



Optimizing the Implementation of Beneficial Ownership in Transfer Pricing in Taxes as a Corporate Crime

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Abstract. Tax is a source of state revenue that plays a major role in financing all state expenditures, including financing national development. The absence of counter-performance that the taxpayer can directly accept is one of the causes of tax crimes committed by corporations through transfer pricing practices, which are difficult to hold accountable, so it is necessary to optimize the application of the principle of Beneficial ownership (BO). The aim of this research is to examine the factors that cause transfer pricing as a form of corporate crime, the application of Beneficial ownership principles in the field of taxation, and the obstacles encountered in implementing Beneficial ownership in the field of taxation along with the solutions. The method is a normative juridical approach, descriptive-analytical research specifications, data types, and sources are derived from secondary data through the support of primary legal materials, secondary legal materials, and tertiary legal materials, and data analysis is carried out qualitatively. The results of the study explain that transfer pricing is a corporate crime that is supported by the use of earnings management, the use of opportunities for special relationships, the support of political connections, and thin capitalization. The application of the principle of Beneficial ownership in the field of taxation means that owners are entitled to enjoy income in the form of dividends, interest and/or royalties, which both individual and corporate taxpayers receive. The obstacles faced in implementing BO in the field of taxation are the weak update of information on Beneficial owners and their changes and partial and sectoral regulations.

Keywords: Corporate crime, Taxation, Transfer Pricing, Beneficial Ownership

Abstrak. Pajak merupakan salah satu sumber pendapatan negara yang berperan besar dalam membiayai semua pengeluaran negara termasuk membiayai pembangunan nasional. Tidak adanya



kontra prestasi yang langsung dapat diterima wajib pajak menjadi salah satu penyebab terjadinya kejahatan di bidang perpajakan yang dilakukan korporasi melalui praktik transfer pricing, yang sulit untuk dimintai pertanggungjawabannya sehingga perlu dioptimalkan penerapan prinsip Beneficial ownership (BO). Tujuan penelitian untuk mengkaji faktor-faktor penyebab terjadinya transfer pricing sebagai bentuk kejahatan korporasi, penerapan prinsip Beneficial ownership di bidang perpajakan dan kendala yang dihadapi dalam menerapkan Beneficial ownership di bidang perpajakan disertai solusinya. Metode pendekatan yuridis normatif, spesifikasi penelitian deskriptif analisis, jenis dan sumber data berasal dari data sekunder melalui dukungan bahan hukum primer, bahan hukum sekunder, dan bahan hukum tersier, dan analisis data dilakukan secara kualitatif. Hasil penelitian menjelaskan bahwa transfer pricing merupakan kejahatan korporasi yang didukung pemanfaatan manajemen laba, pemanfaatan peluang hubungan istimewa, dukungan political connection dan thin capitalization. Penerapan prinsip Beneficial ownership di bidang perpajakan merupakan pemilik yang berhak menikmati penghasilan berupa deviden, bunga dan atau royalti, yang diterima baik wajib pajak perorangan maupun wajib pajak badan. Kendala-kendala yang dihadapi dalam menerapkan (BO) di bidang perpajakan yaitu lemahnya update informasi Beneficial owner maupun perubahannya, serta regulasi yang bersifat parsial dan bersifat sektoral.

Kata kunci: Kejahatan Korporasi, Perpajakan, Transfer Pricing, Beneficial Ownership

1. Introduction

The politics of the Indonesian National Constitution, as regulated in Article 1 paragraph (3) of the 1945 Constitution, places Indonesia as a state based on the law (*rechtsstaat*), not based on mere power (*machtsstaat*), which means that the government must be based on law and the constitution (basic law), not absolutism.¹ Even as a country based on the philosophy of Pancasila, the founding fathers, as regulated in the 4th paragraph of the 1945 Constitution, have mandated that the establishment of a state has a function as a means of realizing a welfare state.² The welfare state is a policy model in which the state is responsible for promoting the general welfare and realizing social justice for all its citizens through various national development programs. The large scale and scope of national development require enormous state financial support. Adhering to the principle of empowering domestic capabilities, the government places taxes as the main source of state revenue in financing national development.³ Characteristics of a tax whose collection can be forced by law but without any counter-achievement that can be directly appointed become one of the reasons for individual and corporate taxpayers who object to carrying out their tax payment obligations to carry out various ways to avoid paying taxes both legally and illegally, one of which is through the practice of transfer pricing.⁴

