

Analyzing General Anti-Avoidance Rule (GAAR) Policy in Indonesia

Zulfa Royani¹

Yulianti²

^{1,2}Fakultas Ekonomi dan Bisnis Universitas Indonesia, Indonesia

*Correspondences: zulfaroyani@gmail.com

ABSTRACT

The General Anti-Avoidance Rule (GAAR) provision, rooted in the substance over form principle, has been codified in the HPP Law and Government Regulation No. 55/2022. Much of the prior research on GAAR was conducted before the enactment of these regulations. To address this gap, the present study aims to assess the legal certainty of Indonesia's GAAR as it pertains to the substance over form principle and offers recommendations for improving the law in this area. This study adopts a qualitative research methodology, utilizing a case study approach that includes a review of relevant literature and interviews with regulators and stakeholders. The findings reveal that the GAAR provision outlines three specific conditions under which it can be applied. However, the provision does not explicitly state that obtaining a tax benefit must be the primary purpose of the transaction, leaving some ambiguity. To enhance the clarity and effectiveness of the GAAR, the implementing guidelines should emphasize this clause and provide clear definitions for "transaction," "tax benefit," and the "purpose test." Whether these terms are interpreted broadly or narrowly should align with the intended scope of Indonesia's GAAR.

Keywords: Tax Avoidance; General Anti-Avoidance Rule; Substance Over Form Principle

Analisis Kebijakan GAAR di Indonesia

ABSTRAK

Ketentuan GAAR melalui prinsip substansi mengungguli bentuk telah disahkan dalam UU HPP dan PP 55/2022. Sebagian besar penelitian sebelumnya tentang GAAR dilakukan sebelum berlakunya peraturan tersebut. Untuk mengisi kesenjangan ini, penelitian ini bertujuan untuk menganalisis kepastian hukum GAAR di Indonesia dan memberikan rekomendasi mengenai cara menyempurnakan undang-undang di bidang ini. Dengan menggunakan penelitian kualitatif dengan pendekatan studi kasus, penelitian ini melakukan studi literatur dan wawancara dengan regulator dan pemangku kepentingan terkait. Hasil penelitian menunjukkan bahwa ketentuan GAAR ini telah mengatur tiga kondisi dimana GAAR dapat diterapkan. Namun, klausul bahwa manfaat pajak merupakan tujuan utama transaksi masih belum disebutkan secara pasti dalam ketentuan ini. Peraturan pelaksanaannya harus menekankan klausul ini serta menentukan definisi transaksi, definisi manfaat pajak, dan pengujian tujuan dengan cakupan luas atau sempitnya yang tergantung pada maksud yang diberikan kepada GAAR Indonesia.

Kata Kunci: Penghindaran Pajak; General Anti-Avoidance Rule; Prinsip Substance Over Form

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INTRODUCTION

According to the OECD Report (2023), Indonesia's tax ratio is among the lowest in the Asia-Pacific region. From 2007 to 2020, Indonesia's tax ratio ranged between 10-13% (OECD, 2023), significantly below the regional average of 19.1% and the OECD average of 33.5%. This indicates that Indonesia's tax revenue remains low. Finance Minister Sri Mulyani attributed this low tax ratio to gaps in tax policy and the relative ease of tax avoidance in the country (Kurniati, 2020). The Directorate General of Taxes (DGT) also acknowledged ongoing difficulties in addressing aggressive tax avoidance (Ministry of Finance, 2021).

From the perspective of agency theory, first introduced by Jensen & Meckling (1976), tax avoidance can reduce tax liabilities and increase shareholder value (Boussaidi & Hamed-Sidhom, 2020). Rational taxpayers often seek to minimize their economic costs, including tax liabilities. Unlike tax planning, tax avoidance involves exploiting loopholes in tax laws to reduce the tax burden, often in ways that present a moral hazard (Martatilova, 2009) and contravene the spirit and intent of the legislature (Kessler, 2004). The goal of tax avoidance is to lower tax liability by identifying and abusing legal gaps (Sandmo, 2005).

