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Legal Certainty Regarding Tax Payment Obligations On Shares In Tax Court Decision Number PUT-002784.25/2019/PP/M.XB

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Abstract: A Limited Liability Company (Perseroan Terbatas or PT) is a legal entity that plays an important role in economic activities, including share ownership arrangements that may involve nominee mechanisms. The use of nominees gives rise to legal and tax issues, particularly in determining the party who is actually responsible for tax obligations, namely between the formal shareholder and the party who substantively enjoys the economic benefits (beneficial owner). The distinction between formal and substantive ownership may result in tax disputes and legal uncertainty, as reflected in Tax Court Decision Number PUT-002784.25/2019/PP/M.XB concerning an Income Tax dispute related to share ownership, in which the tax authority imposed tax liability based on formal ownership, while the appellant denied being the party that received the economic benefits. This study employs a normative juridical method using statutory, doctrinal, and case law approaches. The results indicate that the determination of tax liability must be based on the principle of substance over form by prioritizing economic substance over formal legal structure. The Tax Court's decision underscores the importance of proving substantive ownership in determining tax obligations and the necessity of clear regulations on nominee arrangements and beneficial ownership to ensure legal certainty, transparency, and tax compliance.

Keywords: Nominee, Beneficial Owner, Limited Liability Company (Perseroan Terbatas), Tax Dispute.

INTRODUCTION

Since businesses are one of the centers of human activity to meet basic needs, they are among the main pillars of contemporary society. A company's operations are part of the open and sustainable economic activities that an organization carries out with respect to immobile or immovable commodities and services, competing in quality to make money. In reality, a trader or trading activity that is, engaging in an open and sustainable activity with the aim of making money is identical to the company or the person who manages it. One It is difficult to avoid talking about the structure of these corporate entities when discussing business. Persekutuan (Fa), Communitaire Vennootschap, and Limited Liability Company (PT) are some of the business entities recognized under Indonesian Commercial Law.

Since the company is a legal entity, it is a subject of law and, therefore, is subject to the same rights and obligations as everyone else. A company has its own assets that are different from its management assets because they are legal entities. Shareholders' liability is limited to the number of shares they own; However, limited liability will turn into unlimited liability if it can be proven that the shareholder's personal assets have been mixed with the corporation's assets. Based on the principle of liability that has been accepted by the legal entity, this means that the shareholders are individually liable for the company's losses, regardless of the number of shares they own in the business.

The formation of laws and regulations that support the aspirations of the people, are based on justice and truth, serve the interests of the people and the state, and of course are developed and implemented within the framework of the Unitary State of the Republic of Indonesia, are several ways to realize the goals of national law development (Margono, 2008). One of the main pillars of national economic growth is limited liability companies (PT), which must be run with a solid legal foundation to support national development. While maintaining clear legal certainty in its operations, a PT must be run as a joint venture based on the concept of kinship. The government has passed Law Number 40 of 2007 concerning Limited Liability Companies in accordance with this basic principle.

Given the complexity of the interaction between taxpayers and tax authorities, tax disputes are one of the legal issues that often arise in Indonesia. This disagreement often arises from differences in interpretation of tax laws, especially in the application of laws aimed at increasing state revenue and tax compliance. Taxes on nominee shares and legal obligations between nominee shareholders and limited liability companies are two increasingly important topics in tax practice. To ensure transparency and fair tax compliance for all stakeholders, these rules are essential.

Regarding nominee shares, the actual owner is the person who has economic rights to the shares, although ownership of the shares is recognized on behalf of another person known as the nominee or designated party. While this approach is often used in corporate operations, it can pose tax problems, especially if it is misused to hide assets or avoid tax liability (Mardiasmo, 2023). Clear tax guidelines for nominee shares are also needed to prevent tax evasion and provide greater legal certainty for taxpayers (Darussalam and Danny Septriadi, 2020).

The Tax Court's Decision Number PUT-002784.25/2019/PP/M.XB is a relevant case to be considered. In this case, there is a tax dispute regarding the obligation to pay taxes on shares whose ownership is questionable. In this case, assets that are considered income but have not been recorded by the taxpayer become the basis for adjustment by the tax authorities. Taxes on nominee shares and legal obligations between the nominee shareholders and the limited liability company are the subject of dispute in this case.

The issue focuses on basic elements such as justice and legal certainty, in addition to tax management. From a justice standpoint, taxpayers often feel disadvantaged when the taxes imposed are too high or not supported by sufficient evidence (Bastari, 2021). However, from a legal certainty standpoint, this kind of dispute can confuse other taxpayers, especially related to the reporting of shareholding by the nominee (Resmi, 2020).

A clear picture of how tax law is handled in relation to nominee shares and how the value of justice and legal certainty is maintained in resolving the dispute can be found in the Tax Court Decision Number PUT-002784.25/2019/PP/M.XB. This case illustrates the difficulties that tax authorities face in enforcing taxpayers' legal rights while ensuring compliance.

An analysis of the legal implications of the tax regulations on nominee shares and the separation of legal responsibilities between nominee shareholders and limited liability are an important part of this study. It is hoped that this study can produce practical ways to improve

Indonesia's tax system and resolve tax disputes. The study is particularly relevant because it provides advice to policymakers on how to strengthen restrictions on nominee shares, improve legal clarity, and make taxation fairer.