For developing countries, the total loss due to tax evasion, either through tax evasion or tax avoidance, reaches USD 385 billion, which causes a low tax ratio, and based on reports from the International Center for Taxation and Development (ICTD) on business entities in 30 countries, Indonesia was ranked 11th which resulted in reduced state revenues of \pm USD 6.48 billion.

¹ Imam Subechi. "Mewujudkan Negara Hukum Indonesia." *Jurnal Hukum dan Peradilan* 1, no. 3 (2012): 339-358.

p. 340-341

² V. Hadiyono. "Indonesia Dalam Menjawab Konsep Negara Welfare State dan Tatangannya." *Jurnal Hukum, Politik dan Kekuasaan* 1, no. 1 (2020): 23-33., p. 25-26.

³ Nevey Varida Ariani. "Beneficial Owner: Mengenali Pemilik Manfaat Dalam Tindak Pidana Korporasi." *Jurnal Penelitian Hukum De Jure* 20, no. 1 (2020): 71-84., p. 72.

⁴ Risa Mayasari. "Analisis Penerapan Metode Gross Up Dalam Penghitungan PPH 21 Sebagai Salah Satu Strategi Perencanaan Pajak Pada SPPBE PT. Trijaya Adymix Jombang." *Al-Anwar* 1, No. 1 (2017): 1-10, p. 2.

However, the government often faces difficulties in holding corporations accountable for crimes in the field of taxation because there are still many companies that have not declared their ownership. Based on the Kemenkumham report, data was obtained that out of 1,461,223 corporations, only 58,743 corporations had filled in the actual beneficial owner (BO/Beneficial Owner), while 1,402,480 corporations still have not reported BO, as can be seen from the chart below.⁵

Tabel 1: Number of Corporations

Corporation	Number of Corporations	Corporations filling BO	Undeclared Corporations	Percentage (%)
Limited company	923.037	28.327	894.710	3,06%
Association	164.827	1.976	162.851	1,19%
Foundation	212.660	3.212	209.448	1,51%
Limited partnership	157.672	24.831	132.841	15,74%
Firm	1.258	181	1.077	14,38%
Civil Federation	1.769	216	1.553	12,21%
Total	1.461.223	58.743	1.402.480	

*Source: Report on Implementation of National Strategy for KPK Kemenkumham-B09
<http://Jaga.id/Monitoring>*

This condition makes it difficult for the government to carry out full supervision because the database regarding beneficial owner information is inaccurate. In this regard, this study seeks to identify the factors that cause transfer pricing as a form of corporate crime, the application of the principles of beneficial ownership in the field of taxation, and the obstacles encountered in implementing beneficial ownership in the field of taxation along with the solutions.

2. Research methods

The research method used is normative juridical with the aim of studying and studying legal principles, especially provisions related to the object of research. The research specifications are analytical and descriptive in nature to provide a complete and comprehensive picture of optimizing the application of beneficial ownership of transfer pricing practices as a form of corporate crime in the field of taxation. Types and sources of data based on secondary data, specially sourced

⁵ Nevey Varida Ariani. Loc.Cit.

from primary legal materials, namely legal materials whose contents are binding because the government issues them in the form of statutory regulations related to the research object.⁶ Secondary legal materials and tertiary legal materials support primary legal materials. Data collection techniques were carried out through a literature study, and data analysis was carried out qualitatively as a method of research carried out without using formulas.

3. Results and Discussion

3.1. Factors Causing Transfer Pricing as a Form of Corporate Crime

Etymologically, the corporation comes from the Latin “corporate,” which is based on the word “corpus,” which means to give body or body.⁷ As for terminology, a corporation is a collection of people and/or wealth that is organized in legal association, whether it is a legal entity or not, a legal entity acting together as a separate legal subject as a personification that has its own rights and obligations apart from the rights and obligations of its respective members. Corporations as business entities, make a significant contribution to supporting national economic development. Apart from absorbing the employment sector, they also contribute to state revenues from the tax sector.