There are two primary mechanisms to combat tax avoidance: the Specific Anti-Avoidance Rule (SAAR) and the General Anti-Avoidance Rule (GAAR). As noted by Wijaya & Kusumaningtyas (2020), countries may choose to implement SAAR, GAAR, or both. Indonesia currently employs SAAR to combat tax avoidance (Putra & Rahayu, 2023), though these rules are seen as weakening over time if not updated (Rahayu, 2010). In response, Indonesia has introduced GAAR to prevent abusive tax avoidance, codified in Law No. 7 of 2021 (the Law on Harmonization of Tax Regulations, or HPP Law) under Article 18. Government Regulation No. 55 of 2022 further ensures the legal certainty of GAAR's implementation, which relies on the substance over form principle to empower tax authorities to address tax avoidance.

Cunningham & Repetti (2004) describe this principle as taxing transactions based on their economic reality rather than their legal form. Explicitly incorporating such principles into the interpretation of tax laws demonstrates a commitment to combating aggressive tax avoidance (Tooma, 2008). GAAR is thus expected to reinforce the substance over form principle within Indonesia's tax regulations (Ministry of Finance, 2021).

GAAR is designed as an enforcement tool to address tax avoidance that, while technically adhering to the letter of the law, violates its intent and spirit (Cowx & Kerr, 2023). Unlike SAAR, which targets specific cases, GAAR applies broadly to anticipate tax avoidance schemes that may not yet be covered by existing regulations (Arnold, 2017). Given that SAAR cannot detect all abuses, GAAR serves as an essential component of modern tax systems (Freedman, 2014). When effectively implemented, GAAR can significantly strengthen anti-tax avoidance measures in Indonesia (Putra & Rahayu, 2023; Sitompul, 2022).

Despite frequent adjudication, the concepts underlying GAAR remain unclear (Nuwagba, 2013). GAAR can impede taxpayers' ability to pursue commercial transactions and capitalize on business opportunities (Waerzeggers & Hillier, 2016). Additionally, critics argue that the broad discretion granted in interpreting business motives leads to significant legal uncertainty for taxpayers

(DDTC, 2019). The absence of detailed implementation regulations allows for subjective interpretations, increasing the likelihood of inconsistent judicial decisions in tax avoidance disputes (Hapsari & Irawan, 2022). Chandrasari (2023) further warns that the application of GAAR may escalate the number of tax disputes in Indonesia.

The effectiveness of GAAR in achieving its objectives depends heavily on both the design of the GAAR regulations and the administrative capacity of the tax authorities (Waerzeggers & Hillier, 2016). The challenges of creating a well-structured regulatory framework and maintaining a competent tax administration make it difficult for developing countries to implement GAAR effectively (CIAT, 2022). This lack of clarity has been so significant that the OECD has recommended additional legislation to clarify when and how GAAR should be applied (Nuwagba, 2013).

In addition to the issue of clarity, the application of the substance over form doctrine under GAAR has not necessarily enhanced the effectiveness of tax avoidance prevention (Jordi & Hikmah, 2023). Tax authorities often build their cases by extensively investigating the substance of transactions rather than their legal form (Tooma, 2008). However, the Ministry of Finance (2021) notes that the Directorate General of Taxes (DGT) frequently loses in the Tax Court when disputes hinge on the substance over form principle. Tax Court judges tend to prioritize the formal legal structure of transactions, relying on explicit provisions in the legislation (Ministry of Finance, 2021). This principle remains one of the most complex and controversial because courts do not consistently apply rules in determining when to uphold or disregard the legal form chosen by taxpayers (Tooma, 2008).

A prominent tax avoidance case that has garnered public attention is the dispute between Indofood International Finance Ltd and JP Morgan Chase Bank N.A., London Branch. In this case, the UK Supreme Court ruled that Indofood International Finance Ltd, a subsidiary of PT Indofood Sukses Makmur Tbk domiciled in Mauritius, engaged in tax avoidance through bond issuance. Other examples include tax evasion allegations involving PT PLN (Persero) and PT Indah Kiat Pulp and Paper, Tbk. Both companies were accused of using special purpose vehicles—Majapahit Finance BV in the Netherlands and Indah Kiat Finance BV, respectively—to carry out tax avoidance schemes. In these cases, the DGT invoked the substance over form principle to determine the beneficial owner. However, unlike the UK ruling, the Indonesian Supreme Court ultimately overturned the DGT's correction.

