

JURIDICAL ANALYSIS OF THE IMPLEMENTATION OF THE SUBSTANCE OVER FORM PRINCIPLE IN CONTRACT LAW IN INDONESIA

By

Risma Hasiholan Sinaga¹ and R.A. Antari Innaka T²

ABSTRACT

The purpose of this research is to determine and examine the application of the *Substance Over Form* Principle as a principle in the accounting field and has coherence in contract law in Indonesia in terms of the implementation of the Sale and Purchase Deed on land sales transactions.

This research is descriptive. The type of research used is normative research which is carried out in 2 (two) stages, namely library research and is equipped with field studies in the form of interviews. The analysis technique in this study was carried out using qualitative analysis methods.

The results of the research and discussion conclude that first, the regulation of the *Substance Over Form* principle is only explained in the Director General of Taxes Regulation Number PER-25/PJ/2018. The principle of *Substance Over Form* has a general meaning and its interpretation is widely used by accountants and legal experts. The principle of *Substance Over Form* in contract law cannot be implemented because contract law does not explain the meaning and arrangement of the principle. In contract law, the agreement is not based on economic events/conditions to gain profit but is based on the agreement of the parties which is legally binding and applies as law so that it fulfills Article 1320 of the Civil Code which is general in nature. The principle in determining the tax base is in accordance with tax regulations. However, in practice, the parties waive these provisions. The coherence of the *Substance Over Form* principle in contract law refers to the implementation of the agreement, namely the good faith of the parties. The sale and purchase transactions that have been carried out by the parties are formally subject to contract law, but the formation and implementation of the agreement must also comply with tax law. Second, the application of the *Substance Over Form* principle in tax disputes has fulfilled the tax obligations of PT XYZ Tbk. Taxpayers prioritize the principle of *Ne Bis Vexari Rule* which states that every action in the administration of the state is based on statutory regulations even though in its implementation the Regulation of the Director General of Taxes Number PER-25/PJ/2018 is not properly used. Third, the judge decided that this case was in accordance with the *Substance Over Form* principle, where recording and acknowledgment take precedence over legal forms. The taxpayer, in this case PT XYZ Tbk, has fulfilled his tax obligations in accordance with his rights and obligations under the tax law.

Keywords: Principle of Substance Over Form, Contract Law

¹ Risma Hasiholan Sinaga, Postgraduate Student of Master of Laws, Gadjah Mada University, Jakarta Campus

² Antari Innaka, Lecturer at the Faculty of Law, Gadjah Mada University, Yogyakarta

ANALISIS YURIDIS PENERAPAN PRINSIP SUBSTANCE OVER FORM DALAM HUKUM KONTRAK DI INDONESIA

Oleh:

Risma Hasiholan Sinaga¹ dan R.A. Antari Innaka T²

INTISARI

Penelitian ini bertujuan untuk mengetahui dan mengkaji penerapan Prinsip *Substance Over Form* sebagai asas dalam bidang akuntansi dan mempunyai koherensi dalam hukum kontrak di Indonesia dalam hal pelaksanaan Akta Jual Beli pada transaksi penjualan tanah.

Penelitian ini bersifat deskriptif. Jenis penelitian yang digunakan adalah penelitian normative yang dilakukan dalam 2(dua) tahap, yaitu penelitian kepustakaan dan dilengkapi dengan studi lapangan berupa wawancara. Teknik analisis dalam penelitian ini dilakukan dengan menggunakan metode analisis kualitatif.

Hasil penelitian dan pembahasan memberikan kesimpulan bahwa pertama, pengaturan prinsip *Substance Over Form* hanya dijelaskan dalam Peraturan Direktur Jenderal Pajak Nomor PER-25/PJ/2018. Prinsip *Substance Over Form* pemaknaannya bersifat umum dan penafsirannya banyak digunakan oleh para ahli akuntan maupun hukum. Prinsip *Substance Over Form* dalam hukum kontrak tidak dapat diterapkan pelaksanaannya dikarenakan hukum kontrak tidak menjelaskan pengertian dan pengaturan prinsip tersebut. Dalam hukum kontrak, perjanjian tidak didasarkan pada peristiwa/kondisi ekonomi untuk memperoleh keuntungan tetapi berdasarkan kesepakatan para pihak yang mengikat secara sah dan berlaku sebagai undang-undang sehingga memenuhi Pasal 1320 KUH Perdata yang bersifat umum. Prinsip dalam menentukan dasar pengenaan pajak sudah sesuai dengan peraturan perpajakan. Namun dalam prakteknya, para pihak mengesampingkan ketentuan tersebut. Koherensi prinsip *Substance Over Form* dalam hukum kontrak mengacu pada pelaksanaan perjanjian, yaitu adanya itikad baik para pihak. Transaksi jual beli yang telah dilakukan oleh para pihak secara formal tunduk pada hukum kontrak, tetapi pembentukan dan pelaksanaan perjanjian juga harus taat kepada hukum perpajakan. Kedua, penerapan prinsip *Substance Over Form* dalam sengketa pajak telah memenuhi kewajiban perpajakan PT XYZ Tbk. Wajib Pajak mengutamakan asas *Ne Bis Vexari Rule* yang menyatakan bahwa setiap tindakan dalam penyelenggaraan negara didasarkan pada peraturan perundang-undangan meskipun dalam pelaksanaannya Peraturan Dirjen Pajak Nomor PER-25/PJ/2018 kurang tepat digunakan. Ketiga, hakim memutuskan perkara ini sudah sesuai dengan asas *Substance Over Form* dimana pencatatan dan pengakuan didahulukan dari pada bentuk hukum. Wajib Pajak dalam hal ini PT XYZ Tbk telah melaksanakan pemenuhan kewajiban perpajakannya sesuai dengan hak dan kewajibannya dalam undang-undang perpajakan.

Kata Kunci: Prinsip Substance Over Form, Hukum Kontrak

¹ Risma Hasiholan Sinaga, Mahasiswa Pascasarjana Magister Ilmu Hukum Universitas Gadjah Mada, Kampus Jakarta

² Antari Innaka, Dosen Fakultas Hukum Universitas Gadjah Mada, Yogyakarta