Taxes can be defined as the contributions of taxpayers to the state by individuals or entities that are coercive based on the law used to finance the implementation of national development without receiving rewards or direct counter-performance to the taxpayers.⁸

Based on the tax definition, it can be seen that the tax elements are (1) contributions to the state; (2) tax imposition can be imposed on taxpayers; (3) the method of payment is based on the applicable laws and regulations; (4) for the payment of taxes there is no return for achievements that can be enjoyed directly;

⁶ Burhan Ashofa. *Metode Penelitian Hukum*. Jakarta: Rineka Cipta, 2001, p. 103.

⁷ Muladi and Dwidja Priyatno, *Pertanggungjawaban Pidana Korporasi*. Jakarta: Penerbit Kencana Prenada Media Group, 2010, p. 23,25.

⁸ Moeljono Moeljono. “Faktor-Faktor yang Mempengaruhi Penghindaran Pajak.” *Jurnal Penelitian Ekonomi Dan Bisnis* 5, no. 1 (2020): 103-121., p. 104.

and (5) its use is to finance the public interest, as a result of the state's duties in administering government and realizing general welfare.⁹

The existence of different interests between the government and corporations is often used as an excuse for corporations as taxpayers to avoid taxes both legally (tax avoidance) and illegally through smuggling/tax evasion (tax evasion), including through transfer pricing practices. Transfer pricing is defined as a term used to describe a process and determination of the price of assets or services delivered between parties that have a special relationship with a multinational company where the transaction passes through two tax authorities.¹⁰ In addition, transfer pricing is also defined as a form of tax avoidance by a company that has a special relationship by setting prices unreasonably either by raising or lowering prices with the aim of saving the tax burden by shifting profits from companies that are in countries with tax rates. High taxes to countries with low tax rates.¹¹

There are two types of transactions in transfer pricing practices. The first is intra-company transfer pricing, namely transfer pricing between divisions within one company, for example, the issuance and use of tax invoices that are not supported by money and goods transactions based on actual transactions. The company was founded only to sell tax invoices. In addition, to reduce VAT deposits, companies deliberately add or buy input tax invoices with tax invoices that are not based on actual transactions.

The second is inter-company transfer pricing, namely transfer pricing between companies with a special relationship or within the same group of companies. This practice can be carried out domestically or internationally, namely domestic transfer pricing and international transfer pricing.

International transfer pricing is a transfer pricing practice that aims to avoid tax or abuse of transfer pricing, which can only be done by multinational companies that have subsidiaries in various countries. Domestic transfer pricing occurs between companies, but still in the same country, but has a significant influence on tax revenues in a country because affiliated companies are still in the same region or country with the same tax provisions.

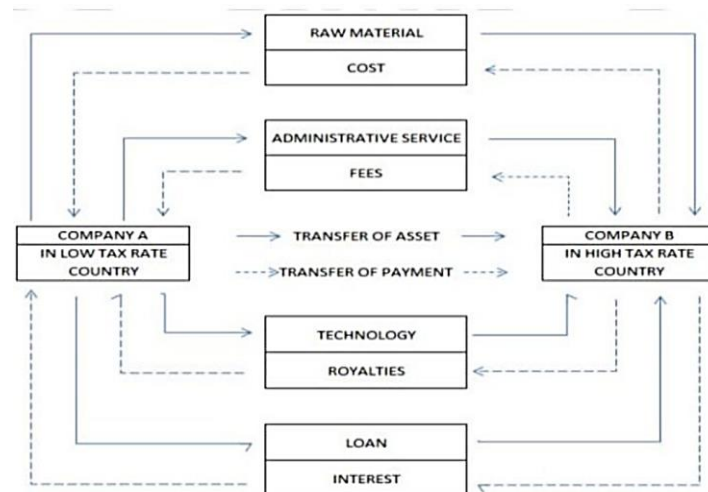
⁹ Meita Djohan Oe. "Pajak sebagai Penunjang Pembangunan Nasional di Indonesia." *Pranata Hukum* 5, no. 2 (2010): 123-132., p. 126.

