

## Civil Legal Liability for Asset Transfers Undertaken to Avoid Tax Obligations

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### ABSTRACT

Asset transfers conducted by taxpayers to avoid tax obligations constitute a practice that has the potential to cause losses to the state. Although such actions are often carried out in a manner that appears formally lawful, they may be categorized as an abuse of law when undertaken in bad faith. This study aims to examine the forms of civil legal liability arising from asset transfers conducted for the purpose of tax avoidance. The research employs a normative juridical method using statutory, conceptual, and case approaches. The data utilized consist of primary, secondary, and tertiary legal materials, which are analyzed qualitatively. The findings indicate that asset transfers motivated by the intention to evade tax payments may give rise to civil liability through the mechanism of unlawful acts pursuant to Article 1365 of the Indonesian Civil Code, as well as through *actio pauliana* as regulated under Article 1341 of the Indonesian Civil Code. The state, as a tax creditor, possesses legal standing to file claims for the annulment of transactions that adversely affect state tax revenues. Therefore, a synergistic relationship between tax law and civil law is necessary to ensure the effectiveness of law enforcement against tax avoidance practices carried out through asset transfers.

**Keywords:** Asset Transfer; Tax Avoidance; Civil Liability



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## 1. INTRODUCING

### 1.1 Background

Taxes constitute the primary source of state revenue and play a crucial role in financing national development. Therefore, taxpayer compliance in fulfilling tax obligations is an essential component of a country's fiscal system. In practice, however, many taxpayers attempt to avoid their tax obligations through various means, one of which is the transfer of assets with the intention of evading tax liabilities, including the avoidance of asset seizure or the settlement of outstanding tax debts. Such actions are often carried out covertly and involve closely related parties, such as family members or affiliated companies, thereby creating the potential for financial losses to the state (Nurmala & Syahrizal, 2021).

Asset transfers conducted for the purpose of tax avoidance are not only a concern from the perspective of tax law but also raise significant issues within the realm of civil law, particularly regarding legal liability for unlawful acts. Under Indonesian civil law, a person who intentionally causes harm to another party may be held liable pursuant to Article 1365 of the Indonesian Civil Code, which governs unlawful acts (*onrechtmatige daad*) (Andini, 2022). As a party suffering losses through the reduction of potential tax revenues, the state possesses a legal basis to seek accountability for such actions through civil litigation. Furthermore, another civil law mechanism available to the state is the doctrine of *actio pauliana*, as stipulated in Article 1341 of the Indonesian Civil Code. This mechanism enables a creditor in this context, the state to seek the annulment of a debtor's legal act that has been carried out in bad faith and has caused prejudice to the creditor's interests.

The phenomenon of asset transfers undertaken to avoid tax obligations is not uncommon, particularly among large taxpayers who possess substantial financial resources and strong access to legal expertise. This situation highlights the existence of gaps within the tax law enforcement system, which has not yet achieved optimal synergy with civil law mechanisms. Therefore, it is necessary to strengthen the framework of civil legal liability in order to limit

opportunities for such manipulative practices and to serve as a preventive measure against systematic tax avoidance (Surya Darma, 2020).

Accordingly, the study of civil legal liability arising from asset transfers intended to avoid tax obligations is of considerable importance, both from normative and practical perspectives. Such research is essential for strengthening the protection of the state's right to tax revenues and for promoting a fair, effective, and authoritative taxation system.

## 1.2 Research Method

This study employs a normative juridical research method, which is an approach that focuses on the analysis of written legal norms, both those contained in statutory regulations and legal doctrines developed by legal scholars. Normative juridical research is conducted to understand how the law ought to be applied in addressing a particular legal issue, which in this study concerns civil legal liability arising from asset transfers undertaken to avoid tax obligations.

## 1.3 Literature Review

Several previous studies have examined similar issues, particularly regarding the relationship between civil law and tax law in the context of asset transfers. Nurmala and Syahrizal (2021), in their study, emphasized that asset transfers carried out with the intention of avoiding tax obligations have the potential to violate the principle of tax justice and may be addressed through civil law mechanisms, such as claims for breach of contract or unlawful acts. They highlighted the importance of exercising caution when assessing the motives and objectives underlying a legal act that may appear formally lawful but is carried out in bad faith.