METHOD

This study uses a normative juridical approach method, which is an approach that focuses on the study of applicable legal norms through the analysis of laws and regulations, legal doctrines, and court decisions. This approach is used to examine the application of tax provisions to nominee share ownership as well as to analyze the division of legal responsibilities between nominee shareholders and limited liability companies (Indrati, 2020). The research specification is descriptive-analytical, namely describing and systematically analyzing the legal provisions that govern the taxation of nominee shares, as well as evaluating their implications for the legal certainty of tax payment obligations based on the Tax Court Decision Number PUT-002784.25/2019/PP/M.XB.

The data sources used consist of primary, secondary, and tertiary legal materials. Primary legal materials include laws and regulations, such as the Civil Code, the Limited Liability Company Law, the Investment Law, the Financial Services Authority regulations, and Tax Court decisions that are the object of research. Secondary legal materials are books, scientific journals, and relevant legal literature, while tertiary legal materials include legal dictionaries, encyclopedias, and other scientific sources. Data collection is carried out through literature studies, document studies, and case studies of court decisions that are analyzed qualitatively to assess the conformity between the applicable legal norms and their application, as well as to assess the legal certainty of the tax payment obligation on nominee shares.

RESULTS AND DISCUSSION

Analysis of Intan Sari Siregar's Position in PT. Liberated by Tritama Light

A person's or entity's ownership or capital participation in a limited liability company is indicated by their shares (M. Syafii S. and E. K. S, 2015). Shares are proof of ownership of a share of the company's capital and provide certain rights to its holders, including:

- a. Voting Rights: The ability to attend the General Meeting of Shareholders (GMS) and vote.
- b. Right to Dividends: If a business generates profits and chooses to share them, this right gives the owner a share of those profits.
- c. Right to Residual Liquidation: In the event that the business is dissolved, the right to acquire the remaining business assets after all debts are settled.
- d. Right to Buy New Shares (Pre-emptive Right): The right to be granted preference when purchasing new shares issued by a company, according to the percentage of ownership, in order to maintain a percentage of ownership.

Income Tax on Stock Sales Profits: Profits from the sale of shares are also taxable. The type of stock and the person who sells it may affect its tax treatment:

- a. Shares on the Stock Exchange: Stock exchange operators or securities companies deduct 0.1% of the transaction value as final income tax from the profits of the sale of shares on the stock exchange.
- b. Shares Not Listed on the Stock Exchange: Under Article 17 of the Income Tax Act, profits from the sale of shares not traded on the stock exchange are subject to non-final income tax, which must be recorded in the Annual Return Letter (SPT) at the general rate along with other taxable income.

Regarding nominee shares, if the nominee sells shares that are actually owned by the beneficial owner, the proceeds of the sale need to be considered as beneficial owner income and subject to income tax. Nonetheless, the profits will be officially recorded in the name of

the nominee as the transaction is completed in their name. To determine beneficial owners and apply appropriate taxes, the DGT must once again adhere to the principle of substance over form.

In connection with the nominee's shares, Intan Sari Siregar, an Indonesian citizen domiciled at Jalan Raya Bogor Gang H. Said No. 27 RT 002 RW 001 Ciracas, East Jakarta, and has a Taxpayer Identification Number (NPWP) 45.253.975.2-009.000, filed an appeal at the first and last instance of a tax dispute against the Decree of the Director General of Taxes Number KEP-00583/KEB/WPJ.20/2018 dated December 28, 2018, regarding the objection to the Income Tax Underpayment Determination Letter Article 4 paragraph (2) of the November 2017 Tax Year Number 00002/240/17/009/18 dated January 8, 2018, which was received by the Tax Court on Wednesday, March 27, 2019 (submitted), and recorded in case file Number 002784.25/2019/PP.

a. Statement of Facts

There is a dispute regarding Article 4 paragraph (2) of Income Tax, which is final, on dividends in the Tax Court Decision Number PUT-002784.25/2019/PP/M.XB. On January 8, 2019, Intan Sari Siregar, the appellant, appealed against the Decree of the Director General of Taxes (DGT) Number KEP-000004/WPJ.07/2019. The DGT's adjustment to the applicant's dividend income from the share ownership of PT. HKP is the trigger for this dispute.

This case began when the Appellant was audited by the Director General of Taxes. The DGT concluded that the appellant had received dividends from PT. HKP based on audit findings. However, the DGT believes that the beneficial owner is actually another party and that the appellant only functions as a nominee or nominal shareholder. In general, the corrections made by the DGT are based on:

In order for the Appellant to be able to receive dividends legally, his name must be recorded as a shareholder in the Notary Deed and the list of shareholders of PT. H.K.P. However, the DGT suspects that there is a nominee arrangement, namely the Appellant is only formally registered but actually holds shares for and on behalf of other parties. This allegation is based on an analysis of cash flows, the lack of business activity of the Applicant, as well as other information that suggests that the economic benefits of the dividend are likely to be enjoyed by other parties. Based on the principle of substance over form, the DGT is of the opinion that the party that actually receives economic benefits (beneficial owner) should be the party taxed on the dividend, not the party that is only administratively recorded.