¹⁰ Jian Li and Alan Paisey. *Transfer pricing audits in China*. Springer, 2007.

¹¹ Erly Suandy. *Perencanaan Pajak* (Edisi Kelima ed.). Jakarta: Salemba Empat, 2011.

There are several identified modes of tax avoidance through transfer pricing practices. First, multinational companies located in countries with high tax rates import raw materials and equipment from associated companies operating in low-tax countries at higher prices or export them to affiliated countries at lower prices. Second, multinational companies that operate in countries that apply higher tax rates pay higher royalties to affiliated companies abroad for the intangible assets they use, such as patents, or sell intangible assets at relatively lower prices.

Third, multinational companies operating in countries with higher tax rates provide services, such as management and marketing services, to affiliated companies located in countries with lower tax rates free of charge or at relatively low prices or pay for services performed by the affiliated company at a higher price. Fourth, multinational companies that operate in countries that apply higher tax rates borrow funds from affiliated companies that operate in countries with lower tax rates and pay higher interest rates and can also lend back these loans. Transfer pricing can also be done by manipulating the four types of transactions to transfer profits from countries with relatively higher tax rates to countries with lower tax rates, as illustrated in Figure 1.¹²



Gambar 1. Transfer pricing high-low rate country model

¹² Jian Li dan Alan Paisey, *Transfer Pricing, A Diagrammatic and Case Study Introduction, With Special Reference to China*. Boca Raton: Brown Walker Press, 2012, p. 16.

Factors that cause corporations to avoid taxes through transfer pricing practices can be seen from 4 things. First is Profit Management. Earnings management is a process carried out by company management in compiling financial reports. Considering that profit is one measure in determining the amount of a company's tax burden, one of the characteristics of earnings management is to minimize profit (income minimization) from taxable income that should be reported to the government so that tax payments are reduced.¹³

The second is multinationality. Multinational companies are companies that involve foreign investment and have value added activities in more than one country.¹⁴ The existence of a special relationship with a multinational company is a great opportunity for tax evasion because it operates in more than one country that has different tax rates and regulations. Multinational companies can take advantage of this difference to streamline income tax payable, by transferring income (income shifting) to countries with lower tax rates.¹⁵

The third is political connection. The success of a business in carrying out its activities and transactions is inseparable from the political connection factor. A company can be said to have a political connection if one of the majority shareholders or a high-ranking official of the company, such as the CEO, president, vice president, chairman or company secretary, is a member of parliament, a minister or has a close relationship with a high-ranking government official. With the support and protection of this political connection, it is possible to reduce the level of transparency of tax audits used by companies to practice tax avoidance.¹⁶

¹³ Ridwan Pajriyansyah and Amrie Firmansyah. Pengaruh leverage, kompensasi rugi fiskal dan manajemen laba terhadap penghindaran pajak.” *Keberlanjutan: Jurnal Manajemen Dan Jurnal Akuntansi* 2, no. 1 (2017): 431–459. p. 437; Fitri Romadhon, Alifiatus Sholikhah, and Elisa Putri Wachdaniyah. “Pengaruh Manajemen Laba Terhadap Penghindaran Pajak (Studi Empiris Efek Pemoderasi Tata Kelola Perusahaan).” *Jurnal Sociaperti* 1, no. 2 (2021): 1-10, p. 2.

¹⁴ John H. Dunning, and Sarianna M. Lundan. “Multinationals enterprises and the global economy.” *England: Addison-Wesley Publishing Company* (1993)., p. Xvi, 687.

¹⁵ Teza Deasvery Falbo dan Amrie Firmansyah. “Penghindaran pajak di Indonesia: multinationality dan manajemen laba.” *Bisnis-Net Jurnal Ekonomi dan Bisnis* 4, no. 1 (2021): 94-110., p. 104; Grantley Taylor, and Grant Richardson. “International corporate tax avoidance practices: Evidence from Australian firms.” *The International Journal of Accounting* 47, no. 4 (2012): 469-496.

