

# Sengketa Perpajakan Dalam Masalah Beneficial Ownership dan Tinjauannya Dari Perspektif Hukum Kontrak = Tax Disputes in Beneficial Ownership Issues and Their Review from the Perspective of Contract Law

Gunawan Setiyaji, author

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## Abstrak

Sengketa pajak kerap kali terjadi dengan isu utama yang menjadi permasalahan hukum adalah mengenai definisi istilah Beneficial Owner dan penentuan siapa yang menjadi Beneficial Owner tersebut. Bagaimana penentuan Beneficial Ownership dalam penyelesaian sengketa di tingkat Pengadilan Pajak dan Mahkamah Agung menjadi hal yang sangat urgent untuk diteliti. Dari beberapa putusan pengadilan pajak dan Mahkamah Agung terdapat beragam pertimbangan hakim dalam menentukan beneficial ownership. Selanjutnya, evaluasi atas putusan pengadilan tersebut sebagai bahan untuk perbaikan regulasi yang berpotensi menimbulkan sengketa berulang, serta untuk perbaikan implementasi di sisi hulunya. Dalam hal ini, penerapan konsep Beneficial Ownership sangat penting dalam memastikan penggunaan fasilitas penurunan tarif dalam Tax Treaty agar tidak disalahgunakan. Oleh karena itu, penulis hendak melakukan analisis terkait konsep beneficial owner ditinjau dari aspek perpajakan dan perspektif hukum kontrak serta menganalisis sikap Hakim dalam memutuskan sengketa pajak dengan memperhatikan pertimbangan hukum kontrak terhadap status kepemilikan atas manfaat suatu pembayaran atau beneficial owner berdasarkan ketentuan yang berlaku baik dalam konteks hukum domestik maupun internasional. Penelitian yang dilakukan untuk menjawab pertanyaan tersebut adalah penelitian yuridis normatif, yang difokuskan untuk mengkaji penerapan kaidah-kaidah atau norma-norma dalam hukum positif. Penulis kemudian menemukan bahwa sikap Hakim dalam memutuskan sengketa pajak sebagaimana termuat dalam Putusan Pengadilan Pajak Nomor Put 59881/ PP/M.IIB/13/2015, tanggal 26 Februari 2015 meskipun telah memperhatikan pertimbangan konsep Perpajakan Internasional namun terdapat penerapan secara tidak tepat dari prinsip hukum kontrak terhadap status kepemilikan atau Beneficial Ownership atas manfaat suatu pembayaran berdasarkan ketentuan yang berlaku baik dalam konteks hukum domestik maupun internasional.

.....Tax disputes often occur with the main issue that becomes a legal issue regarding the definition of the term Beneficial Owner and the determination of who is the Beneficial Owner. How to determine the Beneficial Owner in resolving disputes at the level of the Tax Court and the Supreme Court is a very urgent matter to study. From several decisions of the tax court and the Supreme Court, there are various judges' considerations in determining beneficial ownership. Furthermore, evaluation of the court decision as material for improving regulations that have the potential to cause repeated disputes, as well as for improving implementation on the upstream side. In this case, the application of the Beneficial Owner concept is very important in ensuring the use of the reduced rate facility in the Tax Treaty so that it is not abused. Therefore, the author wishes to conduct an analysis related to the concept of beneficial owner in terms of the taxation aspect and the perspective of contract law and analyze the attitude of judges in deciding tax disputes by taking into account contract law considerations regarding the status of ownership of the benefit of a payment or beneficial owner based on the provisions that apply both in the context of domestic and international law. The research conducted to answer this question is normative juridical

research, which is focused on examining the application of the principles or norms in positive law. The author then finds that the judge's attitude in deciding tax disputes which is as contained in the Tax Court Decision Number Put 59881/PP/M.IIB/13/2015, dated 26 February 2015, even though they have paid attention to considerations of the concept of International Taxation but there is an inappropriate application of legal principles contract on the status of ownership of the payment benefits based on the provisions that apply both in the context of domestic and international law.