

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

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ABSTRACT

The GAAR provision to combat unacceptable tax avoidance has already been ratified in Law Number 7 of 2021 concerning the Law on Harmonization of Tax Regulations (HPP Law) and Government Regulation Number 55 of 2022 (PP 55/2022). Employing qualitative research with a case study approach, this study conducts literature studies and interviews with regulators in the Ministry of Finance and relevant stakeholders to determine the aspects that must be taken into Indonesian GAAR provision. This study found that GAAR provisions in Indonesia have fulfilled the three GAAR trigger elements. Using substance over form principle as GAAR has its challenges in regulation, infrastructure, and human resource. This GAAR implementation need to consider limits on authority and implementation procedures, the scope of tax avoidance, stages of formal and material testing, quality assurance mechanisms, and protection of taxpayers' rights.

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

Analisis Kebijakan General Anti-Avoidance Rule (GAAR) di Indonesia

ABSTRAK

Ketentuan GAAR untuk mengatasi penghindaran pajak yang tidak dapat diterima telah disahkan melalui Undang-Undang Nomor 7 Tahun 2021 tentang Undang-Undang Harmonisasi Peraturan Perpajakan dan Peraturan Pemerintah Nomor 55 Tahun 2022. Menggunakan penelitian kualitatif dengan pendekatan studi kasus, penelitian ini melakukan studi literatur dan wawancara dengan regulator di Kementerian Keuangan dan stakeholders terkait untuk menentukan aspek-aspek yang harus diperhatikan dalam ketentuan GAAR di Indonesia. Penelitian ini menemukan bahwa ketentuan GAAR di Indonesia telah memenuhi ketiga elemen pemicu GAAR. Penggunaan prinsip Substance Over Form sebagai GAAR mempunyai tantangan tersendiri dalam hal regulasi, infrastruktur, dan sumber daya manusia. Penerapan GAAR ini perlu mempertimbangkan batasan kewenangan dan prosedur pelaksanaan, ruang lingkup penghindaran pajak, tahapan pengujian formal dan material, mekanisme penjaminan mutu, dan perlindungan hak wajib pajak.

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



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INTRODUCTION

In the OECD Report (2023), Indonesia's tax ratio is one of the lowest among other Asia Pacific countries. Indonesia's tax ratio for 2007-2020 was in the range of 10-13% (OECD, 2023). Based on this report, this rate is far below the average tax ratio for Asia Pacific countries of 19.1% and OECD countries of 33.5%. This tax ratio shows that the level of tax revenue in Indonesia is still low. Minister of Finance Sri Mulyani stated that this low tax ratio was partly due to gaps in tax policy and the ease of tax avoidance practice in Indonesia (Kurniati, 2020). The DGT also revealed that it is still having difficulty handling cases of aggressive tax avoidance (Ministry of Finance, 2021).

The DGT also revealed that it is still having difficulty handling cases of aggressive tax avoidance (Ministry of Finance, 2021). Referring to Table 1, based on DGT's data regarding tax avoidance cases that have been decided by the Tax Court, the potential tax loss in 2014-2020 reached IDR 3.8 trillion. Of the total tax potential of IDR 6.1 trillion, only around 38.43% of the potential tax value can be maintained. As much as 61.57% of the potential tax value was lost due to detectable tax avoidance. This value is much smaller when compared to data on losses due to tax avoidance from the Tax Justice Network. Based on Tax Justice Network data (2021), Indonesia's losses due to tax avoidance in 2020 reached US\$4.785 billion, or the equivalent of IDR 69.3 trillion. In other words, the potential tax value of tax avoidance cases that can be detected using anti-tax avoidance instruments is currently estimated to be only around 8.92% in 2014-2020, or around 1.27% per year (Ministry of Finance, 2021).