¹⁶ Kartika Sari, and Rawidjo Mulyo Somoprawiro. “Pengaruh Corporate Governance, Koneksi Politik dan Profitabilitas Terhadap Potensi Tax Avoidance.” *Jurnal Akuntansi* 9, no. 1 (2020): 90-103.; Sahrir Sahrir, Sofyan Syamsuddin, and Sultan Sultan. “Pengaruh koneksi politik, intensitas aset

Fourth is thin capitalization. Thin capitalization is a situation where a company has greater debt than the available capital. Thin capitalization or Thin Capitalization Rules (TCR) is a concept used by multinational companies through covert capital loans that exceed the limits of fairness to direct subsidiaries. The burden of paying the company's debt obligations is used as an excuse to reduce the amount of tax to be paid. Indonesia adopted rules on the application of Thin Capitalization Rules (TCR) through the provisions of Article 18 paragraph (1) of the Income Tax Law which states that the Minister of Finance has the authority to issue decisions regarding the size of the comparison between company debt and capital for tax calculation purposes. The amount of this comparison has been further regulated in the Regulation of the Minister of Finance Number 169/PMK.010/2015 concerning Determining the Amount of Comparison between Company Debt and Capital for Tax Calculation Purposes. The maximum ratio of debt and capital according to the latest profits is 4:1.

The act of transfer pricing is a form of crime in the field of taxation committed by the directors and or employees of a corporation based on a work relationship, or based on other relationships, both individually and jointly acting for and on behalf of the corporation within and outside the Corporate Environment.¹⁷ According to the Economic Cooperation and Development/OECD, from the practice of eroding the tax base and transferring profits, global corporate income tax is lost by 4% to 10% annually, and the state has the potential to lose tax revenues of up to IDR 100 trillion annually..¹⁸

3.2. Application of the Principle of Beneficial Ownership in Taxation

Beneficial owner (BO) terminology was first recognized in the English Trust Law, which defines a beneficial owner as a party that meets the criteria as an owner without having to acknowledge ownership from a legal perspective (legal title). Then, globally the definition of BO has been constructed by the Organization for

tetap, komisaris independen, profitabilitas dan leverage terhadap tax avoidance.” *Jurnal Penelitian Ekonomi Akuntansi (JENSI)* 5, no. 1 (2021): 14-30.

¹⁷ G. V. Sekhar. “Transfer pricing-A case study of Vodafone.” *International Journal of Engineering Science* 6, no. 5 (2016): 6207-6210.

¹⁸ Raymondo Sitanggang dan Amrie Firmansyah. “Transaksi dengan pihak berelasi dan praktik transfer pricing di Indonesia.” *Jurnal Pajak dan Keuangan Negara (PKN)* 2, no. 2 (2021): 34-52., p. 35.

Economic Cooperation and Development (OECD), where BO is the actual beneficiary individual, and then divides these beneficiaries into three types, namely:

1. in a company, BO is a shareholder or member
2. in a partnership, the BO is a partner, both limited and general in nature
3. in a trust or foundation, BO is the founder.

Thus, BO refers to a person (natural person) who ultimately benefits from the ownership of beneficial securities, and/or has the power to control/influence the voting rights attached to the shares (even if legally the shares are legally on behalf of another person/held by another person), including controlling the customer and/or person on whose behalf the transaction is being carried out, as well as including those who exercise the most effective control over the person or legal arrangement.¹⁹ However, even though BO is always associated with natural persons, legal entities can also be the highest owners if the most beneficial owners are the State or SOEs.²⁰

Furthermore, in the provisions of Indonesian national law, the concept of beneficial owner is regulated in Presidential Decree no. 13 of 2018 concerning the Application of the Principle of Recognizing Beneficial Owners from Corporations in the Context of Prevention and Eradication of Money Laundering Crimes (TPU) and Terrorism Crimes (TPM) as stated in Article 1 point 2 which defines beneficial owners, namely individuals who actually own funds or corporate shares as a result of an ownership which has three authorities, namely: (1) to appoint or dismiss directors, commissioners, management, supervisors, or supervisors in the corporation, (2) has the ability to control the corporation, and (3) has the right for and/or receive benefits from the corporation either directly or indirectly.