On the issuance of the Tax Determination Letter (SKP), the Appellant filed an objection by stating that he was a legally valid shareholder as evidenced by a notary deed and share ownership documents. The applicant also rejects the presumption of being a nominee because there is no valid nominee agreement or strong evidence. In addition, the Applicant argued that the dividend did not reflect additional economic capabilities for him, and considered that the DGT did not have sufficient evidence to prove the existence of nominee practices, so that the imposition of tax on the dividend on the Appellant was inappropriate.

The Appellant appealed to the Tax Court after receiving a decision of objection from the DGT. This process begins with the submission of an Appeal Letter containing the facts and legal reasons that are the basis for filing an appeal. Furthermore, the DGT submitted an Appeal Description Letter (SUB) which contained responses to the appeal and reasons for the tax correction that had been made.

In the trial, the Panel of Judges will examine the case by listening to the testimony of both parties and assessing the evidence submitted, especially regarding the status of the Appellant as a shareholder or nominee, as well as the party who actually receives dividend

benefits. In the evidentiary process, the DGT has the obligation to prove that the Appellant acted as a nominee, while the Appellant must also show that the tax correction made by the DGT was inappropriate or did not have sufficient basis.

b. Legal Considerations and the Panel of Tax Court Judges

The main analysis is focused on the legal considerations of the Panel of Judges in the Tax Court Decision Number PUT-002784.25/2019/PP/M.XB. Before making a decision, the Panel of Judges will assess the facts, supporting documents, and legal arguments submitted by the Appellant and the DGT. The Panel will carefully examine all the evidence to determine whether the Appellant is really the rightful shareholder or merely a nominee, as well as who is the party who actually enjoys the benefits of the dividend.

The evidence examined includes a notary deed and a register of shareholders as formal proof of ownership, proof of dividend receipt, as well as proof of fund flow to see whether dividends are used by the Appellant or passed on to other parties. In addition, the Panel may also consider the nominee agreement, witness or expert testimony, and other evidence showing whether the Appellant has control and risk over the shares or not. All of this evidence is the basis for the Panel of Judges in determining the truth of the substance of its ownership and tax obligations.

The core considerations of the Panel of Judges in nominee cases often center on the application of the substance over form principle. The Board will evaluate whether the legal form of dividend receipt and shareholding is in line with its economic content. The Board will seek to ascertain whether the Appellant is merely acting as a conduit or intermediary for the beneficial owner, or whether the Appellant actually derives "additional economic capacity" from the profits. Tax corrections on nominees are likely to be rescinded if the Board determines that the nominee has no significant control or economic benefit. Tax liabilities can then be transferred to the beneficial owner, provided that the beneficial owner can be identified and corrected by the DGT in a separate tax determination letter or through other legal procedures. On the other hand, since there is no strong substantive basis for taxing the nominee who did not receive income, the DGT adjustment can be withdrawn if it cannot show that the appellant is the nominee or that the other party is the actual beneficial owner.

Article 33 of the Investment Law, which states that the nominee agreement is void, will also be considered by the Panel of Judges. However, in the case of taxes, the main concern is not whether the agreement is acceptable *de facto* and *de jure*, but rather who is legally and in fact responsible for the tax. Beneficial owners remain subject to their tax responsibilities even if the nominee agreement is declared void. Indeed, this could be the basis for the DGT's claim that significant ownership cannot be hidden. Whether the existence of this null and void agreement or the clear signs of the nominee's arrangement is sufficient to prove that the dividend income really belongs to the other party will be determined by the panel of judges.

c. The Decision of the Panel of Tax Court Judges

The Defendant (DGT) in the Appeal Letter stated that the appeal letter submitted by the Appellant had met the formal requirements, as submitted in Indonesian, submitted within three months from the date of the decision received, only one appeal letter was submitted for one decision, and attached a copy of the disputed decision. The appeal letter was also signed directly by the taxpayer, namely Intan Sari Siregar. However, the DGT is of the opinion that the appeal does not meet all the formal provisions under the Tax Court Act. In addition, based on the Tax Audit Report, it was found that the Applicant had assets in the form of shares in PT Nafaka Cahya Tritama worth Rp1,100,000,000.00 which were not

reported in the Annual Tax Return, so that an Underpaid Tax Determination Letter (SKPKB) was issued with a tax amount payable of Rp140,250,000.00.

The Panel of Judges then considered that the shares were additional income because they were not reported in the Annual Tax Return and were not disclosed in the tax amnesty program. Therefore, the Applicant was declared to have a tax liability of Rp140,250,000.00. In the case of nominee shares, the main issue is to determine who is actually obliged to pay taxes, whether the nominee is formally registered or the beneficial owner who receives economic benefits. In principle, taxes are supposed to be levied on the beneficial owner, but in practice taxes are often deducted in the name of the nominee. If it is proven that there is a nominee practice, then the DGT can make corrections to ensure that taxes are imposed on parties who actually receive economic benefits.