Table 1. Tax Avoidance Cases Based on Court Decisions

Types of Tax Avoidance Cases	Potential Tax Value (Rp) Before Court Decision	Potential Tax Value (Rp) After the Court Decision
Participating Interest Transfer Scheme	5.389.962.903.376	1.915.875.995.441
Beneficial Owner Abuse	744.483.782.440	458.192.978.123
Treaty Abuse	47.901.257.589	2.025.976.744
Total	6.182.347.943.404	2.376.094.950.308
Potential Tax Lost		3.806.252.993.096
Percentage		61,57%

Source: Ministry of Finance (2021)

In the context of agency theory, first developed by Jensen and Meckling in 1976, tax avoidance activities can reduce tax liability and increase shareholder's value (Boussaidi & Hamed-Sidhom, 2020). Rational taxpayers will try to reduce their economic costs, including tax costs. Different from tax planning, tax avoidance is made by taxpayers to minimize the tax burden in a way that is contrary to the spirits and intentions of the parliament (Kessler, 2004). It aims to lighten the tax burden by finding and exploiting loopholes in tax provisions (Sandmo, 2005).

There are two types of instruments that can be used to prevent tax avoidance, the Specific Anti-Avoidance Rule (SAAR) and the General Anti-Avoidance Rule (GAAR). Wijaya & Kusumaningtyas (2020) explained that each

country can choose to implement SAAR, GAAR, or a combination of both. Currently, Indonesia has attempted to prevent tax avoidance through SAAR, such as anti-thin capitalization, CFC rule, transfer pricing, and anti-treaty shopping (Putra & Rahayu, 2023). The GAAR provision to prevent unacceptable tax avoidance has already been ratified into Law Number 7 of 2021 concerning the Law on Harmonization of Tax Regulations on Elucidation of Article 18. To ensure legal certainty, PP 55/2022 also stated that the government will determine the aspects that must be taken into GAAR provision. However, to date, there have been no implementing regulations that have been established for GAAR.

GAAR was designed as a law enforcement mechanism against tax avoidance that is following with the interpretation of the law but does not follow the interpretation of the law and the spirit of tax law (Cowx & Kerr, 2023). GAAR can be used to anticipate tax avoidance practices that have not been regulated in SAAR because it is general and not limited to certain subjects or objects (Arnold, 2017). The benefits of GAAR are considered capable of strengthening anti-tax avoidance provisions if implemented in Indonesia (Putra & Rahayu, 2023; Sitompul, 2022). GAAR types can also be divided into two types, namely, statutory GAAR and GAAR-like provisions (Cowx & Kerr, 2023). Rules that have a type of economic substance, such as the principle of substance over form, are generally defined as GAAR-like provisions, which means provisions like GAAR by practitioners and academics (Cowx & Kerr, 2023). Rioseco (2004) also states that GAAR-like provisions and statutory GAAR have the same principles. The difference, according to Rioseco (2004), lies in the GAAR approach which is more procedural compared to the substantial characteristics of GAAR-like provisions.

However, GAAR can hinder taxpayers' commercial transactions in taking advantage of business opportunities (Waerzeggers & Hillier, 2016). Apart from that, there is criticism that there is great discretion in interpreting business motives, causing legal uncertainty for taxpayers (DDTC, 2019). The absence of detailed implementation regulations will create room for interpretation which can increase subjectivity for courts in deciding tax avoidance disputes (Hapsari & Irawan, 2022). Chandrasari (2023) also emphasizes that if GAAR is applied, it will increase Indonesia's tax dispute level. GAAR's success in achieving its objectives depends on the design and preparation of GAAR regulations, as well as the available tax authority administrative capacity and infrastructure (Waerzeggers & Hillier, 2016). The importance of adequate regulatory design and mature tax administration creates difficulties for developing countries to implement GAAR effectively (CIAT, 2022). This is certainly a challenge for the government in compiling and implementing these regulations.

