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PROSECUTING TRANSNATIONAL TAX EVASION: LEGAL CHALLENGES AND INTERNATIONAL COOPERATION — A COMPARATIVE STUDY BETWEEN INDONESIA, SOUTH KOREA, AND OECD COUNTRIES

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Abstract

Transnational tax evasion poses a serious threat to fiscal integrity and global economic stability. This study aims to conduct a comparative analysis of criminal tax law regulations addressing cross-border tax evasion in Indonesia, South Korea, and selected OECD countries, and to identify the main obstacles faced by Indonesia in prosecuting tax crimes across jurisdictions. The findings reveal that Indonesia has adopted tax regulations through the General Taxation Provisions and Procedures Law (UU KUP) and international treaties such as Tax Treaty Agreements (P3B). South Korea enforces stricter regulations via the Punishment of Tax Offenses Act, actively participates in international investigations, and provides incentives for whistleblowers. OECD countries apply a more coordinated approach, utilizing initiatives such as the BEPS Project and the Common Reporting Standard (CRS), and establishing dedicated task forces like the TFTC to enhance cross-border cooperation in combating tax evasion. The primary obstacles identified in the Indonesian context include the complexity of international financial transactions, limited jurisdictional reach, differences in legal systems, regulatory loopholes, limited resources, and challenges arising from digital assets and cryptocurrencies. The study recommends that Indonesia strengthen its criminal tax framework by increasing incentives for whistleblowers, imposing harsher penalties, enhancing investigative effectiveness, expanding international cooperation through the ratification of BEPS and CRS initiatives, building institutional capacity, harmonizing national tax regulations with international standards, and promoting tax transparency through an integrated digital system.

A. INTRODUCTION

Transnational tax avoidance poses significant challenges to the fiscal integrity and economic stability of nations worldwide. The increasing globalization of financial markets and the digitalization of the economy have facilitated sophisticated methods of tax avoidance, enabling individuals and corporations to conceal income and assets across borders. This phenomenon undermines public trust in tax systems, erodes government revenues, and exacerbates economic inequality.

The emergence of these tax avoidance schemes has prompted international organizations and governments to strengthen regulatory frameworks and promote cross-border collaboration, recognizing that addressing transnational tax avoidance requires a comprehensive understanding of the legal challenges involved and the effectiveness of international cooperation mechanisms. The Organisation for Economic Co-operation and Development (OECD) has taken a leading role in this effort, developing initiatives such as the Base Erosion and Profit Shifting (BEPS) project and the Common Reporting Standard (CRS) to combat tax avoidance and evasion. The BEPS project aims to address gaps and mismatches in tax rules that allow profits to be shifted to low- or no-tax jurisdictions, while the CRS facilitates the automatic exchange of financial account information between jurisdictions to detect and prevent tax evasion.

Indonesia and South Korea, as members of the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes, have committed to implementing international standards for tax transparency and information exchange. Indonesia has taken steps to align its tax policies with global standards, including the issuance of Minister of Finance Regulation (Peraturan Menteri Keuangan/PMK) No. 136 of 2024 on the Implementation of the Global Minimum Tax Based on International Agreements, which will enforce a 15% global minimum corporate tax starting January 1, 2025. South Korea has also actively adopted measures to enhance tax compliance and international cooperation.[1]

Despite these initiatives, significant challenges remain in the effective prosecution of transnational tax avoidance. Legal complexities, jurisdictional limitations, and varying levels of commitment among countries continue to hinder successful law enforcement efforts. The emergence of digital assets and cryptocurrencies further complicates enforcement, providing new avenues for concealing wealth and evading taxes.[2] The Joint Chiefs of Global Tax Enforcement (J5), comprising tax enforcement authorities from Australia, Canada, the Netherlands, the United Kingdom, and the United States, exemplify coordinated efforts to tackle these challenges through collective action against tax crimes.[3]