Based on Presidential Decree No. 13 of 2018, as a whole an individual can be said to be a beneficial owner if the person concerned has income and/or profits due to ownership of more than 25% of shares, capital, initial assets, funding sources, or other rights that can generate profits from the corporation. In addition, even though an individual does not have any wealth in the corporation, the party

¹⁹ Financial Action Task Force. "FATF Guidance Transparency and Beneficial ownership." 2014. accessed 14 March 2018; Kusrini Purwijanti dan Iman Prihandono. "Pengaturan Karakteristik Beneficiary Owner di Indonesia." *Notaire* 1, no. 1 (2018): 53-86., p. 63-64.

²⁰ The Organisation for Economic Co-operation and Development (OECD). "Disclosure of Beneficial Ownership and Control in Listed Companies in Asia." 2016. accessed 14 March 2018

can also be categorized as a beneficial owner if it has unlimited authority regarding the appointment of corporate management and corporate control without having to obtain approval from the authorities from any party. or is the actual owner of the funds on corporate ownership.

The concept of beneficial owner regulated in Presidential Decree No. 13 of 2018 departs from the concept of beneficial owner (BO) which is regulated in the Financial Action Task Force (FATF) Recommendations, as a form of Indonesia's seriousness in becoming a member of the FATF which requires transparency of actual ownership or beneficial owners of corporations. Therefore, there are similarities in the BO concept in Presidential Decree 13 of 2018 with the BO concept in the FATF Recommendations, including:

1. BO refers to an individual who ultimately owns or controls another party (ultimate owns or controls), and/or an individual whose interests are controlled by another person.²¹ In addition, BO also refers to individuals who exercise overall effective control (ultimate effective control) over other parties or over legal arrangements. Furthermore, the terms ultimate owns or controls and ultimate effective control refer to a situation where the exercise of ownership or control is carried out either through direct or indirect control.²²
2. The background for the preparation of the beneficial owner concept according to Presidential Decree No. 2018 and FATF Recommendations, based on the need to disclose BO to corporations, because corporations can be used as a means either directly or indirectly by criminal offenders who are beneficial owners to commit money laundering and terrorism crimes.

In the context of taxation, the term BO refers more to Law No. 36 of 2008 Fourth Amendment to Law No. 7 of 1983 concerning Income Tax which is specifically regulated in Article 26 paragraph (1a) which reads as follows:

“Country of domicile of foreign taxpayers other than those conducting business or carrying out business activities through a permanent establishment in Indonesia as referred to in paragraph (1) is the country of residence or domicile of

²¹ Henry Donald Lumbantoruan. “Pembentukan Regulasi Badan Usaha Dengan Model Omnibus Law.” *to-ra* 3, no. 1 (2017): 463-472., p. 463.

²² Darussalam. “Beneficial Owner Dalam Konteks Perpres No. 13/2018 Dan Pajak.” Last modified 2019. <https://news.ddtc.co.id/benefi-owner-dalamkonteks-perpres-no-13-2018-dan-pajak-12661>; and Nevey Varida Ariani. Loc. Cit., p. 82.

foreign taxpayers who actually receive benefits from the income (beneficial owner).”²³

The term BO in the provisions of Article 26 of the Income Tax Law has a broader meaning. For example, foreign taxpayers who have shares in Indonesia will be subject to a dividend tax of 20%, but if there is a P3B agreement (Agreement on the Avoidance of Double Taxation) a lower rate will be given according to the agreed MoU, usually 10%.

