# Advance Pricing Agreement for Preventing Transfer Pricing Disputes in International Trade Law

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***Abstract***

*Companies often engage in purchase and sale transactions with related parties. Some companies utilize such transactions as instruments in transfer pricing practices. Advance Pricing Agreement is a written agreement mechanism used to determine the arm's length price for transactions between related parties. This study aims to analyze the implementation mechanism of the Advance Pricing Agreement in preventing transfer pricing disputes and to examine the challenges of its implementation from the perspective of international trade law. The author employs a normative juridical research method, using a statutory approach and a case study approach involving transfer pricing disputes such as PT Covestro Polymers Indonesia and Court Decision No. PUT 003777.15/2023/PP/M.XVIIIA (2024) in the case of PT VVF Indonesia vs the Directorate General of Taxes (DGT), which discusses the application of the Advance Pricing Agreement in resolving tax disputes. The findings indicate that the implementation of the Advance Pricing Agreement serves as a legal instrument capable of creating legal certainty, transparency, and efficiency in resolving potential transfer pricing disputes. Minister of Finance Regulation (PMK) No. 172/2023 strengthens the legal foundation for Advance Pricing Agreement implementation in Indonesia. However, several challenges remain in its practical application. Overall, the study concludes that the Advance Pricing Agreement functions as a legal solution to prevent transfer pricing disputes and reinforces the arm's length principle within the framework of international trade law.*

***Keywords: Advance Pricing Agreement, Transfer Pricing Disputes, Tax Court, Tax Law***

**Abstrak**

Perusahaan sering melakukan transaksi pembelian dan penjualan dengan pihak-pihak yang memiliki hubungan istimewa. Beberapa perusahaan memanfatkan jenis transaksi ini sebagai intrumen dalam praktik *transfer pricing. Advance Pricing Agreement* merupakan mekanisme kesepakatan tertulis yang digunakan untuk menentukan harga wajar atas transaksi antar pihak yang memiliki hubungan istimewa. Penelitian ini bertujuan untuk menganalisis mekanisme penerapan *Advance Pricing Agreement* dalam mencegah sengketa *transfer pricing* serta menganalisis hambatan implementasinya dari perspektif hukum perdagangan internasional. Penulis menggunakan metode penelitian yuridis normatif, serta menggunakan pendekatan perundang-undangan dan pendekatan kasus *transfer pricing* seperti PT Covestro Polymers Indonesia dalam Putusan Pengadilan PUT-000257.15/2023/PP/M.VA tahun 2024 serta Putusan Pengadilan PUT 003777.15/2023/PP/M.XVIIIA tahun 2024 tentang kasus antara PT VVF Indonesia vs DJP, terkait penerapan *Advance Pricing Agreement* dalam penyelesaian sengketa perpajakan. Dari hasil penelitian ditemukan bahwa penerapan *Advance Pricing Agreement* berperan sebagai instrumen hukum yang mempu menciptakan kepastian hukum, transparansi, dan efisiensi dalam penyelesaian potensi sengketa transfer pricing. PMK Nomor 172 Tahun 2023 memperkuat landasan hukum penerapan *Advance Pricing Agreement* di Indonesia. Namun, dalam implementasi *Advance Pricing Agreement* masih menghadapi sejumlah kendala. Secara keseluruhan, penelitian ini menegaskan bahwa *Advance Pricing Agreement* merupakan solusi hukum dalam mencegah sengketa *transfer pricing* dan memperkuat penerapan prinsip kewajaran dan kelaziman usaha dalam sistem hukum perdagangan internasional.

**Kata Kunci:** ***Advance Pricing Agreement, Sengketa Harga Transfer, Pengadilan Pajak, Hukum Pajak***

## Introduction

Companies often conduct purchase and sales transactions with parties with whom they have a special relationship. Some companies often use these types of transactions as instruments in transfer pricing practices. When these transactions cross different tax jurisdictions, there is potential for business entities to engage in significant tax avoidance. Conceptually, transfer pricing is understood as a mechanism for setting prices for goods and services exchanged between divisions that function as profit centers within a corporate entity[1]. The main purpose of transfer pricing is to minimize the tax burden borne by the company. In some cases, it can even be used as a means of tax avoidance[2]. This practice is generally carried out by increasing the purchase price and lowering the selling price between companies that are in the same business group or have a special relationship. Through this mechanism, the company's profits are shifted to affiliated entities domiciled in countries with lower tax rates. The amount of tax payable is one of the main factors that encourage companies to engage in transfer pricing practices. From a taxation perspective, this practice has the potential to cause losses for the state because it can reduce, or even eliminate, potential tax revenue[3]. This occurs due to the tendency of multinational companies to shift their tax obligations from high tax countries to low tax countries[4].