In addition to the existing challenges, the urgency of this research lies in the scarcity of studies addressing transnational criminal offenses in the field of taxation. The OECD's 1987 report on *International Tax Avoidance and Evasion* primarily discussed the challenges posed by international tax evasion and avoidance, particularly through the use of tax havens.[4] The report highlighted the concerns of tax authorities regarding base erosion and emphasized the need for international

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[1] Reuters. (2025, January 16). Indonesia issues regulation to implement global minimum tax. Retrieved from https://www.reuters.com/markets/asia/indonesia-issues-regulation-implement-global-minimum-tax-2025-01-16/Reuters

[2] The Joint Chiefs of Global Tax Enforcement, The J5 Report, available at https://www.irs.gov/pub/irs-ci/j5-report-7-25-2024.pdf?utm_source=chatgpt.com.

[3] *Loc.cit.*

[4] OECD, International Tax Avoidance and Evasion, 1987, available at https://www.oecd.org/content/dam/oecd/en/publications/reports/1987/04/international-tax-avoidance-and-evasion_g1ghgbf6/g2ghgbf6-en.pdf?utm_source=chatgpt.com.

cooperation to combat these issues.[5] The novelty of the present study lies in its early recognition of the complexities introduced by tax havens and its call for a coordinated international response to mitigate tax evasion. Furthermore, a study by Rosenbloom et al. criticized the fragmented nature of international tax policy cooperation and proposed the establishment of an International Tax Cooperation Forum.[6] uch a forum was intended to address inconsistencies, legal loopholes, and ineffective mechanisms in global tax governance. Compared to prior research, the novelty of this study lies in its proposal for a centralized platform to foster genuine intergovernmental collaboration, thereby enhancing the effectiveness of international tax regulation. Additionally, the Tax Justice Network report provides a detailed analysis of global tax losses resulting from corporate tax abuse and offshore wealth avoidance.[7] The report identifies the significant role played by OECD countries and their reliance on mechanisms that facilitate such losses, underscoring the need for more robust international measures to curb tax avoidance.[8] The novelty of this legal study lies in its quantification of tax losses and its critical assessment of the responsibility borne by major economies in perpetuating tax injustice.

Therefore, a juridical study is needed to conduct a comparative analysis of legal frameworks and cooperative efforts in prosecuting transnational tax evasion in Indonesia, South Korea, and selected OECD countries. This study seeks to address the following two research questions:
How are criminal tax law regulations structured to address cross-border tax evasion in Indonesia, compared to South Korea and OECD countries?
What are the main obstacles to prosecuting transnational tax evasion in Indonesia?

B. ANALYSIS AND DISCUSSION

Criminal Law Regulations in Addressing Cross-Border Tax Evasion in Indonesia Compared to South Korea and OECD Countries

Indonesia regulates criminal tax offenses under Law No. 6 of 1983 concerning General Provisions and Tax Procedures, as amended several times, most recently by Law No. 7 of 2021 on the Harmonization of Tax Regulations (UU KUP). The UU KUP stipulates criminal sanctions for tax violations such as tax evasion, the submission of inaccurate tax returns (Surat Pemberitahuan/SPT), and other actions that harm state revenue. In addition to domestic regulations, Indonesia has adopted various international agreements, including Double Taxation Avoidance Agreements (DTAAs) with multiple countries, to prevent cross-border tax evasion.[9] One such example is Indonesia's tax treaty with South Korea, which aims to eliminate double taxation and prevent tax avoidance in cross-jurisdictional contexts.

South Korea's approach to prosecuting transnational tax evasion involves a combination of stringent legal provisions, proactive investigative measures, incentives

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[5] Ibid.
[6] H. David Rosenbloom, Noam Noked, dan M. S. Helal, The Unrully World of Tax: A Proposal for an International Tax Cooperation Forum. *Florida Tax Review*, Vol. 24, No. 1, 2014, hlm. 57-87.
[7] Tax Justice Network. (2023). State of Tax Justice 2023. Retrieved from https://taxjustice.net/wp-content/uploads/SOTJ/SOTJ23/English/State%20of%20Tax%20Justice%202023%20-%20Tax%20Justice%20Network%20-%20English.pdf.
[8] *Loc.cit.*
[9] Darussalam dan Danny Septriadi (ed.), Perjanjian Penghindaran Pajak Berganda: Panduan, Interpretasi, dan Aplikasi, Jakarta: PT Dimensi International Tax, 2017.