According to Mardiasmo, taxation is part of public law that regulates the interaction between taxpayers and the government regarding the collection, payment, and settlement of tax disputes. The basics of taxation, including proportionality in taxation, legal clarity, and fairness, are covered in this approach. The tax duty on the ownership of shares represented by the nominee as promulgated and applied is examined using the theory of tax law in the case of nominee shares. This idea also helps in assessing the tax authority's approach in deciding whether the nominee shareholder or the actual owner is responsible for paying the tax (Mardiasmo, 2020).

The structure, duties, and obligations of a limited liability company and its shareholders are explained by the corporate legal theory in Nominee Munir Fuady's Corporate Legal Theory. The idea of separating the corporate entity and its shareholders is at the heart of corporate law. However, because the nominee represents the ownership of the shares, this distinction becomes blurred in the practice of the nominee's shares. The division of duties between nominee shareholders and limited liability firms in meeting their tax obligations was tested using this paradigm. In addition, this theory helps in detecting abuse of the nomination process for illegal activities such as tax evasion (Fuady, 2020).

Maria Farida Indrati is one of the main pillars of the theory of legal certainty, which aims to provide clarity, order, and legal protection to the public including taxpayers. To exercise legal rights and obligations, it is essential to have clear, consistent, and predictable regulations. This is known as legal certainty. The level of clarity and certainty offered by the tax on nominee shares to the actual shareholders and nominee shareholders is tested in this study using the concept of legal certainty. When evaluating whether the division of duties between the nominee shareholder and the limited liability company has been openly regulated and does not create legal ambiguity for the parties, legal clarity is also very important.

Regarding the Nominee Shares, Intan Sari Siregar, an Indonesian citizen domiciled at Jalan Raya Bogor Gang H. Said Number 27 RT 002 RW 001 Ciracas, East Jakarta, and has a Taxpayer Identification Number (NPWP) 45.253.975.2-009.000, filed an appeal at the first and last level of a tax dispute against the Decree of the Director General of Taxes Number KEP-00583/KEB/WPJ.20/2018 dated December 28, 2018, regarding the objection to the Income Tax Underpayment Tax Determination Letter Article 4 paragraph (2) of the November 2017 Tax Year Number 00002/240/17/009/18 dated January 8, 2018, which was received by the Tax Court on Wednesday, March 27, 2019 (submitted), and registered in case file Number 002784.25/2019/PP.

Berdasarkan surat keberatan tersebut, Direktur Jenderal Pajak menerbitkan Keputusan Number KEP-00fi83/KEBMPJ.20/2018 dated December 28, 2018, which states that the underpaid tax of Rp140,250,000.00 (one hundred and forty million two hundred and fifty thousand rupiah) has been calculated and the applicant's objection is rejected. Researchers claim that nominee agreements, often called nominee shares, are still used by certain

investors. Both the Limited Liability Company Act and the Investment Act prohibit this approach. The Ministry of Investment and Industry/Investment Coordinating Board (BKPM) does not actively encourage investors to avoid nominee agreements or nominee shares in their investments, which is the cause of this difficulty.

According to Notary Deed Number 19 of Notary Dedy Pramono, made on September 10, 2014, Intan Sari Siregar has a shareholder position in PT. Nafaka Cahya Tritama, with a total share value of IDR 1,100,000,000.00 (one billion one hundred million rupiah). Intan Sari Siregar shares worth IDR 1,100,000,000.00 have never been deposited into the bank account or cash of PT. Liberated by Tritama.

According to the minutes of the General Meeting of Shareholders (GMS) of PT. Nafaka Cahya Tritama dated December 15, 2017 with Notary Rita Imelda Ginting, the company has been dissolved for the following reasons: The authorized capital and total capital of Rp. 11,000,000,000.00 (eleven billion rupiah) have not been paid by the shareholders to the company's cash account or to the company itself since the company was established.

Regarding the Nominee's shares, that based on the objection letter Intan Sari should not be subject to Final Income Tax Article 4 paragraph (2) and the Director General of Taxes in Decree Number KEP-00fi83/KEBMPJ.20/2018 dated December 28, 2018 should have stated that he accepted the Appellant's objection application with the calculation of the amount of underpaid tax of Rp140,250,000.00 (one hundred and forty million two hundred and fifty thousand rupiah). This is because Intan Sari Siregar has never enjoyed the benefits of PT. Liberated by Tritama.

Analysis of Legal Certainty of the Distribution of Responsibilities of Nominee Shareholders in Limited Liability Companies in Indonesia

The decision in the nominee dispute relies heavily on the strength of the evidence possessed by the DGT to prove who the beneficial owner is and where the economic benefits flow. If the DGT can prove that there are other parties who are beneficial owners and receive economic benefits, then the tax correction can be maintained or adjusted to the actual party. However, if it is proven that the Appellant is only a nominee and does not obtain economic benefits, then the tax correction against the Applicant can be cancelled. On the other hand, if the DGT cannot prove the existence of other beneficial owners or the flow of economic benefits to other parties, then the tax correction is likely to be canceled and the Appellant is declared not proven to be a nominee.

