

TRANSFER PRICING OPTIMIZATION IN THE DEVELOPING ECONOMY: A TAX CONSULTANT'S VIEW

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Abstract

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Transfer pricing (TP) is usually used by multinational companies (MNCs) to minimize corporate tax liabilities, using affiliates. This practice involves tax consultants optimizing transfer pricing without violating the tax regulation. Tax consultants contribute to supervising companies to make transparent documentation and transfer pricing policies. This qualitative research explores the tax consultant perspective on companies' transfer pricing optimization behaviour using planned behaviour theory. Data was collected through interviews, documentation, and observations. This research involves 5 transfer-pricing experts that have experience in transfer pricing issues, in 5 interview sessions. Data triangulation among data sources, written feedback, online interviews, and documentation review was used to ensure validity and reliability. The finding gives an understanding that MNCs in Indonesia optimize transfer pricing by the perception of TP benefit specifically for corporate profit allocation among parties in a different taxation area and tax payment minimization. While business norms, environments, and international regulations of transfer pricing are not fully considered by MNCs in Indonesia. International transfer pricing regulations are not considered the organizational perception of this TP practice. This finding enriches the discussion on the tax consultant perspective, specifically companies' transfer pricing optimization behaviour to improve guidelines on the TP arm's length principle (Djaja & Sonny, 2021; Sari, 2021).

Keywords: Transfer Pricing Optimization, Companies Behaviour, Tax Consultant Perspective

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1. INTRODUCTION

Recently, public attention has focused on the business activities of multinational companies (MNCs), particularly their transfer pricing (TP) practices. The reason is it is commonly used as

a tool for profit maximization. One of the main debates is the lack of tax regulation resulting in tax planning, tax avoidance, and even tax evasion among the MNCs (Endika et al., 2019). A common tax planning method used is to shift profits from high-tax jurisdictions to low-tax jurisdictions (Sari,

2020; Huda et al., 2017; Kamilah, 2019). Due to the complexities involving a group of companies located in different jurisdictions calls for inputs from a tax consultant (transfer pricing specialist) to minimize the risk of violating tax rules (Tambunan et al., 2019). Accordingly, there is a mushrooming of transfer pricing specialists globally, including in Indonesia (Solikhah et al., 2021). Hence, this raises an issue of how MNCs optimize their transfer price from the tax consultant's perspective as they play a crucial role in consulting the transfer pricing scheme for MNCs.

This paper seeks to understand the "transfer pricing optimization" behaviors among MNCs from the tax consultants' views because they play a crucial role in assisting the MNC to develop the transfer pricing policy. Particularly, the study seeks to 1) identify whether management accounting or taxation perspective is dominant in determining the MNC transfer pricing policy; 2) understand how differential perception of the benefit of transfer pricing optimization, differential perception of transfer pricing regulation and business environment, and differential perceived control over behaviour influence the transfer optimizing behaviour among the MNCs.

The transformation in transfer optimizing behaviour among the MNCs in the world, including MNCs in Indonesia, has become more complex (Barker et al., 2017). MNCs in Indonesia utilize company resources including affiliated companies, tax experts, and external tax consultants. This significant increase in transfer pricing practices has encouraged the involvement of transfer pricing specialists that enables them in applying the transfer pricing method and determine a transfer pricing policy that complies with the tax regulation. The involvement of tax consultants (transfer pricing specialists) due to the uncertainty of tax regulation in many jurisdictions increased by 64 jurisdictions in 2021 becoming 84 jurisdictions in 2022, including Indonesia.

This study uses a qualitative method in exploring the tax consultants' views on the transfer pricing optimization behaviour of Indonesian companies. This study aims to understand the use of transfer pricing by companies from a transfer pricing consultant perspective. Transfer pricing consultants in Indonesia were chosen as the key informant in this study to give an understanding of how transfer pricing practices within the companies (taxpayers) in Indonesia over a period of time.

Using the theory of planned behavior, this study found that there is a relationship between actual and intended behavior on transfer pricing. Intentional behavior of transfer pricing can be directed by an understanding of many factors that determine transfer pricing in the interest of MNC managers. This understanding can be obtained by exploring the view of tax practitioners who have experience in facilitating the MNC in transfer pricing practices.