Andini (2022) further examined the role of *actio pauliana* as a legal remedy designed to protect the rights of creditors, including the state as the holder of tax claims. She explained that in situations where a debtor (taxpayer) transfers assets with the intention of prejudicing the interests of creditors, the state has the right to seek the annulment of such legal acts through civil legal proceedings.

Meanwhile, Putra (2023) emphasized the importance of synergy between civil law and tax law to ensure effective law enforcement, particularly in addressing tax avoidance strategies carried out through legal mechanisms that appear legitimate but ultimately cause losses to the state. He suggested that the state should make greater use of civil law provisions to address violations that cannot be directly reached through tax law enforcement mechanisms.

## 1.4 Research Questions

- a. What forms of civil legal liability may arise from asset transfers carried out to avoid tax obligations?
- b. What legal basis can the state rely upon to seek accountability for such actions?
- c. What is the role of the *actio pauliana* mechanism in annulling asset transfers that cause losses to the state from a taxation perspective?

## 2. DISCUSSION

### 2.1 Civil Legal Liability Arising from Asset Transfers Intended to Avoid Tax Obligations

Asset transfers carried out by taxpayers to avoid tax obligations may give rise to civil legal consequences when such actions cause losses to the state. As a tax creditor, the state has the right to initiate civil proceedings against taxpayers when the transfer is undertaken with the intention of evading the settlement of outstanding tax liabilities. In such circumstances, liability may be pursued through the mechanism of an unlawful act (*perbuatan melawan hukum* or *PMH*) as provided under Article 1365 of the Indonesian Civil Code. Article 1365 of the Indonesian Civil Code stipulates that any act that violates the law and causes harm to another party obliges the perpetrator to compensate for the resulting damages. In the context of asset transfers intended to avoid tax obligations, where a taxpayer deliberately transfers assets to another party in order to evade the payment of taxes owed, such conduct may be classified as an unlawful act. This is because the action contains an element of intentional misconduct aimed at avoiding a legal obligation and results in financial losses to the state.

For example, when a taxpayer becomes aware that a tax assessment or tax claim will be imposed and subsequently transfers ownership of assets to family members or third parties with the intention of avoiding seizure, such conduct may be considered unlawful. Although the transfer may appear formally valid under the law, substantively it violates the principles of justice and good faith (Putra, 2023). As the injured party, the state occupies the position of a creditor and is therefore entitled to seek compensation for the losses incurred. Such practices may take various forms, one of which is the use of transfer pricing schemes by multinational corporations, whereby

income is shifted to jurisdictions with lower tax rates. A study by Napitupulu et al. (2020) demonstrates that although such strategies may not directly violate legal provisions, they can nevertheless be interpreted as actions contrary to the principles of fairness and fiscal responsibility when undertaken with the purpose of avoiding tax obligations.

Panatagama (2019) emphasizes that *actio pauliana* serves an important function in protecting the rights of creditors, including the state in its capacity as a tax collector. However, in its implementation, proving the existence of bad faith remains a major challenge. This view is supported by the findings of Makmur (2016), who argues that the evidentiary process in *actio pauliana* claims requires a high degree of scrutiny, particularly in establishing the connection between the motive behind the transaction and the losses suffered by the creditor.

On the other hand, the role of tax authorities is crucial in detecting patterns of tax avoidance of this nature. Effective prevention requires inter-agency cooperation as well as the strengthening of legal instruments, including the implementation of the General Anti-Avoidance Rule (GAAR) to limit opportunities for tax avoidance strategies. Educating taxpayers about the legal consequences of unlawful asset transfers also constitutes an important preventive measure. Putra and Rahayu (2023) note that the enforcement of laws against tax avoidance through asset transfers continues to face various challenges, both in terms of regulatory frameworks and inter-agency coordination. Accordingly, civil legal liability may serve as an effective mechanism for addressing asset transfers motivated by tax avoidance. Such measures are essential to ensuring taxpayer compliance and maintaining fiscal justice within the national legal system.