In this case, the dispute arises from the Decree of the Director General of Taxes Number KEP-00583/KEB/WPJ.20/2018 regarding the correction of Final Income Tax on dividends for the November 2017 tax period. The dispute was submitted by Intan Sari Siregar to the Tax Court and registered with Case Number 002784.25/2019/PP. In Decision Number PUT-002784.25/2019/PP/M.XB, THE Panel of Judges granted all of the Applicant's appeals. This shows that the DGT has not succeeded in proving that the Appellant is a nominee or that the dividend is an additional economic ability for the Applicant, so that the tax correction made by the DGT is declared untenable.

The decision granting the Applicant's appeal confirms that the DGT is not enough to rely only on formal evidence, such as names in the list of shareholders or a notary deed, but must be able to prove the economic substance of the transaction. The DGT needs to clearly show who is actually receiving the economic benefits from dividends, including by tracing the flow of funds and identifying beneficial owners. If the DGT cannot provide strong and verifiable evidence, then the tax correction becomes weak and can be canceled by the Tax Court. This suggests that the evidence in a tax dispute must be based on real economic facts, not just administrative formalities.

In addition, this ruling also shows that identifying beneficial owners in tax disputes is difficult, especially if the information available is limited or related parties do not cooperate. Although the concept of substance defeats form is recognized in tax law, its application is highly dependent on the quality of the evidence that the DGT has. If the DGT cannot prove conclusively that the Appellant is acting only as a nominee and not the actual owner, then the tax correction cannot be maintained. Thus, the strength of the evidence is the main factor in determining the success of the DGT in tax disputes.

This ruling has important implications for tax transparency and compliance in Indonesia. First, the DGT needs to strengthen its investigative and evidentiary capabilities to identify beneficial owners and trace the flow of funds. This can be done by utilizing better information technology and increasing cooperation with other institutions, such as PPATK and the Directorate General of AHU, so that the evidence obtained is stronger and more accurate.

In addition, this ruling serves as a warning for taxpayers to be more compliant and not to use nominees to avoid taxes, because the DGT can still trace parties who actually receive economic benefits. This ruling also encourages the need to improve tax policies, including the possibility of clarifying rules on beneficial ownership and strengthening anti-tax avoidance provisions, so that the DGT has a stronger legal basis in dealing with tax avoidance practices.

According to the explanation above, the legal obligations of nominee shareholders in a limited liability company in Indonesia must be divided in accordance with relevant laws and regulations. A common tactic for tax avoidance or aggressive tax planning is the use of nominee shares. It is very important to distinguish between these two ideas, which is tax avoidance. Tax avoidance is a legitimate attempt to reduce tax liability by exploiting loopholes or loopholes in tax laws or by interpreting tax rules literally. While it does not violate any laws, it is often considered contrary to the spirit of the law or the financial goals of the state.

Nominee shares can be used as *a means of tax avoidance* in various ways:

- a. Transferring dividend income or proceeds from the sale of shares to nominees with lower tax rates, certain tax benefits, or those who have not yet reached the threshold of taxable income is known as income diversion.
- b. Disguised identity of the real owner: When investing abroad, foreign investors may use Indonesian nominees to avoid paying higher final income taxes on dividends or stock gains received by foreign taxpayers, or to avoid restrictions on foreign ownership in certain industries that could change their tax treatment.
- c. Avoiding Anti-Tax Avoidance Rules: Certain ownership arrangements are the focus of tax laws such as the General Anti-Avoidance Rule (GAAR) and Controlled Foreign Corporation (CFC). By using the nominee method, ownership can be concealed and this rule can be avoided.

The illegal practice of reducing or evading tax liability by violating tax laws for example, by failing to disclose income, falsifying documentation, or concealing assets is known as tax evasion. As a criminal offense, tax evasion is subject to criminal sanctions. In addition, nominee shares can be used as a means of tax avoidance:

- a. Failure to Report Income: In the hope that the tax authority will mistakenly assume that the income belongs to the nominee or will not notice it at all, the beneficial owner may neglect to include income received from the nominee's stock in their tax filing.
- b. Concealing Assets: If assets are acquired through unlawful means or are not disclosed in a tax amnesty program, the nominee's shares can be used to hide them from the DGT.
- c. Manipulative Transfer Pricing: In certain settings, nominee techniques can be used to help move revenue to a low-tax jurisdiction through manipulative transfer pricing transactions.

The tax authority (DGT) must create a comprehensive plan that includes the following to identify and stop tax evasion or evasion techniques using nominee shares:

- a. Data Analysis Capacity Building: DGT must have the necessary systems and personnel to analyze ownership, transaction, and financial data from various sources (such as PPATK, Directorate General of AHU, banking data, and data exchange of information with other countries).
- b. Reaffirmation of the Substance Over Form Principle: In any tax audit where nominee practices are suspected, use the substance over form principle consistently. It involves examining the economic content of a transaction in addition to its formal legality.
- c. Strengthening Anti-Tax Avoidance Provisions: Consider implementing or strengthening general anti-avoidance rules (GAAR) or other specific clauses that allow the DGT to infiltrate schemes created solely for tax purposes without a justifiable commercial purpose.
- d. Inter-Agency Cooperation: To collect information on suspicious ownership and transactions, improve coordination and share information with other institutions, including the Financial Services Authority (OJK), PPATK (Financial Transaction Reporting and Analysis Center), and the Ministry of Law and Human Rights (Directorate General of AHU).
- e. Socialization and Education: Informing taxpayers of the financial and legal dangers associated with nominee practices that are not transparent.