The structure of the paper is as follows. Section 1 describes the background of the study. Section 2 reviews the relevant literature followed by the research methodology in Section 3. Section 4 presents the findings while Section 5 offers a deeper discussion of the main findings. Section 6 concludes the paper.

2. LITERATURE REVIEW

2.1. Transfer pricing

One of the earliest discourses on transfer pricing tends to stem from the management accounting literature. Determining the optimal price to transfer goods or services, such as intellectual property, tangible goods, services, loans, or other financial transactions (Kusuma & Wijaya, 2017) is central to resource allocation and profit allocation among divisions. More importantly, empowering the divisions to set the transfer price calls for the need to monitor that there is goal congruence as well as a tool to evaluate the division's performance of managers (Cools et al., 2008). Hence, the use of an economics-based approach, which includes considering the effect of taxation, is advocated (Utari & Supadmi, 2017) as it allows fairness among the divisions.

The element of tax affects the determination of transfer prices involving companies operating in multiple jurisdictions (Hikmatin & Suryarini, 2019). This is made possible due to economic globalization allowing a company to operate in multiple countries, hence the growing numbers of MNCs. Although most tax regulators require the transactions to be at arm's length transaction (Moisello, 2016), some MNCs saw this as an opportunity to shift profit to minimize their tax obligations (Wu & Wang, 2018). For example, Moisello (2016) demonstrates how to transfer price is used mainly to take advantage of the differences in tax rates by consulting with tax consultants. The increasing numbers of cases of tax disputes later raise concerns about whether transfer pricing is used as a scheme for tax avoidance rather than the original role as a management accounting tool (Moisello, 2016). Thus, understanding the MNC's transfer pricing optimization behaviour from both management accounting and taxation perspectives allows researchers to understand how they develop their transfer pricing policy. As argued by Hang (2019), there is a possibility that transfer pricing decisions are beyond companies' control due to the perception of the benefit of conducting transfer pricing optimization through taxation. This can be further understood using the theory of planned behaviour.

2.2. Transfer pricing optimization behaviour

The theory of planned behaviour assumes that there is a relationship between attitude and action (Ajzen, 1991), as the intention to behave is formed and proceeds from several indicators — attitude toward behavior, subjective norms, and control belief. The theory can explain the transfer pricing optimization behavior as it allows the researcher to understand the manager's intention in determining the optimal transfer price. It is argued that the transfer pricing intended behavior is not under organizational behavioral control. The reasons are three-fold.

First, the transfer pricing decisions can be influenced by the perception of transfer pricing's cost and benefit (Hang, 2019). Stemming from behavioral belief or differential organizational perception, although the costs of setting a transfer price policy can be costly if the benefits outweigh

the cost, it can affect the transfer pricing perception or belief, hence how the policy is being decided.

Second, differential perceptions of international and domestic norms, including the influence of multinational companies' environment, can be categorized as normative beliefs (Zvarikova & Kovalova, 2021). This belief is related to the companies' perception of the economic norms, international norms, and domestic norms, which affect the companies' transfer pricing behavior (Endika et al., 2019). These normative beliefs can be considered as one of the factors that can encourage or restrict transfer pricing behaviour (Merle et al., 2019).

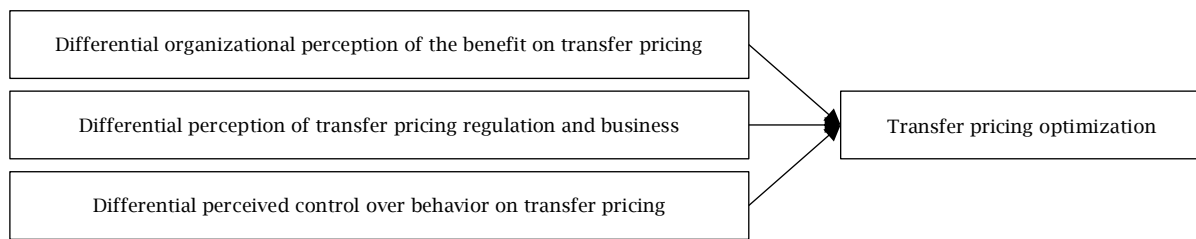
Third, control belief or differential perceived control over behavior can facilitate or limit the companies' transfer pricing behavior by assessing internal and external factors. While internal factors, such as company resources, subsidiaries, and joint ventures between related parties in the same group of companies will facilitate transfer pricing practice (Taklalsingh, 2019), external factors, such as the transfer pricing