Along with the intensification of economic globalization and cross-border expansion, the issue of transfer pricing has become a major concern in the governance of multinational companies[5]. Some example of cases related to transactions through transfer pricing manipulation are the case involving PT. Covestro Polymers Indonesia with its affiliate, Covestro Limited, domiciled in HongKong, which was then decided through Decision Number PUT-000257.15/2023/PP/M.VA of 2024. The Directorate General of Taxes assessed that PT. Covestro Polymers Indonesia had a special relationship with Covestro Limited, domiciled in Hong Kong. DGT assessed that the company's gross profit margin continued to decline even though the

[1] Yousef Shahwan, "The Effect of Practicing Transfer Pricing and Financial Performance: Evidence from Multinational Corporations in the UAE," *Asian Economic and Financial Review* 14, no. 10 (2024): 735, https://doi.org/10.55493/5002.v14i10.5200.

[2] Cannaviero Jihanda and Sufiyati, "Faktor Yang Mempengaruhi Praktik Transfer Pricing Pada Perusahaan Non-Cyclical Yang Terdaftar Di Bei," *Gema Ekonomi (Jurnal Fakultas Ekonomi )* 12, no. 7 (2023): 2623, https://journal.unigres.ac.id/index.php/GemaEkonomi/index.

[3] Fariha Nuraini, "Sinergi International Journal of Economics Transfer Pricing and Tax Avoidance: A Narrative Review of Global Strategies and Regulatory Challenges," *Sinergi International Journal of Economics* 3, no. 2 (2025): 103.

[4] Widhi Nugroho Budi Prasetyo, "Sengketa Pajak Atas Koreksi Biaya Royalti Dan Secondary Adjustment (Studi Kasus Putusan Banding PT XYZ)," *Owner* 7, no. 4 (2023): 2972, https://doi.org/10.33395/owner.v7i4.1697.

[5] Fatmah Saeed Alghamdi et al., "Non-Arm's-Length Transactions, Offshore Financial Centres, Transfer Pricing Agreements and Corporate Cash Holdings: Evidence from U.S. Multinational Corporations," *International Review of Financial Analysis* 96 (2024): 1–15, https://doi.org/10.1016/j.irfa.2024.103589.

volume of purchases increased, thus giving rise to indications of transfer pricing irregularities[6]. Then there is the case of Australia vs Glencore Investment Pty Ltd v Commissioner of Taxation. The Australian Tax Office (ATO) accused Glencore of setting the selling price of copper concentrate to its overseas affiliate below market value, thereby shifting profits to low-tax jurisdictions. The Federal Court ultimately ruled in favor of Glencore, emphasizing that transfer pricing analysis must take into account actual business conditions and prevailing market realities, rather than relying solely on theoretical models put forward by the tax authorities. Then, the case of PT VVF Indonesia vs the Directorate General of Taxes (DGT) No. PUT 003888.15/2023/PP/M.XVIIIA (2024) serves as a concrete example of how the arm's length principle and transfer pricing documentation (TPD) are tested in practice.

Based on the case related to transfer pricing, an advance pricing agreement was created to prevent transfer pricing disputes. The urgency of research on Advance Pricing Agreement stems from the need to provide a legal instrument capable of preventing transfer pricing disputes before they arise. An Advance Pricing Agreement is an agreement between a taxpayer and the Director General of Taxes regarding the fair sale price of products manufactured by the taxpayer to parties with whom it has a special relationship (related parties)[7]. In Indonesia, Article 18 of Law Number 36 of 2008 concerning Income Tax and Minister of Finance Regulation Number 172 of 2023 concerning the Application of the Principles of Fairness and Business Norms in Transactions Affected by Special Relationships are regulations governing transfer pricing. Article 18 (3a) of Law Number 36 of 2008 discusses several matters such as special relationships and debt-to-equity ratios. In international law, the practice of advance pricing agreement is also rooted in Article 9 of the OECD Model Tax Convention and the OECD Transfer Pricing Guidelines, which emphasize the importance of applying the arm's length principle to create fairness in cross-border taxation[8].

This article attempts to fill this gap by analyzing Advance Pricing Agreement as an instrument for preventing transfer pricing disputes from the perspective of international commercial law. This paper contributes to the literature in several important ways. This study is

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[6] Daniel Edgar Hirasma Saragi, "DEVELOPMENT OF TRANSFER PRICING REGULATIONS IN INDONESIA," *Jurnal Ilmu Ekonomi Dan Pembangunan* 24, no. 2 (2021): 82, https://doi.org/https://doi.org/10.20961/jiep.v24i2.90934.
[7] Z Afik and Y Lahav, "Practical Valuation of Risk Transfer in Advance Pricing Agreements," *Journal of Tax Administration* 4, no. 1 (2018): 38.
[8] Dealia Tiara Oktaviani and Maria R.U.D. Tambunan, "The Implementation of Advance Pricing Agreement in Indonesia Following The Adoption of Dispute Resolution Guideline," *BISNIS & BIROKRASI: Jurnal Ilmu Administrasi Dan Organisasi* 27, no. 2 (2021): 92, https://doi.org/10.20476/jbb.v27i2.11756.

the first to examine the relationship between advance pricing agreements as an instrument for preventing transfer pricing disputes from the perspective of international trade law. Past research by Fatmah Saeed Alghamdi, Baban Eulaiwi, Satam Salih Hussein, Grantley Taylor, and Lien Duong in 2024 has focused on the relationship between transfer pricing and corporate cash holdings[9] while research conducted by Dansen Yino and Ngadiman in 2025 has focused on the effect of transfer pricing, capital intensity, and leverage on tax avoidance in coal mining companies listed on the Indonesia Stock Exchange (IDX) from 2021 to 2023[10].