The general principle, both historically and currently, is that taxpayers are free to organize their affairs in the most tax-efficient manner possible (Nuwagba, 2013). GAAR is not intended to apply to legitimate commercial transactions but rather to prevent abusive tax avoidance (Arnold, 2017; Darussalam & Septriadi, 2017). Therefore, it is essential for GAAR to distinguish between legitimate and abusive transactions (Arnold, 2017; Waerzeggers & Hillier, 2016). According to Arnold (2017), GAAR typically applies to a transaction or arrangement if three key conditions are met: (1) the transaction generates a tax benefit, (2) the sole, main, or one of the main purposes of the transaction is to obtain that tax benefit, and (3) the transaction abuses the intent of the relevant tax provisions. These conditions form

the core of most GAAR frameworks, including definitions for "transaction," "tax benefit," and the purpose test (Arnold, 2017).

First, there must be a "transaction." It is often critical for tax authorities to have a degree of flexibility in defining and identifying what constitutes a "transaction" (Waerzeggers & Hillier, 2016). Second, the transaction must result in a "tax benefit." An analysis is conducted to determine whether the steps taken by the taxpayer legitimately grant such a benefit (CIAT, 2022). GAAR should not apply if no tax avoidance is evident (Arnold, 2017). Finally, most GAARs include some form of a purpose test. If the arrangement's primary or one of its primary objectives is not to obtain a tax benefit, GAAR does not apply. However, if the main purpose is to secure a tax benefit, GAAR will apply unless the transaction aligns with the underlying policy of the tax law (Arnold, 2017). To avoid stifling commercial activity, it is crucial that tax authorities apply the purpose test objectively (Waerzeggers & Hillier, 2016).

Previous research on GAAR in Indonesia has explored the ideal design framework for the rule (Chandrasari, 2023; Hapsari & Irawan, 2022; Suryani & Devos, 2016; Wijaya & Kusumaningtyas, 2020). These studies were conducted prior to the enactment of Government Regulation No. 55/2022 and have not taken the latest provisions into account. As of now, no implementation regulations have been established to explain the specifics of these provisions. The novelty of this research lies in its focus on providing recommendations for the technical implementation of GAAR, based on the three conditions for its application outlined by Arnold (2017). This study will assess the certainty of Indonesia's GAAR, particularly with respect to the substance over form principle, and offer suggestions for refining the legal framework in this area.

RESEARCH METHODS

This research employs a qualitative case study approach to provide recommendations for the Directorate General of Taxes (DGT), particularly the Directorate of International Taxation, which is responsible for formulating policies related to international tax regulations and the technical implementation of GAAR. Qualitative research is an approach used to explore and understand how individuals or groups interpret social or human issues (Creswell & Creswell, 2018). Data for this study was collected through a comprehensive literature review, including articles, books, journals, and government regulations. To deepen the analysis of GAAR, in-depth interviews were also conducted. Semi-structured interviews were chosen as they allow for the collection of unique insights that can vary among interviewees (Stake, 1995).

This study aims to capture various perspectives from both policymakers and those involved in the implementation of tax regulations. Informants were selected based on their knowledge of the research topic and their direct involvement in GAAR implementation (Neuman, 2014). By considering these diverse viewpoints, the research aims to formulate recommendations that are representative of all relevant stakeholders.

Interviews were conducted with officials from the Directorate General of Taxes and the Fiscal Policy Agency of the Ministry of Finance (MoF), both of which play a key role in policy formulation and regulation. On the implementation side,

interviews were held with tax practitioners who represent clients with complex transactions that may be impacted by GAAR regulations. Academics were also consulted to provide a neutral perspective on the development of GAAR. Additional input was gathered from tax officials, including tax auditors and objection reviewers, as well as judges, to further enrich the analysis. The interviews were conducted through both in-person and online meetings in March, April, and May 2024. The details of the research informants are presented in Table 1.

Table 1. Informants of The Study

No	Informant	Code	Unit	Role	Total
1	Analyst at The Directorate of International Taxation	DGT Analyst	Directorate General of Taxes, MoF	Regulator	1
2	Analyst at Center for State Revenue Policy	FPA Analyst 1,2	Fiscal Policy Agency, MoF	Regulator	2
3	Tax Auditor	TaxAuditor 1, 2, 3	Tax Office	Tax Official	3
4	Objection Reviewer	Reviewer 1, 2	Directorate Objection and Appeal, Tax Office	Tax Official	2
5	Tax Court Judge	Judge	Tax Court	Judicial	1
6	Practitioner	Practitioner 1, 2	Tax Consultant	Taxpayer Advisor	2
7	Academics	Academic 1, 2	International Taxation Lecturer	Neutral	2

Source: Research Data, 2024

After collecting the data, this research employed qualitative descriptive analysis techniques to interpret the findings. Thematic analysis was also applied, allowing for the identification of patterns or themes emerging from the qualitative data (Maguire & Delahunt, 2017). The conclusions were drawn from this thematic analysis and used to develop recommendations for the technical implementation of GAAR.