Furthermore, technical BO arrangements are outlined in DGT Circular Letter No.SE-04/PJ.34/2005 concerning Beneficial Ownership Implementation Guidelines as stated in the Double Tax Avoidance Agreement (P3B) between Indonesia and other countries. This SE has been revised several times through SE-03/PJ.03/2008 concerning Determination of Beneficial Owner Status as intended in the Double Taxation Avoidance Agreement between Indonesia and Partner Countries and Regulation Number Per-62/Pj/2009 concerning Prevention of Misuse of Double Taxation Avoidance Agreements Director General of Taxes, as amended by Regulation of the Director General of Taxes PER 25/PJ/2010. Based on Article 3 letter c BO is defined as a recipient of income who is not the actual owner of the economic benefits of income and Article 4 explains in more detail that what is meant by the actual owner of the economic benefits of income as referred to in Article 3 letter c is an income recipient who: (1) act not as an Agent; (2) act not as a Nominee; and (3) not a Conduit Company. Therefore, reviewing the regulations above, the point is that there are three things, namely:

What is meant by “beneficial owner” is the actual owner of income in the form of dividends, interest and or royalties, both from individual taxpayers and corporate taxpayers who are fully entitled to directly enjoy the benefits of these incomes.

Special purpose vehicles in the form of “conduit company”, “paper box company”, “pass-through company” and others of the same kind are not included in the definition of “beneficial owner” mentioned above.

If there are other parties who are not “beneficial owners”, who receive dividend, interest and royalty payments originating from Indonesia, then the party paying the dividends, interest or royalties is required to deduct PPh. Article 26 complies with Indonesian income tax law at a rate of 20% of the gross amount paid.

²³ Kusrini Purwijanti dan Iman Prihandono. Loc. cit., p. 77-78

Thus BO is the actual owner of the income in the form of dividends, interest and/or royalties, both individual taxpayers and corporate taxpayers, who are fully entitled to directly enjoy the benefits of these incomes. The beneficial owner concept described in Presidential Decree No. 13 of 2018 does not explicitly regulate the tax sector, however, in the context of taxes, the existence of this Presidential Decree can prevent and/or close the gaps in tax embezzlement and/or evasion which are often committed by beneficial owners which have an impact on the loss of economic potential and state revenue. In addition, the implementation of BO provides great benefits, including: (1) Providing convenience and legal certainty for parties who must be held responsible for unlawful acts that are detrimental to state revenues; (2) Facilitating the search for and proving money laundering crimes (TPPU); (3) Protecting corporations and beneficial owners with good intentions; (4) Implementation of sound business and avoiding market monopoly; and (5) Inviting trust and cooperation with other corporations, the results of which can increase corporate investment and make it easier to obtain significant information related to the interests of the corporation. The disadvantage is that the absence of BO information disclosure opens up great opportunities for tax evasion by taxpayers which has an impact on the loss of economic potential and state revenue.²⁴

3.3. Constraints in Implementing BO in the Field of Taxation

The income contribution of funds originating from taxpayers is a significant income input and has a broad meaning for the development of the Unitary State of the Republic of Indonesia. However, there are different interests between the tax authorities who place taxes as a budgetary function in putting as much money as possible into the state treasury, dealing with corporations as taxpayers to maximize profits so that the policy of beneficial ownership transparency in an effort to optimize state revenue from the tax sector is perceived. negative by business actors, because it is associated with an increase in the tax burden that must be borne by business actors. Therefore, in its implementation, tax avoidance and resistance often occur in both passive and active forms, known as various terms tax avoidance and tax evasion.

²⁴ Kusrini Purwijanti dan Iman Prihandono. Ibid.,p. 64-65

Tax avoidance or tax avoidance is an effort made by taxpayers, to reduce or even eliminate tax debts that must be paid legally, not violating provisions in the field of taxation by exploiting the weaknesses (gray areas) contained in the law. the tax laws of a country. Tax evasion or tax evasion is an illegal or unlawful act carried out by taxpayers, one of which is through the practice of transfer pricing to reduce tax payments which has a detrimental effect on the state due to reduced potential tax revenue from its true value. Therefore, it is necessary to encourage a transparency model related to direct beneficiaries (beneficial owners) in companies.

However, at the level of empirical facts, they still face several obstacles, including that there are still many companies that have not made changes to beneficial owner information or submitted the latest information regarding beneficial owners, so that the existing data is not updated..²⁵ Beneficial ownership of a company at this time can only be known on a legal basis. Company legality is the foundation for encouraging data access to beneficial ownership in companies. In terms of company legality, which is recorded by the Ministry of Law and Human Rights, it is only limited to the legal owner. The data does not provide a wider range such as who is the main controller, broader economic beneficiaries and in whose hands is the main control of business activities, namely the ultimate owner, economic benefits and control).