## 2.2 Legal Basis for the State to Seek Civil Liability

Within the Indonesian legal system, the state possesses a clear legal basis for pursuing civil liability against taxpayers who deliberately transfer assets in order to evade their tax obligations. Unpaid taxes constitute a debt owed to the state that must be collected, and where assets are transferred with the intention of avoiding the fulfillment of such obligations, the state, as a creditor, is entitled to seek legal remedies. The legal framework governing this issue can be found in various provisions of both civil law and tax law, which complement one another. As a tax creditor, the state has two principal civil law avenues through which it may seek accountability: Article 1365 and Article 1341 of the Indonesian Civil Code. Both provisions provide a legal foundation for either annulling transactions or claiming compensation for asset transfers that have indirectly harmed the interests of the state. According to Andini (2022), these two provisions function in a complementary manner: Article 1365 is applied when actual losses have already occurred as a result of an unlawful act, whereas Article 1341 serves as a preventive mechanism, allowing for the annulment of transactions that have the potential to prejudice the state before such losses materialize.

Article 1365 of the Indonesian Civil Code stipulates that any act that is contrary to the law and causes harm to another party obliges the perpetrator to provide compensation for the resulting damages. In cases involving asset transfers, if it can be demonstrated that a taxpayer intentionally transferred assets to a third party in order to prevent them from being seized or subjected to tax collection measures, such conduct may be classified as an unlawful act (*perbuatan melawan hukum*). In this context, the state acts as the injured party, as it loses the potential revenue that should have been collected from the taxpayer. In addition, the state may rely on Article 1341 of the Indonesian Civil Code as the legal basis for filing an *actio pauliana*, namely a claim seeking the annulment of a legal act carried out by a debtor that is detrimental to the interests of its creditor. As explained by Prasetyo (2020), *actio pauliana* is an effective civil law instrument for invalidating asset transfer transactions undertaken in bad faith by a debtor to the detriment of a creditor, including the state in its capacity as a tax creditor. This mechanism is frequently utilized in tax disputes, particularly when the transfer is carried out shortly before tax collection proceedings or tax audits are initiated.

The state also possesses an administrative legal basis through the Law on General Provisions and Tax Procedures (*Undang-Undang Ketentuan Umum dan Tata Cara Perpajakan* or Tax Procedures Law), particularly Articles 21 through 32A, which regulate the authority of the Directorate General of Taxes to collect tax debts and seize the assets of taxpayers who fail to fulfill their tax obligations. However, where such assets have been unlawfully transferred to third parties, civil law remedies such as *actio pauliana* and claims based on unlawful acts become particularly relevant. As noted by Lestari and Aditya (2021), the strengthening of the General Anti-Avoidance Rule (GAAR) within the Indonesian tax system also provides a normative basis that enables tax authorities to assess the substantive nature of a transaction.

Where a transaction is formally valid but, in substance, is undertaken solely for the purpose of avoiding tax obligations, the state may take legal action to annul or disregard the transaction. In this regard, GAAR functions as a complement to existing civil law mechanisms, thereby facilitating a more comprehensive approach to legal enforcement.

At the international level, principles embodied in initiatives such as the OECD's Base Erosion and Profit Shifting (BEPS) framework also provide moral and legal justification for states to take firm action against tax avoidance practices, including through civil legal remedies. A study by Ayu and Ramadani (2022) highlights that the exploitation of legal loopholes in cross-border business transactions may constitute a strong basis for the state to pursue civil litigation as a means of enforcing legal accountability for tax avoidance. Accordingly, the legal basis for the state to seek civil liability in relation to asset transfers motivated by tax avoidance is not confined to national civil law provisions alone but is also supported by anti-avoidance principles embedded in tax law and international legal frameworks. This demonstrates that the state possesses a solid juridical foundation for safeguarding its fiscal interests and combating manipulative practices in asset transactions.