RESULT AND DISCUSSION

In 2021, the establishment of GAAR principles gained a clear regulatory foundation, providing a structured framework for preventing tax avoidance. This commitment to drafting specific regulations regarding GAAR is codified in the HPP Law, particularly in the Elucidation of Article 18, which serves as a guideline for addressing tax avoidance practices.

"The government has the authority to prevent tax avoidance practices as an effort by taxpayers to reduce, avoid or postpone the payment of taxes that should be owed which is contrary to the aims and objectives of statutory provisions in the field of taxation. One way to avoid tax is by carrying out transactions that are not in accordance with the actual situation which is contrary to the principle of substance over form, namely the recognition of economic substance above its formal form."

This authority is further clarified in Government Regulation No. 55/2022, Article 32, paragraph (4), which states that if tax avoidance cannot be addressed through the SAAR mechanism, the Directorate General of Taxes (DGT) may reassess the tax liability based on the substance over form principle. This provision allows tax authorities to apply GAAR as a last resort. However, debate persists regarding the legality and enforceability of GAAR under this provision.

In terms of GAAR regulations in Indonesia, all informants agreed that Indonesia has not yet enacted a statutory GAAR. While the substance over form principle is employed as a guideline, there is no specific article in the law that directly addresses GAAR. Since the GAAR clause exists only in the explanatory section of the law, taxpayers may challenge DGT's claims of violations, questioning which specific legal provision applies. The absence of a dedicated article means that Indonesia's regulations do not align with a statutory GAAR framework, as it is not explicitly codified in a separate legal provision.

"Yes, that's why, as I said earlier, Indonesia does not yet have something called statutory GAAR. It must be strictly regulated by law. If, for example, Indonesia really wants to have a statutory GAAR, it must be regulated in the body of the regulation itself. Not only in explanations such as the current principle of substance over form." (Practitioner 1)

A DGT analyst also acknowledged that Indonesia does not yet have a statutory GAAR. This is evident in the authority granted to apply the substance over form doctrine to combat tax avoidance. However, the presence of general anti-avoidance provisions, as a fallback when specific anti-avoidance rules cannot be applied, is not explicitly mentioned in the Elucidation of Article 18. While GAAR provisions are included in Government Regulation No. 55/2022, they remain closely tied to the substance over form principle. According to Law No. 12 of 2011 on the Formation of Legislative Regulations, the explanatory section is considered an integral part of the law, thus making these explanations legally binding. Therefore, FPA Analyst 1 contends that the GAAR provisions in the Elucidation of Article 18, along with the relevant implementing regulations, are still enforceable.

The principle of substance over form has been applied in Indonesian tax practice, albeit implicitly. FPA Analyst 1 noted that GAAR arises from the recognition that lawmakers face challenges in defining every possible tax transaction scheme, given the many variations and the continuous evolution of such schemes, which can be exploited. As a result, GAAR grants discretionary authority to determine whether a transaction is abusive, relying, among other principles, on the substance over form doctrine. However, when such provisions are explicitly codified in national legislation, it is referred to as statutory GAAR.

"Before the existence of the HPP law, it had not been stated clearly and explicitly, only implicitly. Because substance over form is a judicial doctrine. What is clear is that it is generally not stated explicitly." (FPA Analyst 1)

All informants concurred that in taxation, the principle of substance over form means that the legality of a transaction should not override its economic substance. This principle is clear in identifying the types of transactions it targets,

including those that are part of tax avoidance schemes, lack substantial economic effect, or where the legal form does not reflect the underlying substance (Nuwagba, 2013). Numerous tax avoidance cases relate to this principle. According to Academic 2, while the concept is straightforward, its application is broad. The Directorate General of Taxes (DGT) frequently applies the substance over form principle. For Tax Auditors and Objection Reviewers, it also offers an opportunity to make corrections based on the actual substance of a transaction.