Previous research related to GAAR in the international world by Cooper (2001) and Freedman (2014) produced general design elements in preparing GAAR, namely scope/definition, objective testing, administrative issues, strength of reconstruction, and burden of proof. The results of the same research in Indonesia also emphasize the importance of these five key elements (Chandrasari, 2023; Suryani & Devos, 2016; Wijaya & Kusumaningtyas, 2020). Hapsari & Irawan (2022) added the legal system factor in Indonesia that needs to be considered in preparing GAAR. Based on literature studies, previous research was conducted before the enactment of the PP 55/2022. These studies have not considered the

provisions of GAAR in Article 32 paragraph (4) and Article 44 of PP 55/2022. To date there has been no implementation of regulations that have been established to explain the provisions in this article. Therefore, in contrast to previous research that examined the ideal design concept of GAAR, the novelty of this research lies in its focus to analyze the technical implementation regulation of GAAR.

This research will analyze the aspects that must be considered in drafting GAAR regulations based on international best practices from the United Nations Handbook on Selected Issues in Protecting the Tax Base of Developing Countries by Arnold (2017). This framework was chosen in this research because it is specifically used as a guideline for implementing GAAR for developing countries such as Indonesia. In addition, this framework has more comprehensive components, covering major policy considerations, major features, and administrative aspects that can be applied by tax authorities.

Major Policy Considerations	Major Features	Administrative Aspects
<ul style="list-style-type: none"> • GAAR must be broad enough • GAAR differentiate tax avoidance category • Objective purpose test • GAAR and SAAR relationship • GAAR as last resort • Determination of tax consequences • Taxpayer right to appeal • GAAR and tax treaties relationship • Simplicity 	<ul style="list-style-type: none"> • Definition of transactions • Definition of tax benefits • Purpose test • Exception or saving provisions • Economic substance role • Tax consequence 	<ul style="list-style-type: none"> • Assessment • Application by tax authorities • Penalty

Figure 1. Arnold (2017) Framework

Source: Research Data, 2024

Arnold (2017) recommends guidelines for implementing GAAR for developing countries such as Indonesia. This framework includes the major policy considerations, major features, and administrative aspects of GAAR that can be applied by tax authorities. Arnold (2017) stated that there are main considerations that must be examined in developing GAAR according to the law. GAAR must be broad enough to handle all forms of unacceptable tax avoidance. GAAR should distinguish acceptable and unacceptable tax avoidance. Then, the purpose of the test should be objective. The relationship between GAAR and other regulations, including SAAR and tax treaty, must be stated in regulation. GAAR must be the last resort provision. The GAAR also determines tax consequences if it is applied. Taxpayers have the right to appeal to all aspects of GAAR. Last, GAAR regulation must fulfil the principle of simplicity.

According to Arnold (2017), GAAR can be applied to transactions or schemes if the following three trigger conditions are met. First, the transaction or scheme produces tax benefits. Second, the sole purpose, primary purpose, or one of the main purposes of transactions and schemes is to obtain tax benefits. Last, such transactions or schemes abuse or conflict with the fundamental objectives of

the relevant statutory provisions (abusive). These conditions result in general aspects of GAAR major features which are explained in the definition of transactions, the definition of tax benefits, purpose tests, exceptions or saving provisions, the role of economic substance, and the determination of tax consequences.

The administrative aspect of GAAR consists of assessment, application by tax authorities, and penalties (Arnold, 2017). The application of GAAR by the tax authorities must be following the general assessment procedures of each country's taxation system. Implementation by tax authorities must consider the existence of guidance regarding the interpretation and application of GAAR, committee approval procedures, and the advance ruling process. The imposition of penalties in connection with the application of GAAR may be justified as reasonable and necessary for the effectiveness of GAAR.

This research aims to give recommendations to the DGT in formulating further regulations of GAAR. It will analyze the technical implementation regulation of GAAR based on major policy considerations, major features, and administrative aspects by Arnold (2017). Hopefully, this research can also add to the contribution of research regarding the application of GAAR, especially in Indonesia.