For the tax authorities, the practice of nominee shares is a serious obstacle in maintaining the integrity of the tax system. In line with the concept of tax equity and efficiency, continuous efforts are needed to guarantee that the tax burden is imposed on those who actually benefit economically. Due to its abundant natural resource potential, Indonesia is a popular destination for domestic and international investors (Margono, 2008). There are several important factors that make the development of the investment climate in Indonesia a destination for investors, namely:

- a. The existence of regulations or policies that support foreign investors to invest in Indonesia;
- b. A large workforce with relatively low wages;
- c. Wide production market due to the large population of Indonesia;
- d. Available sources of natural resources;
- e. Political stability;
- f. There is legal certainty and consistency of regulations and their application.

The list of negative investments outlined in Presidential Regulation Number 39 of 2014 concerning the List of Closed Business Fields and Open Business Fields with Requirements in the Investment Sector hinders foreign investors who are interested in making direct investments in Indonesia because of the benefits mentioned above. To protect the livelihoods of the Indonesian people, the government, in this case the Investment Coordinating Board, prohibits foreign investors from making investments. A number of industries are listed as negative investments, such as the manufacture of explosives, weapons, ammunition, military equipment, and so on.

A limited liability firm is a legal entity that foreign investors often use when conducting direct or indirect investment operations in Indonesia. Two or more people can form a limited liability company in accordance with Article 7 paragraph (1) of the Limited Liability Company Law. Individuals, including Indonesian and international residents, or Indonesian or foreign legal organizations are referred to as "persons" in the explanation of Article 7 paragraph (1) of the Limited Liability Company Law. Since it is impossible for one person to enter into an agreement with himself, two (2) or more persons must be shareholders in order to meet the criteria for the establishment of a limited liability company through an agreement resulting in the incorporation of a limited liability company. Foreign investors often want unlimited control over the limited liability company's business, which is why having to form a limited liability company with two or more people also leads to the formation of nominee shareholders.

The nominee agreement designates a specific individual or group (nominee) as a shareholder, or rather, registered owner, of a predetermined number of shares, and the beneficiaries are entitled to the profits of those shares. The purpose of the nominee agreement is to hide the ownership of the beneficiary's shares from the public and to eliminate any existing or previously formed affiliations between the companies.

Article 33 paragraph of the Investment Law, which states that "domestic and foreign investment in the form of a limited liability company is prohibited from making agreements and/or statements affirming that the ownership of shares in a limited liability company is for and on behalf of another person," contains a number of legal transactions that use the concept of nominee, which is strictly prohibited in Indonesia. This is to prevent the possibility of a limited liability company business that is normatively owned by one person but physically or substantively owned by another.

According to Article 33 paragraph (1) of the Investment Law, it is prohibited to make an agreement that stipulates that the ownership of shares in a limited liability company is for and on behalf of another person. In accordance with Article 33 paragraph (2) of the Investment Law, such agreement and/or statement is considered null and void if this is done. Problems arise when a plan is developed with the intention of owning shares in the name and for the benefit of others, but there is no signed agreement that specifically indicates that the ownership of shares in a limited liability company is in the name and for the benefit of others.

Nominee literally means two different things. First, the term "nominee" describes the suggestion or nomination of a candidate or person nominated for a particular position, award, or other nomination. The second definition of a nominee is someone who speaks for the benefit of the other party. A representative is never the owner of the object (including interest) managed by the nominee, but the nominee becomes the owner of an object (including rights or interest arising from a contract) under his administration. Here it is.

It is clear from all the definitions mentioned above that the idea of a nominee involves two parties: the legally registered nominee and the beneficiary who receives all the income and profits from the activities of the legally registered party. Two forms of ownership result from the presence of two parties in the nominee agreement: the legally recognized and registered legal owner/juridische eigendom and the actual beneficial owner/economic eigendom who gains and disadvantages from the nominee's property.

Although the beneficiary is not de facto recognized as the rightful owner of the property, the nominee is the rightful owner of the property and has the unconditional right to transfer, sell, encumbrance, pledge, and take any other action over the property. In general, there are two methods for assigning a nomination, namely:

a. Direct Nominee

By drafting and signing the nomination agreement in one document, the nominee is immediately determined between the candidate and the beneficiary. This Agreement makes it clear and unambiguous that the beneficiary will trust the nominee to perform certain tasks or operations under the guidance of the beneficiary and in the best interests of the beneficiary. When a foreigner uses the concept of a nominee to own a share, the name and identity of the nominee are often the same as the name and identity of the party identified as the rightful owner in the company's list of shareholders. The company's shareholder records do not include the names or identities of the beneficiaries. The beneficiary offers payment in the form of nominee fees by utilizing the nominee's name and identity as a legally registered party. A mutual agreement between the nominee and the beneficiary determines the amount of the nomination fee. In accordance with the mutual agreement, the formal agreement signed by the candidate and the beneficiary will determine the amount and manner of payment of the candidate's fees.