The primary aim of this study is to analyse of the mechanism for implementing advance pricing agreements in preventing transfer pricing disputes and analyse of obstacles in implementing advance pricing agreements in preventing transfer pricing disputes from the perspective of international trade law. An analysis of the implementation mechanism and challenges of advance pricing agreements is significant to examine because in the current era of global economic development, many multinational companies (MNC) have emerged that influence the movement of activities, money, goods, services, and even labor without borders to various parts of the world which ultimately causes transfer pricing issues in economic transactions[11]. The scientific merit of this research lies in its interdisciplinary approach between tax law and international trade law, which is expected to enrich both the theoretical understanding and practical implementation of advance pricing agreements within the framework of global tax cooperation.

## Problem Formulation

Based on the preliminary description, the author formulates several main issues examined in this paper, such as how to apply the advance pricing agreement mechanism to prevent transfer pricing disputes and what are the challenges in applying the advance pricing agreement to prevent transfer pricing disputes.

[9] Alghamdi et al., "Non-Arm's-Length Transactions, Offshore Financial Centres, Transfer Pricing Agreements and Corporate Cash Holdings: Evidence from U.S. Multinational Corporations."
[10] Dansen Yino and Ngadiman, "Transfer Pricing, Capital Intensity Dan Leverage Diproyeksikan Mampu Mempengaruhi Tax Avoidance," *Jurnal Ekonomi* 30, no. 1 (2025): 130–52, https://doi.org/10.24912/je.v30i1.2941.
[11] Ilham Hidayah Napitupulu, Anggiat Situngkir, and Chairunnisa Arfanni, "Pengaruh Transfer Pricing Dan Profitabilitas Terhadap Tax Avoidance," *Kajian Akuntansi* 21, no. 2 (2020): 133, https://doi.org/10.29313/ka.v21i2.6737.

## Methodology

The research methodology employed in this study is normative juridical research. Data collection techniques involve an extensive literature review relevant to the research topic, including laws, regulations, scholarly articles, and books. The data are analysed through classification and categorization processes tailored to each discussion's specific aspects[12]. This study constitutes legal research employing both statutory and case approaches. The statutory approach involves examining legislation including Law Number 36 of 2008 concerning Income Tax, Minister of Finance Regulation Number 172 of 2023 concerning the Application of the Principles of Fairness and Business Norms in Transactions Affected by Special Relationships, and Regulation of the Director General of Taxes Number Per-17/PJ/2020 Concerning Procedures for The Settlement of Applications, Implementation, and Evaluation of Advance Pricing Agreements. While the case approach in this paper will examine the transfer pricing case involving PT. Covestro Polymers Indonesia and its affiliate, Covestro Limited, based in Hong Kong, which was decided by the court through PUT-000257. 15/2023/PP/M.VA in 2024, and the transfer pricing case of PT VVF Indonesia, which was decided in Decision Number PUT 003888.15/2023/PP/M.XVIIIA in 2024.

## Discussion and Result

### The Mechanism for Implementation Advance Pricing Agreements as an Instrument for Preventing Transfer Pricing Disputes

The rapidly developing dynamics of globalization around the world have encouraged various innovations in many sectors of life[13]. One of the sectors that has been most significantly affected by globalization is the economic and business sector. Globalization has created an integrated economic system without national jurisdictional boundaries, resulting in cross-territorial economic activities. Consequently, the intensity and complexity of cross-border transactions conducted by companies have increased in line with the rapid pace of globalization. This situation means that it is no longer sufficient for companies to limit their economic activities to a single country[14].

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[12] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2019).
[13] Alghamdi et al., "Non-Arm's-Length Transactions, Offshore Financial Centres, Transfer Pricing Agreements and Corporate Cash Holdings: Evidence from U.S. Multinational Corporations."
[14] Ivanka Maharani SZ et al., "Pengaruh Transfer Pricing, Pajak Tangguhan Dan Pinjaman Antar Perusahaan Afiliasi Terhadap Tax Avoidance," *Jurnal Ekonomi Dan Pembangunan Indonesia* 2, no. 2 (2024): 130, https://doi.org/10.61132/jepi.v2i2.527.

Cross-border trade has significantly driven the growth of multinational companies. Multinational companies are business entities that operate through branches or subsidiaries spread across various countries outside their domicile. Establishing subsidiaries in various jurisdictions is part of a corporate strategy to increase competitiveness, maintain and expand market share, and gain access to limited resources. In practice, most of the economic activities and transactions carried out by multinational companies occur between entities that have special relationships, such as sales transactions, purchases of raw materials, provision of services, utilization of intellectual property rights, and intercompany loans[15].