regulations weaknesses, tax authorities' competencies will encourage MNC to develop transfer pricing policy for tax avoidance or management control purposes (Kamilah, 2019).

Accordingly, to understand the MNC's transfer pricing optimization behavior, embracing the tax consultant's perspective allow the study to understand the subjective norms, in this context, international regulation, domestic regulation, and companies' environment that encourages transfer pricing optimization; as well as the facilities that allow or restrict transfer pricing optimization behaviour (Merle et al., 2019). This behavioural approach can give an alternative explanation of how MNCs develop their transfer pricing policy.

Building on Moisello (2016) and Hang (2019), three constructs, 1) differential organizational perception of companies' business norms on transfer pricing, 2) differential perception of transfer pricing regulation and business environment, and 3) differential perceived control over behaviour are deemed relevant to explain the MNC's transfer pricing optimization behaviour (Figure 1).

Figure 1. Conceptual framework of the study



Source: Authors' elaboration, 2021.

3. RESEARCH METHODOLOGY

This paper aims to explore transfer pricing optimization behaviour by MNCs from the tax consultants' perspective using the theory of planned behaviour. Using a qualitative approach, data were collected through interviews and observations made from email discussions. Stemming from the interpretive-qualitative paradigm, the research focuses on exploring the dynamics of interactions between researchers and informants as a socially constructed reality to interpret the perceptions of the tax consultants on transfer pricing optimization.

Research participants are senior transfer pricing specialists with more than 5 years of experience in transfer pricing-related matters. First, the researchers sent consent forms and interview questions to the selected tax consultants. Next,

the researchers contacted the tax consultants to follow up on their written feedback based on the questions emailed. This is followed by an online interview to clarify and further confirm the researchers' understanding of their written feedback. The interviews were conducted online using the Google Meet platform, for about 3 hours using both structured and unstructured questions. In total, there are 5 interviews conducted involving 5 interviewees (Table 1).

To ensure validity and reliability, data triangulation was carried out, consistent with Jamaluddin (2015). The reason is triangulation among data sources, in this context, written feedback, online interviews, and documentation review from Indonesian transfer pricing regulation documents help to corroborate and validate the findings (Merle et al., 2019).

Table 1. Summary of research participants

No.	Name	Position	Year of experience
1	Rahmat Muttaqien (Interviewee A)	Transfer pricing specialist in DDTC	5 years
2	Sofyan Hadi (Interviewee B)	Tax consultant	5 years
3	Bernard J (Interviewee C)	Partner	5 years
4	Antoni F (Interviewee D)	Director	12 years
5	Edy Wahyudi (Interviewee E)	Tax consultant	5 years

Note: DDTC is for Danny Darusslaam Tax Centre.

Source: Authors' elaboration from interview result, 2022.

4. RESULTS

4.1. Differential perception of the benefit of transfer pricing optimization

This study found that there are three types of taxpayers that conduct transfer pricing in Indonesia. First, companies that are part of a big MNC with a headquarter (HQ) located in America or in Europe. Second, companies that are not part of a big MNC, and third, small enterprises.

Companies that are part of a big MNC with HQ in America or Europe usually have their TP policy and a good understanding of the TP scheme. Hence, their engagement with tax consultants is to ensure they will comply with the Indonesian TP regulation. Whereas companies that are not a part of big MNC refer to a group of companies operated only in

Indonesia. The role of tax consultants in this context is to supervise their tax obligation in order to mitigate the risk of committing tax evasion. In the event the companies do not have any TP policy yet, the tax consultants will offer their advice in this aspect. In contrast, most small enterprises hardly have any TP policy. Even if they do, some did not have a clear understanding of the TP scheme. Hence, the role of tax consultants is to advise them on related party transactions, set up the optimal TP, and determine the appropriate margin. If the existing TP policy is outdated, the advice will cover recommendations on changing their TP policy and supervision for a transparent transaction. Hence, the perceived benefit for transfer pricing optimization is high in tax payment minimization and cost optimization but low in shareholders' value in the form of dividends or other benefits.