Another problem also exists in updating data. Often companies make changes to the composition of ownership, but the process of changing company deeds is not well-updated to the relevant government institutions (Depkumham) or to the public. In addition, so far there has been no data integration with the relevant ministries or agencies, so that the Director General of Taxes cannot easily obtain in-depth information regarding transactions involving the company's controllers.

Problems related to regulations that were made partially, such as the confidentiality of access to customer data, also caused the Directorate General of Taxes to find it difficult to conduct an assessment of taxpayer returns. This has the implication that even though information about beneficial ownership is known, constraints on financial data will exist.

Beneficial ownership is used as a means of tax avoidance by taking advantage of tax policy gaps between countries through tax treaties, one of which relates to the Double Taxation Avoidance Agreement (P3B), in which each country provides tax incentives such as tax deductions on interest on loans involving both countries

²⁵ Nevey Varida Ariani. Loc. Cit.

or tax deductions on dividends involving inter-country taxpayers. Talking about beneficial ownership in the context of strengthening transparency, will deal with aspects of policy synchronization. This is where the big problem is being faced in promoting transparency of beneficial ownership data in Indonesia. In addition, Indonesia has not synchronized various regulations with one another.²⁶

Beneficial ownership is not a stand-alone aspect. Beneficial ownership requires data integration, while the existing data is still partial, and spread across various agencies that have different authorities, such as company legality under the Ministry of Law and Human Rights, tax identification number is at the Ministry of Finance, personal identity is at the Ministry of Home Affairs, the account data is in the bank. This is where the big problem is being faced in promoting transparency of beneficial ownership data in Indonesia. There is no system to integrate the data yet. Then, the problem becomes even more complicated, when every data that should be integrated cannot be accessed by institutions that need the data, such as the case of confidentiality of customer data which cannot be accessed by the Directorate General of Taxes. In fact, this data is important as a basis for the Directorate General of Taxes to supervise and optimize taxes. In addition, the data of individual/entity taxpayers is not yet valid, making it difficult for the Directorate General of Taxes to pursue the receipt of their tax obligations.

In addressing these constraints, it is necessary to improve policy synchronization and strive to encourage the application of the Single Identity Number (SIN) as the foundation for integrating data, because beneficial ownership data can be useful and effective, if the required data is integrated with each other such as NPWP, KTP, data customers and financial transactions, company ownership data and other data. Here, strong support or political will from the government is needed to realize a transparency policy in the beneficial ownership aspect. Finally, the regulatory framework related to beneficial ownership needs to be developed so that there is legal certainty for Double Tax Avoidance Agreements (P3B). In addition, it is necessary to simplify the administrative process regarding withholding taxes related to beneficial owner status and tax treaties between countries, by formulating and integrating General Anti Avoidance Rule (GAAR) policies in the Income Tax Law.

²⁶ Nevey VaridaAriani. Ibid., p. 81

4. Conclusion

This study concludes that transfer pricing is a form of corporate crime supported by factors such as earnings management, exploiting opportunities for special relationships, political connections, and thin capitalization. In the field of taxation, beneficial ownership is generally an individual who owns funds or shares from a corporation so that he has the ability to control the corporation, including appointing or dismissing directors, commissioners, management, supervisors or supervisors in the corporation, and is entitled to and/or receive benefits from the corporation either directly or indirectly. However, in the context of taxation, BO is defined as an owner who is fully entitled to enjoy income in the form of dividends, interest and/or royalties, which both individual and corporate taxpayers receive. In overcoming the obstacles faced in implementing BO in the field of taxation, such as there are still many companies that have not updated beneficial owner information or changes thereto, an integrative regulation is needed that connects sectors and data between related ministries or agencies so that the Director General of Taxes can obtain in-depth information regarding transactions involving beneficial ownership. In addition, policy synchronization is needed to encourage the application of the Single Identity Number (SIN) as the foundation for integrating data.

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