for whistleblowers, and active participation in international cooperation frameworks. Continuous efforts to strengthen these components are essential to effectively combat tax evasion in an increasingly globalized financial environment. South Korea enforces strict regulations against tax evasion and the manipulation of financial statements. The primary legislation governing tax offenses is the Punishment of Tax Offenses Act.[10] It prescribes penalties for a range of tax-related crimes, including tax evasion, fraudulent tax refunds, and failure to issue tax invoices.[11] For instance, individuals found guilty of tax evasion may face imprisonment with forced labor for up to two years or a fine equivalent to twice the amount of the evaded tax. In cases where the amount of evaded tax exceeds a certain threshold, the penalties may increase to imprisonment for up to three years or a fine of up to three times the amount of tax evaded.[12] An illustrative case occurred in 2022 when Apple Korea was suspected of manipulating its financial statements to reduce corporate income tax liabilities. South Korean lawmaker Yang Jeong-sook stated that Apple Korea sought to minimize its tax payments despite continuously increasing sales in the country.[13] In addition, South Korea is actively engaged in international efforts to combat cross-border tax avoidance. In March 2022, the National Tax Service (NTS) of South Korea held a meeting with the United Kingdom's HM Revenue & Customs to exchange strategies for preventing tax evasion, including mechanisms for tax data and information exchange.[14] Subsequently, in April 2023, an NTS delegation visited the headquarters of Indonesia's Directorate General of Taxes (DJP) to strengthen bilateral cooperation in taxation, particularly in the area of information exchange.[15] The NTS also collaborates with foreign tax authorities to conduct joint investigations and exchange data. It launched an investigation into four Korean companies suspected of evading approximately US$53 million in taxes after acquiring account data from jurisdictions such as Switzerland, Hong Kong, and Singapore.[16] Furthermore, South Korea participates in global initiatives such as the OECD's Base Erosion and Profit Shifting (BEPS) project and the Common Reporting Standard (CRS), both of which enhance transparency and facilitate cross-border information exchange to prevent tax evasion.

Despite South Korea's robust legal framework and law enforcement mechanisms, the prosecution of transnational tax evasion still presents significant challenges, including the complexity of financial transactions and the critical need for international cooperation. A notable case, such as the acquittal of SPC Group Chairman Hur Young-in on charges of tax evasion, underscores the inherent difficulty in proving

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[10] Law Viewer, *Punishment of Tax Offenses Act*, available at https://elaw.klri.re.kr/eng_mobile/viewer.do?hseq=49532&key=20&type=part&utm_source=chatgpt.com.
[11] *Loc.cit.*
[12] *Loc.cit.*
[13] Syadesa A. Herdona, Apple Korea Diduga Manipulasi Laporan Keuangan, Pangkas Setoran PPh, 2022, available at https://news.ddtc.co.id/berita/internasional/36626/apple-korea-diduga-manipulasi-laporan-keuangan-pangkas-setoran-pph?utm_source=chatgpt.com.
[14] DDTC, Cegah Penghindaran Pajak, Korsel dan Inggris Sepakati Kerja Sama, 2022, available at https://news.ddtc.co.id/berita/internasional/37919/cegah-penghindaran-pajak-korsel-dan-inggris-sepakati-kerja-sama?utm_source=chatgpt.com.
[15] DDTC, Pejabat Pajak Korea Datangi DJP, Bahas Kerja Sama Pertukaran Informasi, 2023, available at https://news.ddtc.co.id/berita/nasional/1793672/pejabat-pajak-korea-datangi-djp-bahas-kerja-sama-pertukaran-informasi.
[16] ITR, Koran companies fined millions of dollars for tax evasion, available at https://www.internationaltaxreview.com/article/2a68rfy5bw2ycq0x7s1iw/korean-companies-fined-millions-of-dollars-for-tax-evasion?utm_source=chatgpt.com.