Transfer pricing is a company policy in setting prices for transactions between related parties, whether related to goods, services, intangible assets, or financial transactions. There are two types of transactions in transfer pricing practices, namely intra-company transfer pricing and inter-company transfer pricing[16]. Intra-company transfer pricing refers to the setting of transfer prices between divisions within a single corporate entity, while inter-company transfer pricing refers to transactions between two entities that have a special relationship. These transactions can occur within a single country (domestic transfer pricing) or involve multiple jurisdictions or countries (international transfer pricing). In determining transfer pricing, there are three approaches as follows:

1. Market-based transfer pricing is a method that sets transfer prices based on market prices formed through the mechanism of supply and demand. This approach reflects the fair value of transactions in the free market.
2. Cost-based transfer pricing, which is a method that determines transfer prices based on the production costs or acquisition costs incurred to produce a good or service, so that the transfer price reflects the company's internal cost structure.
3. Negotiated transfer pricing is a method that sets transfer prices through a negotiation process between the transacting parties, taking into account information about market prices and production costs as the basis for decision making[17].

Transfer pricing is often used as a corporate strategy to achieve high revenues from sales. Some of the objectives of companies that implement transfer pricing are to provide added value

[15] Sany Dwita Elsha Fitri, "Pengaruh Transfer Pricing Dan Thin Capitalization Terhadap Praktik Penghindaran Pajak," *Jurnal Eksplorasi Akuntansi (JEA)* 5, no. 4 (2023): 1658, https://doi.org/10.1002/9781119198055.ch13.
[16] Wikan Isthika, Y Anni Aryani, and Doddy Setiawan, "Transfer Pricing in Indonesia: Literature Analysis," *Media Riset Akuntansi, Auditing & Informasi* 24, no. 2 (2024): 176, https://doi.org/10.25105/v24i2.18727.
[17] P. Weetman, *Management Accounting* (Prentice Hall, Pearson Education Limited. England, 2010): 446.

to management and departments, as well as to increase opportunities to maximize revenues and reduce costs. Companies usually reduce their tax burden by manipulating the prices of goods and services to avoid international taxes[18]. Therefore, it is not surprising that various companies that deliberately implement transfer pricing ignore tax compliance issues when setting transfer prices.

One of the problems faced by multinational companies is the difference in tax rates between countries. These differences in tax rates encourage multinational companies to use transfer pricing in international transactions to minimize their overall tax burden[19]. This practice allows companies to shift profits to countries with lower tax rates through pricing that does not reflect fair market conditions (arm's length principle)[20]. This practice can take the form of financial reporting manipulation, such as the transfer of income or the disproportionate allocation of costs between related parties, with the aim of making one of the business entities located in a country with high tax rates appear to be suffering losses. Thus, the company can avoid tax obligations in the country concerned, while the business group as a whole obtains greater net profits.

The type of tax most often affected by this practice is income tax. Income tax objects are divided into two categories of narrow and broad meaning. In the narrow sense, income tax objects include income such as salaries, honoraria, and business profits. Meanwhile, in a broad sense, Income Tax objects include any additional economic capacity received by taxpayers, whether from within or outside the country, which can increase the wealth of those taxpayers. In the context of transfer pricing between companies that have a special relationship, transactions are not limited to the sale and purchase of goods, but also include royalty payments, patent licenses, and various other transactions that can generate profits[21]. Therefore, all forms of income arising from such transactions are essentially income tax objects in a broad sense. However, if an entity formally reports a loss due to a transaction with a related party, then legally there is no income

[18] Hanik Devita and Badingatus Sholikhah, "The Determinants of Transfer Pricing in Multinational Companies," *Accounting Analysis Journal* 10, no. 2 (2021): 18, https://doi.org/10.15294/aaj.v10i2.45941.
[19] Shahwan, Op Cit, hlm. 735.
[20] Agus Suharsono, Nanik Prasetyoningsih, and Nur Aida Ikrima, "A Comparison of Supreme Court Justices' Legal Argumentation in Deciding Disputes on Transfer Pricing Management Fees in Indonesia," *Jurnal Jurisprudence* 14, no. 2 (2024): 219, https://doi.org/10.23917/jurisprudence.v14i2.5874.
[21] Mega Indah Permata Sari and Fatma Ayu Husnasari, "Penerapan Arm's Length Principle Dalam Praktik Abuse of Transfer Pricing Perusahaan Multinasional Di Indonesia," *RechtIdee* 17, no. 2 (2022): 352–73, https://doi.org/10.20935/AL189%0Ahttps://www.researchgate.net/publication/269107473_What_is_governance/link/548173090cf22525dcb61443/download%0Ahttp://www.econ.upf.edu/~reynal/Civil wars_12December2010.pdf%0Ahttps://think-asia.org/handle/11540/8282%0Ahttp.

tax object that can be imposed, because nominally the income does not appear in the company's financial statements.

A transfer pricing case concerns PT. Covestro Polymers Indonesia, which was decided by the Court through Decision Number PUT-000257.15/2023/PP/M.VA in 2024. PT Covestro Polymers Indonesia is a chemical raw material (polymer) distribution company that purchases all of its purchases from an affiliate, Covestro (Hongkong) Limited, and all sales proceeds are to independent parties. During the 2019 tax audit, the Directorate General of Taxes made corrections to three main issues:

1. Cost of Goods Sold (COGS) of IDR 76.965.175.132,00
2. Non-operating income of IDR l6.629.582.638,00
3. Positive fiscal adjustments of IDR 4.871.587.127,00 related to Low Value Added (intra group service) costs.