The formal legalization of this principle would provide auditors with greater discretion in addressing transaction schemes that are not explicitly covered by existing tax regulations. This can help prevent tax avoidance by taxpayers and provide a solid framework for the DGT to exercise its authority effectively.

"The guidelines/procedures for how to prove this principle are left to the inspection techniques or audit techniques owned by the auditors. The advantage is that it gives the auditor the opportunity to make corrections based on substance." (Tax Auditor 1)

In addition to the DGT, the judge informant also noted that the substance over form principle is applied when deciding tax dispute cases. However, under Article 69, paragraph (1) of the Tax Court Law, judges adhere to the principle of free evaluation of evidence, meaning they maintain independence, and their decisions may differ from those of other judges. In the context of GAAR's substance over form principle, courts do not consistently apply rules when determining whether to uphold or disregard the legal form chosen by the taxpayer (Tooma, 2008). The judge informant explained that courts consider specific facts and circumstances when deciding whether to disallow a transaction under this principle.

Academic 1 emphasized the advantage of using the substance over form principle within GAAR due to its general and logical nature. Its generality means it can be applied to various types of transactions or schemes. Practitioner 1 drew an analogy with the term "generic drugs," suggesting that GAAR can address transaction schemes that SAAR cannot prevent, serving as a last-resort anti-avoidance tool. The principle is also logical, allowing for the true substance of a transaction to be revealed through the analysis of its flow. FPA Analyst 1 added that the principle of substance over form is increasingly adopted internationally and is already recognized and applied in Indonesia. She noted that using unfamiliar principles would complicate enforcement in the country.

However, while the types of transactions targeted by this principle are identified, the definition of a "tax avoidance scheme" remains vague (Nuwagba, 2013). FPA Analyst 1 pointed out that, since this principle is applied on a case-by-case basis, interpretations will naturally vary. Moreover, proving that the economic substance of a transaction differs from its legal form is often very challenging. Practitioner 1 noted that the substance over form test involves two key elements: motives and tax benefits. A taxpayer's motives are inherently subjective, while tax assessments are generally based on objective facts rather than intentions (Arnold, 2017). It is possible for a transaction to have legitimate business substance beyond tax avoidance. Regarding tax benefits, the principle should be applied only when actual benefits are obtained, not based on assumptions. Tax auditors also acknowledged that proving these elements in practice is quite

difficult. Practitioner 1 further noted that the subjectivity of tax auditors can influence how the substance over form principle is interpreted in the field.

"So, in substance over form there are two elements that are tested. The first is the examination of motives, here there is often debate. The regulations will later use that the only motive is tax avoidance or one of the motives is tax avoidance or tax savings. It could be that a transaction that has business substance or a bona fide transaction also has a tax saving element. ... GAAR can be implemented only when there are clear tax benefits to be gained. So, if it is an invention, a conjecture, then GAAR should not be applicable. Well, maybe the difficulty is the first one in testing the tax benefit, because it must be proven first. Well, this might also be difficult in the field. Then also test the purpose of a transaction. We must prove that there is a tax saving purpose here. Of course, it will be difficult to prove it in the field and subjectively, you could say that GAAR creates uncertainty from a business perspective." (Practitioner 1)

However, the direction for Indonesian GAAR settings will be detailed and rigid. FPA Analyst 1 tended to arrange it in detail. If simple means are not detailed, it will open greater opportunities for interpretation due to ambiguity.

"If we look at Australian and Canadian GAAR, they are detail. These two country GAARs can be used as references. ... That's why if we have a GAAR for the first time, with our taxpayers' characteristics, there are concerns, maybe because of the experience of different treatment even though the rules are clear. So, if you want to implement it, you have to be detailed." (FPA Analyst 1)

Academic 1 criticized Indonesian tax system which adheres to self-assessment. In this system, taxpayers are given the trust to carry out their tax obligations. If it turns out that the DGT feels that there is indeed a violation of substance over form principle, which means that there are indications of incorrect tax reporting, then it is the DGT's duty to prove this. DGT needs to prove what he postulates. Of course, this is not easy because there is asymmetric information for the DGT. In practice, it is difficult to know the true substance of transactions, because taxpayers are the ones who best understand the business processes of their businesses. Tax Auditors informants also emphasized that they are guided by the need for two pieces of evidence to make corrections. If this evidence is not found, the tax auditor will not make corrections. This is related to the court's frequent cancellation of DGT corrections due to lack of evidence.