criminal intent and the importance of meticulous evidence gathering in such prosecutions.[17]

Moreover, the prosecution of transnational tax avoidance in OECD countries requires a coordinated approach that combines a strong legal framework, international collaboration, and sustained capacity-building efforts. Although significant progress has been made, continued efforts are essential to counter the evolving tactics employed by tax evaders. In response to these challenges, the OECD has established the Task Force on Tax Crimes and Other Crimes (TFTC)—the world's only international standard-setting body specifically focused on combating tax crime. The TFTC develops global principles and best practices to guide countries in strengthening their legal frameworks against tax evasion. One such initiative is the publication of "Fighting Tax Crime – The Ten Global Principles", a comprehensive set of guidelines that countries can adopt to enhance their tax crime enforcement capabilities.[18]

In addition, OECD member countries actively engage in various forms of international cooperation to combat transnational tax evasion, including information exchange and joint investigations. These countries participate in mechanisms such as the Common Reporting Standard (CRS), which facilitates the automatic exchange of financial account information between jurisdictions. This level of transparency enables tax authorities to detect and prosecute tax evasion more effectively.[19] Collaborative efforts, including joint investigations and information-sharing agreements, allow OECD countries to confront complex tax evasion schemes that span multiple jurisdictions. The OECD also emphasizes capacity building to enhance countries' ability to combat tax crimes. The OECD International Academy for Tax Crime Investigation offers training programs designed to equip tax authorities with the skills needed to investigate and prosecute tax evasion efficiently.

Despite these initiatives, challenges persist in prosecuting transnational tax evasion, particularly due to complex financial structures and jurisdictional barriers. Tax evaders often utilize intricate financial arrangements and offshore entities to conceal assets, making detection and prosecution difficult. Furthermore, differences in legal systems and definitions of tax crimes across countries can hinder effective cross-border enforcement. Illustrative cases include the Cum-Ex scandal in Denmark and the LuxLeaks revelations. In Denmark, British hedge fund trader Sanjay Shah was sentenced to 12 years in prison for orchestrating a US$1.3 billion tax fraud involving a complex dividend refund scheme. This case highlights the critical importance of international cooperation, as Shah was extradited from Dubai to face charges.[20] Meanwhile, the LuxLeaks case exposed preferential tax rulings granted by Luxembourg to multinational corporations, sparking global discussions on tax

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[17] The Korea Herald, SPC Chairman Hur cleared of tax evasion charges, available at https://www.koreaherald.com/article/3318907.

[18] OECD, *Fighting Tax Crime – The Ten Global Principle*, 2024, available at https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/tax-and-crime/fighting-tax-crime-the-ten-global-principles-country-chapters.pdf.

[19] Wikipedia, Exchange of information, available at https://en.wikipedia.org/wiki/Exchange_of_information?utm_source=chatgpt.com.

[20] AP News, Danish court sentences British hedge fund trader to 12 years over massive tax fraud, 2024, available at https://apnews.com/article/denmark-tax-fraud-sanjay-shah-7dc495a331e9ee78c92a191c1fc2059d.

avoidance and underscoring the need for greater transparency in international tax practices.[21]

Obstacles in Prosecuting Cross-Border Tax Evasion in Indonesia

Based on the preceding discussion, Indonesia, South Korea, and OECD countries face several legal challenges in prosecuting transnational tax evasion. These challenges primarily concern jurisdictional limitations, complex financial structures, information exchange barriers, resource constraints, and legal loopholes and inconsistencies. Regarding jurisdictional limitations, tax evasion frequently involves multiple jurisdictions, complicating the determination of legal authority and enforcement responsibility. Differences in legal systems and the definitions of tax crimes across countries further hinder effective prosecution. The complexity of financial structures refers to the use of elaborate arrangements such as shell companies and trusts in tax haven countries, which obscure beneficial ownership and asset tracking, making it difficult for authorities to gather sufficient evidence for criminal prosecution. Barriers to information sharing stem from the fact that some jurisdictions may lack the legal framework or political will to exchange financial information, even in the presence of international agreements. This limits the effectiveness of cross-border investigations. Resource constraints are especially prevalent in developing countries like Indonesia, which may lack the technical expertise and institutional capacity necessary to investigate and prosecute sophisticated tax evasion schemes. Legal loopholes and inconsistencies refer to the variation in tax laws and enforcement practices among different countries, which can be exploited by tax evaders to avoid liability and complicate legal proceedings.