The DGT assessed that PT. Covestro Polymers Indonesia engaged in affiliate transactions that did not comply with the Arm's Length Principle, using the Resale Price Method (RPM) in its testing[22]. The Directorate General of Taxes considered that the company's gross profit margin (GPM) continued to decline despite increasing purchase volume, indicating an unfair transfer price. Furthermore, the payment of service fees to affiliates was deemed to provide no real economic benefit and was categorized as a disguised dividend payment.

Conversely, PT. Covestro Polymers Indonesia argued that the most appropriate method was the Transactional Net Margin Method (TNMM) because the company functions as a limited-risk distributor, and therefore, its performance and fairness of transactions should be measured based on operating margin, not gross profit. PT. Covestro Polymers Indonesia also confirmed that transactions with affiliates were conducted fairly, documented, and ex ante. Regarding low value-adding service costs, the company showed evidence of contracts, invoices, and economic benefits obtained from accounting, administration, and operational support services provided by affiliates such as Covestro Deutschland AG, Covestro Polymers (China), Covestro (Slovakia), and Covestro AG Germany.

[22] Desak Nyoman Lia Lestari, Tulus Harefa, and Luk Luk Fuadah, "Systematic Literature Review: The Role Of Transfer Pricing Regulations In Reducing Tax Avoidance Systematic Literature Riview: Peran Regulasi Transfer Pricing Dalam Mengurangi Penghindaran Pajak," *Jurnal Fokus Manajemen* 5, no. 2 (2025): 229.

The Tax Court deemed the DGT's corrections to the cost of goods sold and service costs untenable, as PT. Covestro Polymers Indonesia had used the appropriate Transactional Net Margin Method (TNMM), the profit margin was within a reasonable range, and the affiliated services were proven to provide economic benefits[23]. However, the correction of interest income on inter-affiliate loans of Rp16.63 billion was maintained because the loan interest rate did not conform to the arm's length range. Therefore, the Tax Court granted PT Covestro Polymers Indonesia's appeal and overturned the DGT's corrections, which was deemed inconsistent with the principles of arm's length and customary business practice.

The case of PT VVF Indonesia vs the Directorate General of Taxes (DGT) No. PUT 003777.15/2023/PP/M.XVIIIA (2024) represents a *transfer pricing* dispute highlighting the application of the *arm's length principle* and the role of *transfer pricing documentation* (TPD) in Indonesia. The DGT argued that PT VVF Indonesia's transactions with its affiliate, VVF India Ltd, did not reflect fair market value and consequently adjusted the company's 2016 corporate income tax. PT VVF Indonesia contested the adjustment, demonstrating that its *transfer pricing documentation* complied with Minister of Finance Regulation (PMK) No. 213/2016 and the OECD Transfer Pricing Guidelines, while asserting that its losses were commercially justified due to idle production capacity and market contraction[24]. The Tax Court found that the company had met its documentation requirements and that the DGT's analysis failed to consider relevant economic and functional comparability factors.

The court partially granted the taxpayer's appeal, affirming that financial losses do not necessarily indicate transfer mispricing. The ruling underscores the importance of comprehensive economic analysis, robust documentation, and consistency with international standards. Furthermore, the case demonstrates that adopting an Advance Pricing Agreement could serve as a preventive mechanism to reduce *transfer pricing* disputes in the future by ensuring greater certainty and transparency for both taxpayers and tax authorities[25].

With the emergence of case related to transfer pricing, to prevent such a recurrence, there is a procedure that taxpayers can utilize, namely an advance pricing agreement, as stipulated in

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[23] Besdy et al., "Comparison of Transfer Pricing Methods and Their Application in Disputed Tax Cases in Indonesian Courts," *Legalpreneur Journal* 2, no. 2 (2024): 202, https://doi.org/10.46576/lpj.v2i2.4402.
[24] Sausan Fajriyati et al., "Tax Management of Related Parties: A Literature Review on Transfer Pricing Practices and Regulations in Indonesia," *TOFEDU: The Future of Education Journal* 4, no. 5 (2025): 1127, https://doi.org/10.61445/tofedu.v4i5.536.
[25] Haula Rosdiana and Edi Slamet Irianto, *Pengantar Ilmu Pajak: Kebijakan Dan Implementasi Di Indonesia* (Jakarta: PT Raja Grafindo Persada, 2014): 168.

Article 18 paragraph (3a) of the Income Tax Law and Minister of Finance Regulation Number 172 of 2023 concerning the Application of the Principles of Fairness and Business Norms in Transactions Affected by Special Relationships[26]. Advance pricing agreement as defined in Article 1 point 24 of Minister of Finance Regulation Number 172 of 2023 concerning the Application of the Principles of Fairness and Business Norms in Transactions Affected by Special Relationships, is a written agreement drawn up between the DGT and the taxpayer, or between the DGT and the tax authorities of a Double Taxation Avoidance Agreement (DTAA) partner country involving taxpayers within their respective jurisdictions[27]. This agreement aims to determine in advance the criteria, methods, and parameters for determining transfer prices and/or fair value or profits used in transactions between parties that have a special relationship.