Table 2. The type of client or taxpayers that conduct transfer pricing

<i>Tax payer category</i>	<i>The level of understanding of transfer pricing regulation</i>	<i>The implication of tax consultant recommendation</i>
The taxpayer is part of a big MNC	- Have a high understanding of transfer pricing regulations; - Has a transfer pricing group policy.	Discuss and ensure that the client will comply with Indonesian transfer pricing regulations.
The taxpayer who is not part of a big MNC	- Have enough understanding of transfer pricing regulations; - Has a transfer pricing policy.	Recommend and advise the client to mitigate the risk of tax evasion and to change their transfer pricing policy.
Small enterprise	- Have no understanding of transfer pricing regulations; - Has no transfer pricing policy.	- Recommend and advise the enterprises to set up the transfer pricing policy; - Give supervision to the taxpayer or the company to conduct transparency recommendations.

Source: Authors' elaboration from interview result, 2022.

4.2. Tax consultant perspective on business norms

In this section, the researchers seek to understand the tax consultants' perspective on Indonesia's business environment and business norms. First, in relation to taxing rights. Any transaction involving a related party within multiple countries will be subjected to the tax treaty and domestic tax regulation of all countries involved in the transaction. The regulation should specify which country has the taxing rights.

However, according to the interviewees, this is normally done on a case-by-case basis. For example, according to Interviewee A, *"If there is a transaction between related parties located in Indonesia and Singapore, and there is a service payment transaction from Indonesia and Singapore then it needs to be analyzed, [we will determine] whether there is a tax treaty between Indonesia and Singapore. And then it will be determined whether it is only Singapore or it is only Indonesia or both countries have [the] taxing right on these kinds of income"*.

In the event there is a dispute on the taxing right, the tax consultant will refer to the international regulation, as well as Organisation for Economic Co-operation and Development (OECD)'s TP policy to arrive at Mutual Agreement Procedure (MAP). While double taxation issues normally involve real transactions involving a related party, *"it can arise from secondary adjustment too"* as explained by Interviewee B. A secondary adjustment is an adjustment that is needed to resolve discrepancies that arise from primary adjustments. Hence, making it more challenging to arrive at the MAP.

Second, as part of G20 countries, Indonesia has adopted the base erosion and profit shifting (BEPS) project to set up the national TP regulation (MoF Regulation No. 213/PMK.03/2016). This requires MNC to maintain proper TP documentation, i.e., local master file, for submission. For a group of companies that earned consolidated revenue of more than 11 trillion rupiahs per year, they are required to also maintain a "country-by-country" report and strictly adhere to the arm's length principle.

However, although the TP documentation regulation in Indonesia is aligned with the international guidance and consistent with those practiced by other countries globally, there is a need to improve the guidelines in determining the arm's length transaction. As claimed by Interviewee C, *"[most] TP dispute comes from a guidance that has not been clear yet. Transfer pricing issue is not an exact science, so there are many transfer pricing disputes going on right now"*. As a result, some may take this opportunity to shift the profit to minimize their tax obligation, as explained by Interviewee D: *"The availability for companies to conduct profit shifting through related party using transfer pricing still exists"*.

Finally, it is noteworthy to highlight that the BEPS project and action plan helps to minimize tax avoidance cases in Indonesia. Prior to this, *"there are so many tax avoidance schemes using transfer pricing. This is because transfer pricing is easy to do by multinational enterprise, especially in cases involving intangible asset. But since the adoption BEP action plan project, the case related to transfer pricing become less"* (Interviewee E). Thus, continuous

improvement in TP guidelines on arm's length transactions is expected to address the current loophole.

