

**SENKETA ATAS PENERAPAN *TAX TREATY* DALAM KONTRAK BAGI HASIL (*PRODUCTION SHARING CONTRACT*) ANTARA PEMERINTAH INDONESIA DAN KONTRAKTOR ASING DALAM INDUSTRI HULU MINYAK DAN GAS BUMI, DILIHAT DARI ASPEK HUKUM KONTRAK DAN HUKUM PERJANJIAN INTERNASIONAL**

**Oleh**

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**INTISARI:** Penelitian ini bertujuan untuk melakukan analisa terhadap sengketa atas penerapan *Tax Treaty* dalam Kontrak Bagi Hasil (*Production Sharing Contract*) antara Pemerintah Indonesia dan Kontraktor Asing dalam industri hulu minyak dan gas bumi, dilihat dari aspek hukum kontrak dan hukum perjanjian internasional. Penelitian ini merupakan penelitian yang bersifat yuridis normatif, yaitu meneliti asas-asas hukum perjanjian, hukum perjanjian internasional, hukum perpajakan, prinsip-prinsip dalam *tax treaty*, dan ketentuan-ketentuan dalam proses bagi hasil dalam *Production Sharing Contract*. Objek yang diteliti adalah sengketa atas penerapan PPh Pasal 26 ayat 4 (*Branch Profit Tax*), di mana Kontraktor menggunakan tarif berdasarkan *Tax Treaty*, sedangkan Direktorat Jenderal Pajak menggunakan tarif sebesar 20%. Hasil penelitian menunjukkan bahwa dalam *Production Sharing Contract* telah mengatur pengenaan tarif PPh Pasal 26 ayat 4 sebesar 20% yang telah dimasukkan ke dalam unsur bagi hasil dengan metode *gross-up*, tetapi pengenaan tarif *Branch Profit Tax* tersebut tidak secara jelas diatur dalam *Production Sharing Contract*, sehingga kontraktor asing beranggapan dapat menggunakan tarif berdasarkan *tax treaty*. Terdapat 2 (dua) rekomendasi solusi dalam menyelesaikan sengketa ini, yaitu amandemen *Production Sharing Contract* dan/atau amandemen *Tax Treaty*.

**Kata Kunci:** *Production Sharing Contract*, *Branch Profit Tax* Industri Migas, Sengketa Penerapan *Tax Treaty* di industri migas.

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**DISPUTE ON THE IMPLEMENTATION OF TAX TREATY IN  
PRODUCTION SHARING CONTRACT BETWEEN GOVERNMENT OF  
INDONESIA AND FOREIGN CONTRACTOR IN THE OIL AND GAS  
INDUSTRY, IN THE VIEWS FROM CONTRACT LAW AND  
INTERNATIONAL TREATY LAW**

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**ABSTRACT:** The research intended to analyze dispute on the implementation of Tax Treaty in Production Sharing Contract between Government of Indonesia and Foreign Contractor in the Oil and Gas Industry, in the views from Contract Law and International Treaty Law. This research is a normative juridical research which analyzed the principle of contract law, international treaty law, tax law, principle of tax treaty, and provisions in Production Sharing Contract. The object of research is the dispute on the implementation of tax treaty which Contractor applies the tax rate using Tax Treaty, while Directorate of General taxation applies the tax rate of 20%. The result of the research showing that Production Sharing Contract stipulates tax rate of Branch Profit Tax by 20%, the rate has been included in the production sharing calculation using gross-up method, however the tax rate provision is not clearly stated in Production Sharing Contract, therefore, foreign contractor assumes that tax treaty's rate can be applied for Branch Profit Tax calculation. There are 2 (two) recommendations that may settle the dispute, namely amendment of Production Sharing Contract and/or amendment of Tax Treaty.

**Keyword:** Production Sharing Contract, Branch Profit Tax in Oil and Gas Industry Migas, Dispute on the Implementation of Tax Treaty in Oil and Gas Industry.

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