These challenges underscore the importance of effective international cooperation mechanisms in addressing the prosecution of transnational tax evasion. Global initiatives such as the OECD's Base Erosion and Profit Shifting (BEPS) project and the Common Reporting Standard (CRS) play critical roles in enhancing collaborative efforts to combat tax evasion. The BEPS project provides governments with tools to close gaps in international tax rules, ensuring that profits are taxed where economic activities take place and value is created.[22] Meanwhile, the CRS facilitates the automatic exchange of financial account information between jurisdictions, improving transparency and aiding in the detection of tax evasion. Despite these initiatives, challenges remain—particularly the varying levels of implementation and enforcement across countries, which can affect the overall effectiveness of these international mechanisms.

Conclusion

This study yields two primary conclusions. **First**, countries such as Indonesia, South Korea, and OECD member states have undertaken concrete measures by implementing global standards, enforcing strict regulations, and engaging in both bilateral and multilateral cooperation. Indonesia regulates tax crimes through the General Taxation Provisions and Procedures Law (UU KUP), which sets out various criminal sanctions for tax evasion. Indonesia has also actively participated in

[21] Wikipedia, LuxLeaks, available at https://en.wikipedia.org/wiki/LuxLeaks?utm_source=chatgpt.com.
[22] *Loc.cit*.

international cooperation initiatives, including the adoption of OECD transparency standards, particularly the BEPS and CRS frameworks. South Korea, by comparison, enforces stricter regulations under the Punishment of Tax Offenses Act, which includes severe criminal penalties, proactive investigative policies, and incentives for whistleblowers. South Korea is also highly active in international information exchange efforts aimed at preventing tax evasion. OECD countries apply a more systematic and coordinated regulatory approach, especially through the BEPS Project, the Common Reporting Standard (CRS), and the creation of specialized bodies such as the Task Force on Tax Crimes and Other Crimes (TFTC), which seeks to harmonize tax policies and enhance intergovernmental collaboration in tackling transnational tax evasion. Among the three, South Korea and OECD countries demonstrate more comprehensive and proactive systems compared to Indonesia, particularly in terms of investigation implementation, prosecution, and international cooperation. **Second**, several persistent challenges hinder effective law enforcement in cross-border tax evasion cases. These include the complexity of international financial transactions, jurisdictional limitations, discrepancies in legal systems, regulatory loopholes, resource constraints, and the emerging challenges posed by digital assets such as cryptocurrencies.

Based on these conclusions, the following policy recommendations are proposed:

Strengthen Indonesia's tax and criminal tax law framework by adopting South Korea's approach—enhancing whistleblower incentives, imposing stricter criminal penalties, and improving the effectiveness of tax investigations.

Enhance international cooperation through the ratification and more effective implementation of agreements such as **BEPS** and **CRS**, and ensure active participation in automatic information exchange mechanisms across jurisdictions.

Expand the institutional capacity of Indonesia's tax authority, including improvements in human resources, technology, and specialized training related to the investigation of transnational tax crimes—drawing on models such as the **OECD International Academy for Tax Crime Investigation**.

Harmonize national tax regulations with international standards to close legal loopholes that are often exploited in tax avoidance schemes.

Increase domestic tax transparency by developing an integrated digital taxation system that enables early detection of suspicious activities, particularly those involving digital and crypto assets.

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Wikipedia, LuxLeaks, available at https://en.wikipedia.org/wiki/LuxLeaks?utm_source=chatgpt.com.