement officials in understanding the patterns and modus operandi of corporate crime. A study by Hidayat and Rakhman (2021) revealed that the handling of tax cases involving corporations is still concentrated on individual perpetrators such as directors or financial staff, not the corporate entity.

The urgency to strengthen law enforcement against transfer pricing abuses is getting higher along with the increasing volume of cross-border transactions and economic digitalization. The existence of increasingly complex and disguised tax avoidance schemes requires the state to have adaptive, sophisticated, and collaborative legal tools. Inter-agency cooperation, strengthening the audit system, and increasing the capacity of human resources are key in dismantling the modus operandi of corporations that have been difficult for the law to touch. Research by Yuliana and Hakim (2022) confirms that without systemic and integrated efforts, the practice of transfer pricing abuse will continue and undermine fiscal justice.

Problem Formulation

1. How is the modus operandi form of transfer pricing abuse by multinational corporations in Indonesia?
2. How is the law enforcement strategy against corporate crime in the case of transfer pricing abuse?

2. THEORETICAL STUDY

Corporate crime is an unlawful act committed by a legal entity in the form of a corporation, either directly or through individuals acting on behalf of the corporation. In the concept of modern criminal law, corporations are not only seen as subjects of civil law, but also as subjects of criminal law that can be held accountable if they fulfill the elements of unlawful acts and collective guilt can be proven. According to Nugroho and Saputra (2022), the doctrine of strict liability and vicarious liability is an important basis in establishing corporate criminal liability because it allows the imposition of responsibility without having to prove individual guilt.

Transfer pricing is a legal practice in theory, but it becomes a serious problem when it is used as a means to avoid tax obligations illegally. The arm's length principle, which is the basis for transfer pricing practices, requires that every transaction between affiliated entities be carried out as if they did not have a special relationship. Devi and Kurniawati (2021) explain that deviations from this principle are the main loopholes in manipulative practices, especially in profit shifting and tax avoidance schemes by utilizing tariff differences between countries.

Law enforcement against transfer pricing abuse by corporations requires a comprehensive and cross-sectoral approach. The conventional criminal law system in Indonesia still shows weaknesses in reaching corporate crimes, mainly due to proving the elements of guilt and complex managerial structures. According to the results of a study by Prasetya and Anggraini (2023), the settlement of corporate cases related to taxation is often only administrative and rarely processed as a criminal offense, so that the deterrent effect on corporations is not achieved. This shows the need for a renewed legal approach that is not only repressive, but also preventive and corrective systemically.

3. RESEARCH METHOD

This research uses normative juridical and empirical juridical approaches to analyze the enforcement of corporate crime against transfer pricing abuse. The normative juridical approach is used to examine positive legal rules governing corporations, tax avoidance, and transfer pricing, including the Law on General Provisions and Tax Procedures, the Law on Limited Liability Companies, and derivative regulations of the Directorate General of Taxes relating to documentation and fairness of affiliated transactions. Normative data was obtained from a literature study of relevant laws and regulations, court decisions, and legal policy documents. In addition, an analysis of academic literature in the form of recent legal and taxation journals discussing corporate criminal liability mechanisms and transfer pricing

modus operandi was conducted. This approach aims to examine the applicable legal provisions and the extent to which the law can be applied effectively in overcoming the problems caused by transfer pricing practices.

The empirical juridical approach is implemented to describe the reality in the field regarding the implementation of law enforcement against corporations involved in transfer pricing abuse. Empirical data is obtained through in-depth interviews with law enforcement officials, tax investigators, academics in the field of economic criminal law, and tax practitioners. In addition, case studies that have been handled in Indonesia, including court decisions that contain criminal liability against corporate entities, were analyzed. The collected data is analyzed using **descriptive analytical** method, namely by explaining the existing legal facts and practices, then comparing them with normative provisions to find gaps, weaknesses, and potential improvements in law enforcement. The selection of this method aims to make the research results not only theoretical, but also able to provide a concrete picture of the legal dynamics that occur in the field.

4. RESULTS AND DISCUSSION

Modus Operandi of Transfer Pricing Abuse

The modus operandi of transfer pricing abuse is generally done through manipulation of selling or buying prices in transactions between affiliated companies. Corporations tend to set prices that are not in accordance with the arm's length principle to shift profits to countries with lower tax rates. According to research by Yusuf and Handayani (2022), this practice most often occurs in the manufacturing and mining sectors which have many entities in various countries, thus providing a large space for price engineering.

The use of shell companies is also one of the strategies often used in illegal transfer pricing schemes. This company is formed in a country with a minimal tax rate and has no real business activities, but is used as a party in affiliate transactions. Based on a study by Rachman and Dewi (2021), multinational companies use shell companies to accommodate profits that are systematically transferred from the country of origin without clear economic activities, thereby reducing tax obligations in the country.

