

# Analisis penerapan prinsip substance over form dalam penentuan status beneficial owner atas transaksi pembayaran bunga sebagai upaya pencegahan penyalahgunaan perjanjian Penghindaran Pajak Berganda (P3B) Indonesia-Belanda: studi kasus putusan PT X = Analysis of the application of the substance over form principle in determining beneficial owner status in interest payment transactions as an effort to prevent abuse of the Indonesia-Netherlands tax treaty: case study of X Company

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## Abstrak

Salah satu kasus sengketa mengenai beneficial owner yang terjadi di Indonesia adalah kasus PT X yang melakukan transaksi pinjaman bunga dengan perusahaan MFBV di Belanda. Untuk mengatasi sengketa tersebut, prinsip substance over form dapat diterapkan untuk menentukan status beneficial owner. Tujuan dari penelitian ini adalah untuk menganalisis penerapan ketentuan dalam P3B untuk menentukan interpretasi pengertian beneficial owner pada kasus PT X serta menganalisis penerapan prinsip substance over form dalam penentuan status beneficial owner dalam mencegah penyalahgunaan P3B Indonesia-Belanda pada kasus PT X. Metode penelitian yang digunakan dalam penelitian ini adalah teknik analisis data kualitatif. Hasil dari penelitian ini menunjukkan bahwa dalam menginterpretasikan definisi beneficial owner di kasus PT X perlu merujuk kepada ketentuan domestik, dan juga dapat mengacu ke dokumen eksternal lainnya. Prinsip substance over form dalam kasus ini diterapkan melalui keputusan hakim yang tidak menggunakan Surat Keterangan Domisili (SKD) sebagai alat untuk menentukan status beneficial owner, melainkan dengan melihat kepada substansi dari perusahaan MFBV di Belanda. Di sisi lain, terdapat juga keputusan hakim yang mengedepankan SKD karena keputusan hakim terikat dengan adanya alat bukti dan peraturan yang ada juga masih belum cukup kuat mengatur mengenai penerapan substance over form dalam menentukan status beneficial owner. Atas permasalahan tersebut, saran yang diberikan adalah pemerintah Indonesia perlu menyusun kesepakatan untuk mengatur dengan jelas mengenai beneficial owner dalam P3B, serta membuat peraturan domestik mengenai beneficial owner yang lebih rinci dan konstruktif dengan berlandaskan prinsip <em>substance over form di tingkat peraturan yang lebih tinggi.

.....One of the dispute cases regarding the beneficial owner that occurred in Indonesia was the case of X Company which carried out interest loan transactions with an MFBV company in the Netherlands. To resolve the dispute, the principle of substance over form can be applied to determine the beneficial owner status. The purpose of this study is to analyze the application of the provisions in the Tax Treaty to determine the interpretation of the meaning of beneficial owner in the case of X Company and to analyze the application of the principle of substance over form in determining the status of beneficial owner in preventing misuse of the Indonesian-Dutch Tax Treaty in the case of X Company. The research method used in This research is a qualitative data analysis technique. The results of this study indicate that in interpreting the definition of beneficial owner in the case of X Company, it is necessary to refer to domestic provisions, and may also refer to other external documents. The principle of substance over form in this case was applied through a judge's decision not to use a Certificate of Domicile (CoD) as a tool to determine the

beneficial owner status, but by looking at the substance of the MFBV company in the Netherlands. On the other hand, there is also a judge's decision that puts forward the CoD because the judge's decision is bound by the existence of evidence and the existing regulations are still not strong enough to regulate the application of substance over form in determining beneficial owner status. Regarding these problems, the advice given is that the Indonesian government needs to draw up an agreement to clearly regulate beneficial owners in the Tax Treaty, as well as make domestic regulations regarding beneficial owners that are more detailed and constructive based on the principle of substance over form at a higher regulatory level.