

## PENGATURAN DAN TANTANGAN PENERAPAN DOKTRIN *SUBSTANCE OVER FORM* SEBAGAI GENERAL ANTI-AVOIDANCE RULE DALAM PENCEGAHAN PRAKTIK PENGHINDARAN PAJAK DI INDONESIA

Oleh: Mario Jon Jordi,<sup>1</sup> Fadhilatul Hikmah<sup>2</sup>

### INTISARI

Praktik penghindaran pajak memberikan dampak negatif terhadap realisasi penerimaan negara dari sektor perpajakan. Beberapa negara telah memiliki instrumen regulasi anti penghindaran pajak yang dikenal dengan *Specific Anti-Avoidance Rule* (SAAR) dan *General Anti-Avoidance Rule* (GAAR). Saat ini, Indonesia telah memiliki SAAR yang diatur melalui Pasal 18 UU PPh. Sementara itu, keberadaan GAAR dinilai masih belum begitu jelas. Pada penelitian ini, Penulis berusaha mengidentifikasi instrumen GAAR pada kerangka peraturan pajak penghasilan di Indonesia dan tantangan penerapannya dalam menyelesaikan sengketa penghindaran pajak.

Penelitian ini merupakan penelitian normatif-empiris dan menggunakan metode penelitian kualitatif. Penulis melakukan studi kepustakaan untuk memperoleh data sekunder guna menganalisis data primer serta wawancara untuk memperkuat argumen Penulis. Pada penelitian ini, bahan penelitian dianalisis secara kualitatif kemudian disajikan secara deskriptif dan sistematis.

Hasil penelitian ini menunjukkan bahwa Indonesia telah memiliki instrumen GAAR berdasarkan Pasal 32 Peraturan Pemerintah Nomor 55 Tahun 2022 tentang Penyesuaian Pengaturan di Bidang Pajak Penghasilan (PP 55/2022). Pasal 32 ayat (1) *jo.* Pasal 32 ayat (4) PP 55/2022 memenuhi karakteristik GAAR, yakni bersifat umum dan sebagai *last resort rule* serta memenuhi elemen aktivasi GAAR, yakni adanya skema, keuntungan pajak (*tax benefit*) yang diperoleh dari skema transaksi yang dipilih, dan tujuan utama atau satu-satunya untuk memperoleh keuntungan pajak. Di samping itu, doktrin *substance over form* diposisikan doktrin yang melandasi GAAR di Indonesia. Namun, keberadaan doktrin *substance over form* sebagai GAAR tidak serta merta dapat meningkatkan efektivitas pencegahan penghindaran pajak. Tantangan penerapan doktrin *substance over form* sebagai GAAR adalah terciptanya ketidakpastian hukum karena tidak jelasnya batasan antara *permissible* dan *impermissible tax avoidance*, sifat pengaturan yang umum berpotensi menimbulkan multi-interpretasi, dan beban wajib pajak yang lebih berat untuk menerapkan doktrin *substance over form* dibandingkan otoritas pajak.

**Kata kunci:** penghindaran pajak, *substance over form*, *General Anti-Avoidance Rule*.

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<sup>1</sup> Mahasiswa Program Studi Sarjana Hukum, Departemen Hukum Pajak, Fakultas Hukum Universitas Gadjah Mada.

<sup>2</sup> Dosen Departemen Hukum Pajak, Fakultas Hukum Universitas Gadjah Mada.

## THE REGULATION AND THE CHALLENGES OF IMPLEMENTATION OF THE DOCTRINE OF SUBSTANCE OVER FORM AS GENERAL ANTI- AVOIDANCE RULE IN THE PREVENTION OF TAX AVOIDANCE PRACTICE IN INDONESIA

Oleh: Mario Jon Jordi,<sup>3</sup> Fadhilatul Hikmah<sup>4</sup>

### ABSTRACT

Tax avoidance has a negative impact on the realization of state revenue from the tax sector. Some countries already have anti-avoidance measures such as Specific Anti-Avoidance Rule (SAAR) and General Anti-Avoidance Rule (GAAR). Currently, Indonesia has SAAR which is regulated through Article 18 of the Income Tax Law. Meanwhile, the existence of GAAR is still unclear. In this study, the author seeks to identify GAAR instrument in Indonesia's income tax regulatory framework and its applicability in resolving tax avoidance disputes.

This research is normative-empirical research and uses qualitative research methods. The author conducted a literature study to obtain secondary data to analyze primary data and interviewed several tax experts to strengthen author's argument in this research. This study analyzed research materials qualitatively and then presented descriptively and systematically.

The results of this study show that Indonesia already has a GAAR which is regulated by Article 32 of Government Regulation Number 55 of 2022 concerning Adjustment of Regulations in the Field of Income Tax (PP 55/2022). Article 32 paragraph (1) *jo*. Article 32 paragraph (4) of PP 55/2022 meets the characteristics of GAAR, namely general nature and as a last resort rule as well as meets the fundamental elements of GAAR, namely the existence of schemes, tax benefits, and the main or sole purpose of obtaining tax benefits. In addition, the doctrine of substance over form is positioned as a guideline for DGT in exercising authority to redetermine the amount of tax that should otherwise be owed. However, the existence of the doctrine of substance over form as GAAR does not necessarily increase the effectiveness of tax avoidance prevention. The challenges of implementing the doctrine of substance over form as GAAR in several other countries include legal uncertainty due to unclear boundaries between permissible and impermissible tax avoidance, multi-interpretation since the regulation is general, and the higher burden on taxpayers to invoke the doctrine of substance over form compared to tax authorities.

**Keywords:** tax avoidance, substance over form, General Anti-Avoidance Rule.

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<sup>3</sup> Undergraduate Law Student, Tax Law Department, Faculty of Law Universitas Gadjah Mada.

<sup>4</sup> Lecturer at Tax Law Department, Faculty of Law Universitas Gadjah Mada.