The name and identity of the nominee will be listed as the shareholder in the company's Register of Shareholders on the nominee's shareholding; b. the nominee receives a certain

amount of money as payment for the use of their name and identity for the benefit of the beneficiary; and c. there are two types of ownership, namely legal ownership (*juridische eigendom*) and beneficial ownership (*economische eigendom*). From this it is clear that the idea of a nominee is based on the existence of a nominee agreement, which is a contract between the candidate and the beneficiary. The content of the nomination agreement will be determined by the nominee and the beneficiary. The agreement will include clauses that require and/or prohibit the candidate from engaging in any activity relating to the use of the candidate's idea, in addition to specifying the amount and manner of payment of the candidate's fees.

b. Undirect Nominee

The nominee arrangement in this case is not based on a nominee agreement that expressly states the existence of a relationship of trust between the nominee and the beneficial owner. On the contrary, the arrangement is formed from several agreements that as a whole show the existence of nominee share ownership. In this condition, the beneficial owner has the authority to direct the nominee in carrying out certain actions or decisions related to the shares in his or her interests. The arrangement is supported by several documents, including the Loan Agreement, the Pledge of Share Agreement, the Indemnity Agreement, the Power of Attorney to Vote, and the Sale and Purchase of and Attorney to Sell Shares.

Based on the deeds made, legally the nominee is registered as a shareholder, but does not have real control over the shares because his rights have been transferred to the beneficiary. Formally, the nominee can still exercise his rights as a shareholder, but in substance the control lies with the beneficiary. The purpose of the nominee agreement is to place the nominee as the registered owner, while the beneficiary becomes the party who actually controls the shares. In this arrangement, the funds for the purchase of shares come from the beneficiary, but are made as if they were loans to the nominee. In addition, the nominee does not have complete control over the shares, as the beneficiary has the authority to sell, transfer, or determine the use of the shares. Ultimately, the beneficiary is the party who receives the economic benefits of the stock, such as dividends and other benefits.

Nominee agreements executed directly with other nominee agreements are invalid. Under Indonesian law, it is almost forbidden to make nominees directly. According to Article 33 paragraph (1) of the Investment Law, both domestic and foreign investors who invest in a limited liability company are prohibited from making agreements or statements stating that shares in a limited liability company are owned by and on behalf of other people. Paragraph (2): Agreements and/or statements made by domestic or international investors as referred to in paragraph (1) shall be considered invalid.

Formally, these agreements do not violate Article 33 paragraphs (1) and (2) of the Capital Market Law or the objective requirements of Article 1320 of the Civil Code because there is no deed or document stating that the ownership of shares in a limited liability company is for and on behalf of another person in the formation of an indirect nominee. On the other hand, the statement is materially contrary to a purpose. In other words, simulation occurs when someone deliberately suggests actions that do not correspond to reality. The terms simulation, simulated contract, ostensible action (English); sham act (Dutch); *simulatio* (Latin) refers to an agreement that regulates everything that is different from the actual condition for a specific purpose.

The criteria for assessing an agreement, including a fake or simulated agreement, are based on the provisions of the Civil Code (KUHPerdata). Article 1873 of the Civil Code states that a follow-up agreement that is contrary to the original deed is only valid as evidence between the parties and cannot be enforced against a third party in good faith. In addition, Article 1320 of the Civil Code requires the existence of a *halal* cause as one of the elements of the validity of the agreement. Article 1335 and Article 1337 of the Civil Code affirm that agreements made without cause, with false causes, or with causes that are contrary to law, decency, or public order are null and void. In the Civil Code, three types of causes are known,

namely agreements without causes, agreements with false causes, and agreements with prohibited causes. Therefore, an agreement may be declared invalid if its substance, performance, or purpose of making it conflicts with the provisions of applicable law.

According to Article 1320 of the Civil Code, consent is an essential component or prerequisite for the formation or formulation of an agreement. The agreement between a statement and an intention is called an agreement. According to Herlien Budiono, intention is defined as a goal that is communicated and intended to produce legal consequences. In general, a person's statement reflects their intentions, but there is a chance that the two are not compatible. This usually happens when the other party's intentions are in line with the desired statement, but the desired legal outcome is not as expected.

Normatively, these agreements are void based on the purposes of the indirect or simulated nominee agreement mentioned above. This is due to the fact that the agreement made to create an indirect nominee agreement is illegal and is based on misleading justification. Article 1320 of the Civil Code, the objective requirements of a valid cause are not met. The reason or purpose and intention of entering into an illegal agreement, in this example Article 33 paragraphs (1) and (2) of the UUPM, are taken into account in addition to the content expressly specified in the agreement when interpreting a valid cause.

In determining and proving whether an agreement is a simulation or not. The agreement used in the creation of the nominee agreement does not directly comply with all applicable rules and regulations. From the candidate's point of view, the candidate is legally liable for any losses arising from actions taken by the beneficiary's regarding the management of the shares, the vote at the general meeting of shareholders, or any other legal consequences of such decisions. This is due to the fact that the nominee is the rightful owner of the shares. It is not legally possible to impose a beneficiary's obligation to cover the nominee's losses. In the event that the prospective beneficiary refuses to transfer the shares he or she owns to the beneficiary, the beneficiary must file a civil lawsuit in court.