4.3. Differential perceived control over behavior on transfer pricing

To understand the factors that facilitate or limit transfer-pricing optimization conducted by MNCs in Indonesia, the researchers seek to understand the perceptions of tax consultants on international regulation and how it shapes domestic regulation.

This study records that there are two factors that facilitate transfer pricing conducted in Indonesia. It was found that there is a lack of technical guidance in Indonesian regulation and a lack of data needed by the taxpayer. The guidance is mostly based on international regulations, including MAP, automatic exchange of information (AEOI) data exchange plan, and other requirements as regulated in OECD BEPS Action Plans 5 and 13 (OECD, 2017a, 2017b).

It was found that Indonesian regulation on transparency framework was built on OECD BEPS Action Plan 5. As explained by Interviewee A, *"BEPS Action Plan number 5 is not directly related to transfer pricing, but it is related to how international regulation counter harmful tax practices more effectively using transparency and substance. There is a concern that a preferential regime that being used for profit shifting and a lack of transparency in connection with certain rule"*. For example, there are big MNCs that recognized their intangible assets in a tax haven country. This area is addressed in BEPS Action Plan 5 to protect those taxpayers that have assets or invest in that country. Hence, there still are difficulties in accessing the data for tax purposes both for tax authorities and for companies. This condition encourages the companies in optimizing the transfer pricing.

Another factor is the influence of BEPS Action Plan 13 on the ETR Status Message XML Schema. Building on BEPS Action Plan 13, forcing all companies to be more transparent and more engaging in exchanging data within countries, the XML schema plays role in making sure that data required to prepare the local master file, as well as the country-by-country report is available especially those located in tax haven country. This helps to minimize tax evasion cases by ensuring only those company that has substance can get more profit.

At the same time, the existence of BEP Action Plan 13 is not considered by MNCs in Indonesia. Currently, the XML Schema is more useful for tax authorities rather than for taxpayers themselves. This scheme is useful in assisting the tax administrator in providing structured feedback to the sender on frequent errors encountered, with a view to improving overall data quality and receiving corrected information. According to Interviewees A and B, only a few MNCs in Indonesia comply with the OECD and G20 countries' requirements in producing tables and metrics for the country-by-country report.

Prior to this, getting data, especially from tax haven country or country that has preferential scheme is quite challenging. Both BEPS Action Plans 5 and 13 shape the domestic regulation forcing MNCs to be more transparent and exchange the relevant data to comply with the TP regulation. Hence, adopting BEPS Action Plans 5 and 13 helps the Indonesian Tax Authority to build a more comprehensive framework to govern the national TP issues.

5. DISCUSSION

From the findings, most Indonesian MNCs use transfer pricing for tax purposes rather than for managerial control when operating globally. This supports Zvarikova and Kovalova (2021) and Sari's (2021) findings that there is an intrinsic goal in the transfer pricing for taxation purposes. In this context, the TP scheme is usually used to shift profit to minimize tax obligations.

While the MNC's transfer pricing optimization is affected by the perception of the benefit of transfer pricing, this is not the case for the perception of the business norms and perceived control. Indonesian MNCs are argued to not consider TP regulation as a subjective norm in conducting transfer pricing leading to transfer pricing optimization. Although international regulation shapes the national regulation to minimize the number of tax evasion cases, there is still some loophole in the arm's length principle which may still result in transfer pricing optimization behavior. This is where tax consultant will play their role in providing consultation and advice to ensure they comply with national regulations.

More importantly, this study found that there is still a gap between regulation and practice in TP among Indonesian MNCs (Table 3).

Table 3. Comparison between the Indonesian regulation and MNC's practice (Part 1)

No.	Issue	Regulation/Theory	Finding
<i>Differential perception of the benefit of transfer pricing optimization</i>			
1	The goal of transfer pricing optimization is for revenue optimization, corporate profit allocation, cost optimization, increase shareholders' value	Transfer pricing is a normal business activity done by MNCs for revenue optimization, corporate profit allocation, cost optimization, and increasing shareholders' value.	Transfer pricing for management purposes done by MNCs was used for corporate profit allocation, especially income allocation among parties in different taxation areas.
2	The goal of transfer pricing optimization is for tax payment minimization and profit shifting	TP regulation did not allow profit shifting via transfer pricing.	MNCs optimize transfer pricing for tax payment minimization, especially in the interest of profit shifting.