In this procedure, as stipulated in Article 55 of Minister of Finance Regulation Number 172 of 2023, the DGT has the authority to enter into Advance Pricing Agreements with taxpayers or with the tax authorities of countries that are parties to a Double Taxation Avoidance Agreement (DTAA) in order to determine fair transfer prices in accordance with the Arm's Length Principle. This agreement is valid for a certain period of time, and its implementation is based on a request submitted by domestic taxpayers[28]. Through this mechanism, the government seeks to create legal certainty and prevent transfer pricing disputes by setting fair transaction parameters in advance. As stipulated in these provisions, an Advance Pricing Agreement is an agreement between a taxpayer and the DGT regarding the fair selling price of their products to related parties. This agreement between the taxpayer and the DGT can cover several matters, including the selling price of the products, the amount of royalties, and other matters, depending on the agreement.

Through Minister of Finance Regulation Number 172 of 2023, the government established new provisions regarding the implementation of Advance Pricing Agreements as a tool to prevent transfer pricing disputes. Applications for Advance Pricing Agreements are now formally submitted directly to the DGT. Domestic taxpayers may apply for an Advance Pricing Agreement for affiliated transactions with either domestic or foreign affiliates, covering all or part of the transactions conducted during the Advance Pricing Agreement period, including the

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[26] Isthika, Aryani, and Setiawan, *Op. CIt,* hlm. 178
[27] Benny Oktis Yanurwenda, "Tinjauan Pelaksanaan Advance Pricing Agreement Di Indonesia: Studi Komparasi Dengan Beberapa Negara G-20," *Prosiding National Seminar on Accounting, Finance, and Economics* 2, no. 4 (2022): 91.
[28] Langgeng Rizky Rahmanda Tri Jatmiko Wahyu Prabowo, "Pengaruh Manajemen Laba Dan Transfer Pricing Terhadap," *Jurnal Ilmiah Fakultas Ekonomi Universitas Katolik Parahyangan* 13, no. 2 (2024): 4.

possibility of a rollback for previous tax years if certain requirements are met, such as not having expired, not having issued a tax assessment letter, and not being the subject of a tax criminal investigation[29]. Taxpayers may submit an Advance Pricing Agreement application no later than five tax years following the year in which the Advance Pricing Agreement application was submitted or for tax years prior to the Advance Pricing Agreement (rollback) period to the DGT. As stipulated in Regulation of the Director General of Taxes Number Per-17/PJ/2020 Concerning Procedures for The Settlement of Applications, Implementation, and Evaluation of Advance Pricing Agreements, advance pricing agreement applications may only be submitted by taxpayers who meet the following criteria[30]:

1. Have submitted an Annual Corporate Income Tax Return and prepared a Transfer Pricing Document (TP Doc) for the past three years
2. Are not currently undergoing tax criminal proceedings.
3. Have reported all affiliated transactions in the Annual Tax Return[31].

The application is submitted in writing to the Tax Service Office where the taxpayer is registered, accompanied by a statement of readiness to complete the documents and execute the advance pricing agreement. The DGT then reviews the completeness of the application and provides written notification within one month regarding whether or not the application can be processed. If accepted, the taxpayer is required to submit additional supporting documents within two months. The DGT then conducts a material review, including field inspections, interviews, and requests for additional data to assess the reasonableness of the transaction. After the review is complete, negotiations on the advanced pricing agreement are conducted, either unilaterally between the DGT and the taxpayer, or bilaterally through the Mutual Agreement Procedure (MAP) with the tax authorities of the Double Taxation Avoidance Agreement (DTA) partner countries. The negotiation period is a maximum of 12 months for unilateral advance pricing agreements and 24 months for bilateral advance pricing agreements. The results of the negotiations are outlined in an advance pricing agreement (for unilateral) or a joint agreement (for bilateral) as stipulated in Article 4 number 3 of Regulation of the Director General of Taxes

[29] Saraswati Aisya and Siti Nuryanah, "Tax Dispute Analysis of Transfer Pricing Case Study of Tax Court Decisions 2020-2023," *JMKSP (Jurnal Manajemen, Kepemimpinan, Dan Supervisi Pendidikan)* 9, no. 1 (2024): 482, https://doi.org/10.31851/jmksp.v9i1.14343.
[30] Gunadi, *Transfer Pricing Tinjauan Akuntansi, Manajemen, Dan Pajak* (Jakarta: PT. Bina Rena Pariwara, 1994), hlm. 18.
[31] Tirzha Carolaine Priska Suoth, "Why Does DGT Lose in Tax Disputes? Case Study on Packaged Drinking Water Company," *Jurnal Lex Et Societatis* 6, no. 1 (2018): 43.

Number Per-17/PJ/2020. The DGT then issues a decision on the implementation of the advance pricing agreement within one month after the agreement[32].