Because such nomination agreements are normatively void, they create legal ambiguity, especially when it involves indirect nominees. Although the law still recognizes these agreements, they pose a challenge to be used as perfect evidence in court because most are made using notary deeds. Judges in the civil justice system prioritize formal truth over material truth. A judge cannot immediately declare a series of agreements void, even if they are satisfied that the agreement is a nominee agreement or a simulated agreement, unless it can be proven that the agreement contains prohibited reasons.

According to the definition given above, first, public demand has driven the growth and development of nominee agreements in society. Direct nominee agreements, which involve the creation of a direct nominee agreement confirming that shares in a limited liability company are owned for and on behalf of others, and indirect nominee agreements, which involve creating multiple layers of agreements with the aim of enabling beneficiaries to control, benefit from, and indirectly own shares, are two types of nominee agreements that are typically made in in practice.

Second, Article 33 paragraphs (1) and (2) of the Indonesian Investment Law strictly prohibits nominee agreements. Because the Limited Liability Company Act does not specifically prohibit nominee shareholders, the practice of nominee agreements has evolved rapidly through the creation of simulated or indirect nominees, making it difficult to identify and verify the existence of such nominees.

According to the explanation above, the nominee agreement is expressly prohibited by a number of laws and regulations, making it impossible to account for the legal certainty of the division of responsibilities of nominee shareholders in a limited liability company in Indonesia. According to Mardiasmo, taxation is part of public law that regulates the interaction between taxpayers and the government regarding the collection, payment, and settlement of tax disputes.

The basics of taxation, including proportionality in taxation, legal clarity, and fairness, are covered in this approach. The tax duty on the ownership of shares represented by the nominee as promulgated and applied is examined using the theory of tax law in the case of nominee shares. This idea also helps in assessing the tax authority's approach in deciding whether the nominee shareholder or the actual owner is responsible for paying the tax.

The structure, duties, and obligations of a limited liability company and its shareholders are explained by the theory of corporate law in Munir Fuady's Nominee Shareholder Corporate Law Theory. The idea of separating the corporate entity and its shareholders is at the heart of corporate law. However, because the nominee represents the ownership of the shares, this distinction becomes blurred in the practice of the nominee's shares. The division of duties between nominee shareholders and limited liability firms in meeting their tax obligations was tested using this paradigm. In addition, this theory helps in detecting abuse of the nomination process for illegal activities such as tax evasion.

Maria Farida Indrati is one of the main pillars of the theory of legal certainty, which aims to provide clarity, order, and legal protection to the community, including taxpayers. To exercise legal rights and obligations, it is essential to have clear, consistent, and predictable regulations. This is known as legal certainty. The level of clarity and certainty offered by the tax on nominee shares to the actual shareholders and nominee shareholders is tested in this study using the concept of legal certainty. When evaluating whether the division of duties between the nominee shareholder and the limited liability company has been openly regulated and does not create legal ambiguity for the parties, legal clarity is also very important.

The researchers found that some investors continued to use nominee agreements, sometimes called nominee shares. Both the Limited Liability Company Act and the Investment Act prohibit this approach. The Ministry of Investment and Industry/Investment Coordinating Board (BKPM) has not done much to encourage investors not to invest through nominee agreements or nominee shares, which has led to this difficult situation.

Since the nomination agreement is normatively invalid, this does not create legal ambiguity in the context of the nomination agreement, especially for indirect nominations. Although the law still recognizes these agreements, they pose a challenge to be used as evidence in court because they are mostly made using notary deeds, which makes them excellent evidence. Judges in the civil justice system prioritize formal truth over material truth. A judge cannot immediately declare a series of agreements void, even if they are satisfied that the agreement is a nominee agreement or a simulated agreement, unless it can be proven that the agreement contains prohibited reasons.

CONCLUSION

Intan Sari Siregar's position in the share ownership of PT. Nafaka Cahya Tritama is formally recognized as a shareholder as stated in the notary deed and the list of shareholders, but it is not substantively proven that he derives economic benefits from the shares, either in the form of dividends or other benefits. The tax dispute that arises focuses on determining whether Intan Sari Siregar acts as a real shareholder or only as a nominee. In the Tax Court Decision Number PUT-002784.25/2019/PP/M.XB, THE Panel of Judges granted the Applicant's appeal because the Director General of Taxes could not conclusively prove the existence of other beneficial owners or show that the Applicant obtained additional economic capabilities from the ownership of the shares. This decision emphasizes the importance of applying the principle of substance over form in tax law, where tax obligations must be imposed on parties who actually receive economic benefits. In addition, this ruling also shows that legal certainty in the division of responsibilities of nominee shareholders is highly dependent on the strength of evidence showing the relationship between formal ownership and

actual economic benefits, so that without strong evidence of substance, the imposition of taxes on parties that are only administratively recorded cannot be legally maintained.

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