Table 3. Comparison between the Indonesian regulation and MNC's practice (Part 2)

No.	Issue	Regulation/Theory	Finding
Business norms and environments related to transfer pricing			
1	Which government (country) has the taxing right on the income	TP regulation requires analyzing the existence of tax treaties between the countries and determining whether only one or each country has taxing right on these kinds of income.	Analysis of the tax treaty and the domestic tax law of the countries is usually done on a case-by-case basis. A case-by-case basis is more flexible and easy to conduct by tax authorities.
2	In the event, both governments (countries) claim the right to tax the same type of income	TP regulation requires to make the mutual agreement procedure (MAP).	Since TP regulations specify real transactions, it is hard to arrive at a mutual agreement when it involves a secondary adjustment.
4	Evolution of stringent documentation standard	Indonesian TP regulation makes it mandatory for MNCs to comply with the national regulation.	There is a need to improve guidelines on the TP arm's length principle.
Differential perceived control over behaviour on transfer pricing			
1	International regulation — BEPS Action Plan 5	BEPS Action Plan 5 is related to how international regulation counters harmful tax practices more effectively using transparency and substance.	The existence of BEP Action Plan 5 with transparency requirements is not fully adopted by many jurisdictions. In fact, many jurisdictions protect their taxpayer data on who has an asset or invests in that country. This means that there is still a preferential regime used for profit shifting with the lack of transparency. These cases are also in connection with tax heaven countries or any country that has a preferential regime.
2	ETR Status Message XML Schema and BEPS Action Plan 13	<ul style="list-style-type: none"> - The ETR scheme allows tax administrations in providing structured feedback to the sender on frequent errors encountered, to improve overall data quality, and receiving corrected information; - BEPS Action Plan 13 provides an overview for tax authorities an inclusive framework and guidance on how to analyse the metrics, and TP reason for the taxpayer who conducts related party transactions. 	Usually, it is difficult for MNCs in Indonesia to get data from tax heaven country or country that has preferential regime, and Indonesian taxpayers cannot do anything because most jurisdictions that are taxed from a country where their related party is located, will not open their data.

Source: Authors' elaboration from interview result, 2022.

6. CONCLUSION

Indonesian transfer pricing regulation and international transfer pricing regulations provided by OECD are quite enough but are not considered by the MNCs in transfer pricing optimization. They are not fully aware of such regulation, because the TP requirement can be fulfilled by utilizing the TP loopholes with the supervision of tax experts or tax consultants. The findings give theoretical implications, especially on the role of behavioural aspects in transfer pricing optimization, and enrich the previous research conducted by Oktaviani and Tambunan (2019) and Pavone (2020). This study also gives practical implications, especially the need for improvement, on transfer pricing guidance which can be used by multinational companies in optimizing transfer pricing and tax authorities to minimize profit shifting via transfer pricing. From the tax consultants' point of view, basically, transfer pricing is a neutral thing that does not necessarily become a negative or a manipulative thing. Transfer pricing optimization will exist when multinational enterprises operate in more than one jurisdiction.

This study only explores the tax consultant perspective on transfer pricing optimization behaviour. Therefore, there is a possibility of different perceptions from the other stakeholders, especially the tax authority and the company itself. This limitation, give recommendation for future research, to explore the tax authorities and company perspective on transfer pricing optimization behaviour.

Indonesian regulation has followed international regulations on transfer pricing. But, due to many transfer pricing disputes, and the existence of profit shifting via transfer pricing, the Indonesian government needs to improve transfer pricing guidance which can be used by multinational companies in optimizing transfer pricing, and for tax authorities to handle profit shifting via transfer pricing. The guidance should complement detailed guidance on transfer pricing and the direction on how to apply the arm's length principle. On the other hand, MNCs have to meet a transfer pricing documentation which is mandatory in Indonesia since 2016 regulated by the Ministry of Finance Regulation No. 213/PMK.03/2016.

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