**Barriers to the Implementation of Advance Pricing Agreement in the Perspective of International Trade Law**

The application of advance pricing agreements in the perspective of international trade law is closely related to the fundamental principles underlying the global trading system, particularly in regulating cross-border transactions. These fundamental principles include:

1. Legal Certainty Principle
   Advance pricing agreements provide legal certainty for international businesses by establishing prospective transfer pricing methods that can reduce the risk of tax disputes and ensuring stability in cross-border affiliate transactions[33].
2. Fairness Principle
   Through advance pricing agreements, tax burdens are imposed proportionally and fairly, avoiding discrimination between tax jurisdictions by ensuring that transfer prices reflect fair market value in order to support equality in global business competition[34],
3. International Cooperation Principle
   Advance pricing agreements encourage collaboration between tax authorities from different countries, such as through bilateral or multilateral mechanisms, to prevent double taxation and tax avoidance practices, which are in line with international cooperation frameworks as stipulated in the OECD Transfer Pricing Guidelines[35].

Overall the integration of advance pricing agreements as a measure to prevent transfer pricing disputes with these principles strengthens the effectiveness of international trade law in facilitating free trade while maintaining the integrity of the global tax system. In the international trade system, the application of advance pricing agreement is in line with these fundamental objectives by establishing a preventive, cooperative, and fair framework for resolving transfer pricing issues in cross-border transactions.

[32] Elleanor Rigby Bangun, "Cross-Border Transfer Pricing Sebagai Tindakan Tax Avoidance," *Jurnal Program Magister Hukum FHUI* 2, no. January (2023): 1569.
[33] Mardiasmo, *Perpajakan Edisi Revisi* (Yogyakarta: Andi, 2008): 4.
[34] E. Fernando M. Manullang, "Misinterpretasi Ide Gustav Radbruch Mengenai Doktrin Filosofis Tentang Validitas Dalam Pembentukan Undang-Undang," *Undang: Jurnal Hukum* 5, no. 2 (2022): 459, https://doi.org/10.22437/ujh.5.2.453-480.
[35] Sesario Aulia, "ADVANCE PRICING AGREEMENT DALAM PERSPEKTIF HUKUM PERJANJIAN," *E-Journal Al-Syakhsiyyah: Journal of Law & Family Studies* 2, no. 1 (2020): 139.

However, in its implementation, advance pricing agreement is certainly not always carried out properly. There will always be obstacles in every policy issued, including those related to advance pricing agreement policies. In Indonesia, although advance pricing agreements have been regulated in Article 18 paragraph (3) of Law Number 36 of 2008 concerning Income Tax and Minister of Finance Regulation Number 172 of 2023 concerning the Application of the Principles of Fairness and Business Norms in Transactions Affected by Special Relationships, there are still obstacles in their implementation which will be described as follows[36]:

1. **Complexity of Taxpayer Transactions**

   The large number of transactions and the complexity of business processes make negotiations between taxpayers and tax authorities time-consuming. Each transaction undertaken by a taxpayer requires adequate supporting data, but unfortunately, finding comparable counterparts is difficult in determining transfer pricing methods[37]. Taxpayers' active participation is essential in providing relevant data throughout the process. While transfer pricing agreements offer numerous benefits, their implementation remains time-consuming due to the complexity of the cases. This complexity also prolongs the negotiation process and can potentially lead to misjudgments by both taxpayers and tax authorities.[38]

2. **Characteristics of Countries that Defend the Interests of Their Respective Countries**

   Negotiations in transfer pricing agreements are conducted through a negotiation process between the two parties. This process is not simple, especially in the implementation of bilateral transfer pricing agreements, because each Competent Authority of the relevant country must be willing to compromise in establishing a fair transfer pricing policy that does not disadvantage either party[39]. The negotiation process is often hampered by differences in characteristics between countries, as not all countries have the same level of openness in negotiations, which affects the smooth exchange of information with the tax authorities of other countries. Furthermore, differences in communication systems between

[36] Raymondo Sitanggang and Amrie Firmansyah, "Transaksi Dengan Pihak Berelasi Dan Praktik Transfer Pricing Di Indonesia," *Jurnal Pajak Dan Keuangan Negara (PKN)* 2, no. 2 (2021): 38, https://doi.org/10.31092/jpkn.v2i2.1180.
[37] Nuraini and Jakfar, *Op. Cit*, hlm. 98.
[38] Anita Wahyu Indrasti, "Pengaruh Pajak, Kepemilikan Asing, Dan Ukuran Perusahaan Terhadap Transfer Pricing," *Jurnal Akuntansi, Perpajakan Dan Auditing* 3, no. 2 (2022): 333, https://doi.org/http://doi.org/XX.XXXX/Jurnal.
[39] Rafael Tambunan and Yulianti Abbas, "Evaluasi Implementasi Analisis Kesebandingan Atas Sengketa Transfer Pricing PT OCI," *Owner* 7, no. 4 (2023): 2787, https://doi.org/10.33395/owner.v7i4.1735.

countries can also be an obstacle, given that each country has its own official communication mechanisms that cannot be ignored. Furthermore, differences in perspectives between tax authorities regarding the relationship between national law and international treaty provisions also have the potential to hinder the negotiation process regarding advance pricing agreements.