"When you are sure, you can get at least two evidences. This principle must have evidence support. In practice, it difficult to prove." (Tax Auditor 2)

In the Elucidation to Article 18, it is stated that "... tax avoidance practices as an effort by taxpayers to reduce, avoid or postpone the payment of taxes that should be owed which is contrary to the aims and objectives of statutory provisions in the field of taxation". FPA Analyst 1 said that this article has characteristics of GAAR, including transaction, tax benefit, and abusive in nature. Arnold (2017) stated that if three conditions are fulfilled, a transaction or arrangement is subject to a GAAR. This clause met Arnold (2017) first and third condition when GAAR can applied, the arrangement or transaction outcomes in a tax benefits and abuse or conflict with the fundamental objectives of the relevant statutory provisions. But for the second condition, DGT Analyst emphasized that clause "main purposes of transactions and schemes is to obtain tax benefits" still not explicitly stated in this provision.

"GAAR must make tax objectives one of the main objectives at least. The transaction was made in such a way because the tax motive was strong." (DGT Analyst)

Tax avoidance scheme in Elucidation Article 18 HPP Law only identified as “... an effort by taxpayers to reduce, avoid or postpone the payment of taxes”. This definition leaves uncertainty to Taxpayer as to what other type of transaction may be included. According to Practitioner 1, this frequently results in uncertainty for the business. In GAAR implementing regulation, he suggests that the clause “*main purposes of transactions and schemes is to obtain tax benefits*” should be adopted. It is additionally recommended, according to FPA Analyst 1, that the guidelines should include the factors to consider when figuring out whether tax avoidance was the main purpose.

GAAR must be applied only on unacceptable tax avoidance (Arnold, 2017). FPA Analyst 1 said that tax avoidance cannot be defined, but it should be objective criteria to determine the scope of unacceptable tax avoidance. So instead of defining what tax avoidance is, Practitioner 1 revealed that other countries try to explain the characteristics of transactions, schemes, or arrangements that are considered tax avoidance.

"We choose not to define it, but there must be objective criteria. Yes, if there isn't one, how will the taxpayer know whether what he is doing is acceptable or not." (FPA Analyst 1)

Then, the scope of GAAR should be applied to a combination of transactions that may include an entire arrangement or series of transactions (Suryani & Devos, 2016). According to FPA Analyst 1 and Practitioner 1, transactions also tend not to be defined, but must be stated clearly. This includes transactions, arrangements, agreements, and so on.

"Looking at GAAR is not just a standalone transaction. It could also only be discovered after we know the helicopter view. We know a series of transactions between group members. If we look at standalone transactions, we will not necessarily find tax avoidance there. It was only discovered after we found out that there was a setting on it. So GAAR must clearly be called series of transactions." (FPA Analyst 1)

GAAR can use the IMF Sample GAAR uses the term “*scheme*” which is defined as “*includes any course of action, agreement, arrangement, understanding, promise, plan, proposal, or undertaking, whether express or implied and whether or not enforceable*” (Waerzeggers & Hillier, 2016). If DGT choose to undefined, it can refer to Canadian GAAR in the Income Tax Act, Part XVI (Section 245) which simply defines “*transaction*” as “*includes an arrangement or event*”.

For the definitions of tax benefit, Practitioner 1 added that tax benefits must be measurable. If this is still assumption, it means that no tax benefits have been received by the Taxpayer. Therefore, an effective GAAR would usually offer further clarification about the procedure for determining and measuring a tax benefit. (Waerzeggers & Hillier, 2016). The DGT is required to provide evidence that the taxpayer's transactions resulted in tax benefits. Academic 2 said that GAAR should be used for tax avoidance that is blatant or abusive. Not all forms of tax avoidance need to be subject to GAAR. These additional provisions should be considered an exception or saving provision in determining the scope of tax avoidance included in GAAR. Only transactions “*which are contrary to the aims and objectives of statutory provisions in the field of taxation*” were subject to GAAR, according to the Elucidation of Article 18 HPP Law. Academic 2 emphasized that DGT should take this statement into account when implementing GAAR.