Another common modus operandi is the creation of fictitious contracts for management services, technology, or licenses that are not actually provided or have no economic value equivalent to the price paid. This contract is made only to create a high cost burden in countries with high tax rates so that the company's net profit looks lower. According to the observations of Santosa and Wahyuni (2023), this kind of contract is difficult to uncover because it requires

an in-depth audit of the company's internal activities, and is often disguised in a complex organizational structure.

Law Enforcement Strategy against Corporate Crime

The law enforcement strategy against corporate crime in transfer pricing cases starts with strengthening the regulation and documentation of related party transactions. The Directorate General of Taxes has issued transfer pricing documentation guidelines to encourage transparency and accountability of transactions between related companies. According to Setiawan and Lestari (2021), this regulation is not strong enough because it is still administrative and has not explicitly placed the company as a criminal subject in tax avoidance.

Coordination between law enforcement agencies such as the Directorate General of Taxes, the Police, the Attorney General's Office, and PPATK is the main key in uncovering cross-jurisdictional transfer pricing cases. Cross-sector cooperation is needed to trace the flow of funds and evidence of complex transactions, including through mutual legal assistance (MLA) mechanisms between countries. According to Putra and Ayuningtyas (2022), weak institutional synergy and limited human resource capacity are serious obstacles in taking action against corporations involved in tax avoidance.

Improving the quality of tax audits and the use of digital technologies such as big data and artificial intelligence are promising strategies in identifying improper transaction patterns. Data-based risk analysis can be used to detect indications of transfer pricing before the manual audit process is carried out. The study by Hariani and Saputra (2023) shows that the utilization of technology in tax supervision can increase the effectiveness and efficiency of disclosing corporate crime cases hidden behind complex and layered business structures.

5. CONCLUSION

Conclusion

The misuse of transfer pricing by multinational corporations is a form of economic crime that significantly harms state revenue through the practice of disguised tax avoidance. The modus operandi used includes manipulation of transaction prices, use of shell companies, and fictitious contracts that are difficult to detect. Law enforcement against this crime still faces major challenges, both in terms of regulations that are not yet fully assertive and in terms of institutions that are less coordinated. Corporations as legal subjects require a more specific and systemic enforcement approach because their characteristics are different from individual perpetrators. Therefore, law enforcement strategies must be directed at proving collective crime structures, not just individuals representing the company.

Suggestions

Law enforcement against transfer pricing abuse by corporations requires comprehensive reforms in the aspects of regulation, supervision, and prosecution. The government needs to strengthen legal instruments by clarifying corporate criminal liability in taxation regulations and economic criminal law. The capacity of law enforcement institutions must be improved through specialized training related to affiliated transaction audits and corporate finance forensics. Inter-agency collaboration, the use of data analytics technology, and international cooperation must be optimized to face cross-border jurisdictional challenges. These measures will strengthen the effectiveness of law enforcement and create a fair and transparent tax system.

LITERATURE

- Hariani, T., & Saputra, D. (2023). Utilization of data analytics-based tax monitoring technology to uncover transfer pricing. *Journal of Tax and Economic Law*, 9(1), 45-58.
- Hidayat, A., & Rakhman, F. (2021). Criminal law enforcement against corporations in tax evasion cases. *Journal of Criminal Law and Criminology*, 7(2), 120-134.
- Lestari, P., & Pranata, A. (2023). Evaluation of transfer pricing monitoring mechanism in international taxation. *Journal of Indonesian Law and Taxation*, 11(1), 89-102.
- Nugroho, R. S., & Saputra, M. A. (2022). Corporate crime and criminal liability in the perspective of Indonesian law. *Journal of Actual Legal Science*, 10(2), 55-70.
- Putra, H. B., & Ayuningtyas, R. (2022). Cross-sectoral law enforcement strategies in dealing with taxation corporate crime. *Journal of Legislation and Law Enforcement*, 8(3), 144-159.
- Rachman, A., & Dewi, L. F. (2021). The role of shell companies in tax avoidance through transfer pricing schemes. *Journal of Business Economics and Law*, 6(1), 77-89.
- Santosa, R., & Wahyuni, E. (2023). Analysis of fictitious contract as a tool of transfer pricing manipulation by multinational corporations. *Journal of Economic and Business Law*, 8(2), 101-115.
- Setiawan, B., & Lestari, D. R. (2021). The regulatory power of transfer pricing documentation in tax supervision. *Journal of Tax Policy and Business*, 5(2), 66-79.
- Yuliana, N., & Hakim, R. A. (2022). Systemic challenges of law enforcement in transfer pricing abuse. *Journal of Law and Economic Development*, 9(2), 118-132.
- Yusuf, M. R., & Handayani, A. (2022). Patterns of transfer pricing abuse by corporations in Indonesia: A case study of the manufacturing sector. *Journal of Accounting and Tax Law*, 10(1), 33-47.