3. **Lack of Communication with Tax Authorities**

   When negotiating an advance pricing agreement, the most important aspect to consider is communication. The better the coordination between the two parties, the smoother the implementation of the advance pricing agreement. Therefore, if communication between the two parties is poor, it will impact the implementation of the advance pricing agreement. In practice, the DGT often encounters communication barriers in bilateral negotiations due to differences in distance, time, and the responsiveness of the partner country's tax authorities. Some countries even respond very slowly. To overcome these obstacles, the DGT is proactive by following up via email to maintain continuity of communication and reach a mutual agreement[40].

4. **Certainty and Equality in Cross-Border Transactions**

   One of the fundamental pillars of international trade law is the principle of non-discrimination and equal treatment. However, in the practice of advance pricing agreements, only large multinational companies are able to bear the complex administrative and documentation costs[41]. This condition has the potential to create inequality among cross-border business actors. Gustav Radbruch, in his theory of the purpose of law, states that if law is a set of general principles for human coexistence, good law must implement three main things, namely legal certainty, justice, and benefit[42]. Advance pricing agreements, as an alternative measure to prevent transfer pricing disputes, have not been able to fulfill the elements of justice and benefit in Gustav Radbruch's theory due to the high administrative costs that must be borne, which only large companies can afford[43]. With the element of justice not being fulfilled, the element of benefit also cannot

[40] Pratikto Winardi Bakhram, Hermanto Siregar, and Moch Hadi Santoso, “Skema Transfer Pricing Untuk Pengalihan Laba,” *Jurnal Aplikasi Bisnis Dan Manajemen* 7, no. 2 (2021): 385, https://doi.org/10.17358/jabm.7.2.379.
[41] Junaedy Abdillah Bauw, “Ketaatan Negara Terhadap Hukum Perdagangan Internasional,” *Refleksi Hukum* 5, no. 1 (2020): 24, https://doi.org/10.29103/sjp.v11i2.11663.
[42] Muhammad Erwin, *Filsafat Hukum* (Jakarta: PT Raja Grafindo Persada, 2012): 123.
[43] Dino Rizka Afdhali and Taufiqurrohman Syahuri, “Idealitas Penegakan Hukum Ditinjau Dari Teori Tujuan Hukum,” *Collegium Studiosum Journal* 6, no. 2 (2023): 557.

be fulfilled because the use of advance pricing agreements is only felt by a handful of large economic entities.

5. **Transparency and Confidentiality Information**

   International trade law promotes transparency as a prerequisite for economic justice[44]. However, the implementation of advance pricing agreements often conflicts with commercial data confidentiality. The absence of global standards on information disclosure hinders cross-jurisdictional data exchange and increases the likelihood of information asymmetry between countries.

6. **Limitations of the National Tax Authority's Capacity**

   From an institutional perspective, not all countries have adequate legal infrastructure and technical capacity to implement advance pricing agreements. For developing countries, the implementation of advance pricing agreements faces limitations in human resources and access to international comparables data. This creates an imbalance in the negotiating position between developing and developed countries, which can be legally categorized as a form of asymmetrical bargaining power in international economic law[45].

## Conclusion

Globalization has increased the complexity of cross-border transactions and encouraged the emergence of transfer pricing practices. Transfer pricing practices often pose the risk of tax avoidance and disputes with tax authorities, as in the case of PT Covestro Polymers Indonesia, which was decided in Decision Number PUT-000257. 15/2023/PP/M.VA of 2024 and PT VVF Indonesia, which was decided in Decision Number PUT 003777.15/2023/PP/M.XVIIIA of 2024. To prevent similar disputes, the Advance Pricing Agreement serves as an instrument that allows taxpayers and the Directorate General of Taxes to agree on transfer pricing methods in advance, thereby providing stability, legal certainty, transparency, preventing cross-border tax disputes, and strengthening the integrity of the global tax system.

[44] Idha Mutiara Sari, “Dispute Settlement of Anti-Dumping Legal Aspect in Indonesia Based on Gatt/Wto Provisions (Allegations Case Study of Dumping Wood Free Copy Paper Between South Korea and Indonesia),” *Lampung Journal of International Law* 2, no. 2 (2020): 74, https://doi.org/10.25041/lajil.v2i2.2034.

[45] Rihan Mustafa Zahri et al., “Pengaruh Profitabilitas Dan Transfer Pricing Terhadap Penghindaran Pajak: Studi Pada Perusahaan Multinasional Di Indonesia Periode 2019-2022,” *Jurnal Akuntansi AKUNESA* 13, no. 2 (2025): 146, https://doi.org/10.26740/akunesa.v13n2.p145-153.

The application of Advance Pricing Agreements in the context of international trade law is in line with the basic principles of the global trading system, namely legal certainty, fairness, and international cooperation. However, the implementation of Advance Pricing Agreements still faces various obstacles, such as the complexity of taxable transactions, differences in interests between countries, lack of effective communication with tax authorities, and unequal access and administrative costs that only large companies can afford. In addition, issues of data transparency and the limited capacity of national tax authorities are also major challenges, especially for developing countries. Overall, although Advance Pricing Agreements reflect the principles of international trade law, their effectiveness still depends on institutional capacity building, global transparency, and a commitment to cooperation between countries to create a fair, balanced, and sustainable cross-border taxation system.

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