"This is used for blatant tax avoidance. Which is abusive. ... When DGT wants to use GAAR, he must be able to prove it." (Academic 2)

To avoid inhibiting or impeding ordinary commercial transactions, the GAAR's purpose test must be applied objectively and in a considered way (Arnold, 2017; Waerzeggers & Hillier, 2016). DGT Analyst, FPA Analyst, and Academic 2 agreed to use a main purpose approach, or, one of the main purposes, not sole purpose. Practitioner 1 said that perhaps Indonesia could imitate Australia by using the term dominant purpose, so that testing is carried out on the dominant purpose. Which is more dominant, tax purposes or commercial purposes.

"GAAR must use tax objectives one of the main purposes at least. The transaction was made in such a way because the tax motive was dominance." (DGT Analyst)

Academic 2 also emphasized the importance of answering whether the transaction was solely carried out to obtain tax benefits. GAAR certainly does not apply if the Taxpayer's business processes require this scheme. Practitioner 1 added that the principle of substance over form usually involves artificial tests. These principal questions are whether the transaction was purely carried out in response to the tax system or artificially. The degree of artificiality necessary to qualify for a tax benefit is typically a strong indication of avoidance (Cooper, 2001). This will determine the motivation for the actions taken by the Taxpayer. Economic substance is important in determining violations of GAAR (Arnold, 2017).

"Is this transaction purely a response to the tax system or is it artificial? It is possible that taxpayers do this because of an incentive or an opportunity that is caused by a weakness in the provisions themselves or was created intentionally. So, this is what needs to be separated." (Practitioner 1)

This view aligns with Tooma (2008), who argues that tax officials applying the substance over form principle must carefully consider the broad investigative authority they hold, the mechanisms available to taxpayers to contest this authority, and the need for legal certainty regarding the use of this principle. There is a risk, however, that tax authorities may disregard legal form based on their interpretation of the transaction's substance (Nuwagba, 2013). To mitigate uncertainty, tax authorities must provide clear administrative guidelines on how GAAR will be interpreted and implemented (Arnold, 2017). The DGT should ensure that key elements of GAAR—such as the definitions of "transaction," "tax benefit," and the purpose test—are clearly articulated in the regulations. These terms can be interpreted broadly or narrowly depending on the intended scope of GAAR, whether it targets specific situations or acts as a catch-all provision (CIAT, 2022).

CONCLUSION

The GAAR provisions based on the substance over form principle, as outlined in the HPP Law and Government Regulation No. 55/2022, possess the core characteristics of GAAR, including references to transactions, tax benefits, and abusive practices. However, debate remains over the legality of applying GAAR through the substance over form principle in Indonesia. Despite this, the GAAR provisions in the Elucidation of Article 18 and its implementing regulations remain enforceable as they are considered an integral part of the law. The substance over

form principle is widely applied by tax auditors for fiscal corrections, objection reviewers for supporting appeals, and Tax Court judges in case decisions. These cases are examined based on applicable regulations to assess tax avoidance on a case-by-case basis. The benefit of using GAAR lies in its generality and logical application. While the general nature of the targeted transactions is clear, the precise definition of what constitutes a tax avoidance scheme remains somewhat ambiguous, leading to potential uncertainty for taxpayers when structuring their business models.

Indonesia's GAAR provisions meet the first and third conditions outlined by Arnold (2017): the transaction or arrangement results in tax benefits, and there is an abuse or conflict with the fundamental objectives of the relevant statutory provisions. However, the second condition – stating that the "main purpose of the transaction or scheme is to obtain tax benefits" – is not explicitly included in the current provisions. Implementing guidelines should provide clarity on the factors to consider when determining whether tax avoidance was the primary purpose. The key elements of most GAAR, including the definitions of "transaction," "tax benefit," and the purpose test, should be applied with either a broad or narrow scope depending on Indonesia's policy objectives for GAAR.

The findings of this research aim to contribute to strengthening the legality and certainty of Indonesia's GAAR provisions. However, the study is limited by its qualitative nature, as the authors could not meet directly with all informants. Despite efforts to select the best available sources, there remains the potential for informant bias. This research primarily focuses on GAAR provisions within the HPP Law and Government Regulation No. 55/2022. In addition, Indonesia employs GAAR provisions using the principal purpose test within multilateral instruments. Future research should explore this principal purpose test provision further, and comparative studies of GAAR regulations across different countries could also enhance the analysis.

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