### **2.3 The Role of Actio Pauliana in the Annulment of Asset Transfers.**

Actio pauliana Actio pauliana is one of the most important legal mechanisms available to the state for addressing asset transfers carried out in bad faith. This legal remedy enables the annulment of legal acts undertaken by a debtor (taxpayer) when such acts are intended to evade the payment of tax liabilities. In the field of taxation, actio pauliana serves as an effective legal strategy for the state to invalidate transactions that are detrimental to state revenue. Surya Darma (2020) emphasizes that the implementation of actio pauliana must be supported by evidence demonstrating intentional conduct, losses suffered by the state, and a close relationship between the taxpayer and the recipient of the transferred assets. Within the framework of Indonesian civil law, actio pauliana constitutes an important legal instrument that grants creditors, including the state in its capacity as a tax collector, the authority to seek the annulment of a debtor's actions that prejudice their interests. In cases involving tax avoidance through asset transfers, actio pauliana functions as an effective legal tool for correcting legal acts undertaken with the purpose of evading tax payment obligations owed to the state.

Taxpayers' asset transfers prior to audits or collection processes are often part of a strategy to protect assets from seizure by tax authorities. While formally valid because they are based on a civil agreement, these actions can be annulled if it can be proven that they were committed in bad faith and detrimental to the creditor. Under Article 1341 of the Civil Code, creditors can file an actio pauliana lawsuit against transactions that harm their interests if there is an element of intent and bad faith on the part of the debtor. Research by Rahman & Putri (2021) shows that in practice, the state, as a creditor in the tax context, can use actio pauliana to sue for the annulment of asset transfer transactions to third parties carried out by taxpayers in arrears. In many cases, these transactions are fictitious or conducted with affiliated parties, and the sole purpose is to avoid the state's right to collect taxes. Furthermore, a study by Lazuardi (2020) highlighted that actio pauliana is not only useful in bankruptcy or ordinary debt settlements, but is also relevant in the context of tax law as a form of protection for state rights. This lawsuit allows the state to annul legal acts that are substantively unfair, even if they formally fulfill the elements of a valid contract under civil law.

Within its implementation framework, the success of an actio pauliana is largely determined by the ability to prove two important things: first, that the act of transferring assets is detrimental to the state as the tax creditor; and second, that the recipient of the assets knew or should have known that the transaction was carried out with the intention of harming the creditor. The emphasis on bad faith is the main key in proving an actio pauliana lawsuit in court. From a tax practice perspective, the application of actio pauliana is also supported by the substance over form approach, where tax authorities can examine the substance of the transaction, not just its legal form. Handayani and Farhan (2023) state that collaboration between tax authorities and law enforcement officials is crucial in compiling evidence indicating an asset transfer intended to evade tax. Actio pauliana plays a strategic role in supporting civil tax law enforcement. This mechanism bridges the gap between the civil legal system and the state's fiscal interests, by providing space for the state to demand the cancellation of transactions that violate the principles of justice and legal certainty.

## **3. CONCLUSION**

The transfer of assets by taxpayers with the aim of evading tax obligations is an act that

not only harms state revenue but also has legal consequences in the context of civil law. Although formally, these transactions are often disguised as legitimate legal acts, their substance often indicates an intention to evade tax payment responsibility. Therefore, the state, as a creditor, has the legal standing to demand accountability for these actions through a civil lawsuit mechanism. The legal basis for demanding this civil liability can be found in Article 1365 of the Civil Code concerning unlawful acts. The state has the right to claim compensation for losses incurred due to the deliberate transfer of assets to evade tax. Furthermore, the provisions of Article 1341 of the Civil Code also provide an important basis, where the state, as a creditor, can file an *actio pauliana* to annul legal actions carried out by the debtor in this case, the taxpayer who intentionally and in bad faith aims to harm the creditor. The role of an *actio pauliana* is very strategic because it can penetrate the formalities of an agreement and determine the intent and consequences of the transaction. If it is proven that the asset transfer transaction was conducted to evade tax and in bad faith, the transaction can be annulled by a court decision. This mechanism not only protects the state's fiscal interests but also provides legal certainty and justice for the national tax system. In this context, the role of civil law is crucial as a complement to administrative and criminal sanctions in tax law enforcement. In the era of information transparency and digitalization, this legal mechanism is increasingly relevant in addressing increasingly complex tax avoidance methods. Therefore, the use of civil law channels should not be overlooked as part of a comprehensive strategy for tax law enforcement in Indonesia.

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