RESEARCH METHOD

This study is qualitative research with a case study approach. Case study held in DGT, especially Directorate of International Taxation, as the unit that has the authorization to formulate policies in international tax regulations. As the mandate of Article 44 paragraph (1) of PP 55/2022, DGT needs to regulate technical implementation of GAAR. This research strategy was chosen so that researchers can conduct an in-depth exploration of a particular phenomenon (Creswell & Creswell, 2018). The research focuses on the application of the technical implementation framework concept for GAAR implementation according to Arnold (2017). To discover the comprehensive analysis regarding GAAR, this research uses an in-depth interview instrument. Through semi-structured interviews, it is hoped that information can be obtained that is unique and can differ between interviewees (Stake, 1995).

This research explores several different points of view, from the side of policymakers and implementers. It is hoped that different points of view can produce recommendation conclusions that can represent all relevant stakeholders. Interviews were conducted with the Directorate General of Taxes and the Fiscal Policy Agency, Ministry of Finance (MoF) as policymakers or regulators. From the policy implementation side, interviews were conducted with tax practitioners who have taxpayer clients with complex transaction substances so that they are likely to be affected by the GAAR regulations that will be implemented. Academics will also be interviewed to provide their point of view as a neutral party in the preparation of GAAR regulations. Another point of view from users such as tax officials (tax auditors and objection reviewer) and judges will be held to enrich the analysis. The interviews were held in March, April, and May 2024 with physical in-person meeting and online meeting. Research informant data is presented in Table 2.

Table 2. 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	Tax Auditor 1, 2, 3	Small, Large, Permanent Establishments and Expatriates Tax Office	Tax Official	3
4	Objection Reviewer	Reviewer 1, 2	Directorate Objection and Appeal, Medium Tax Office	Tax Official	2
5	Tax Court Judge	Judge	Tax Court	Judicial	1
6	Practitioner (Tax Consultant)	Practitioner 1, 2	DDTC and TaxPrime	Taxpayer Advisor	2
7	Academics (International Taxation Lecturer)	Academics 1, 2	Politeknik Keuangan Negara STAN, UPN "Veteran" Jakarta	Neutral	2

Source: Research Data, 2024

After collecting the data, this research analyzed the data using qualitative descriptive analysis techniques. Thematic analysis is also used in data analysis which is carried out through the process of identifying patterns or themes based on the qualitative data obtained (Maguire & Delahunt, 2017). The interview results were concluded through thematic analysis as recommendations for the technical implementation of GAAR. This interview result is supported by secondary data from literature studies, such as articles, books, journals, and government regulations, to strengthen the analysis. The framework used to analysis data in this research can be seen in Figure 2.

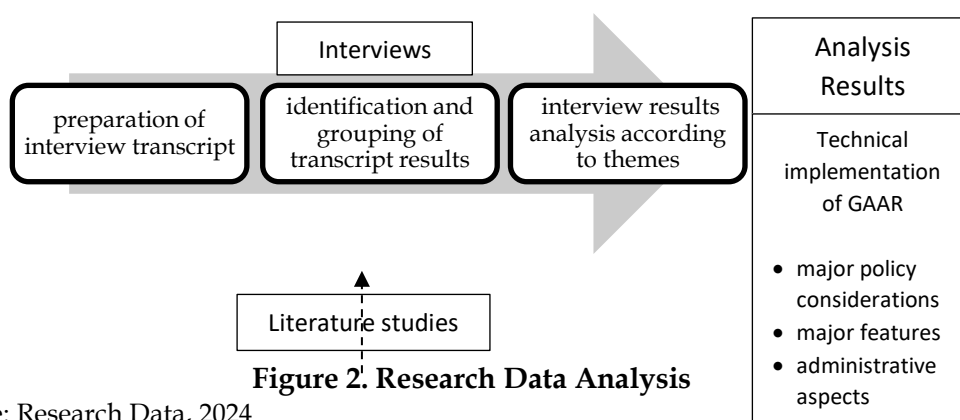


Figure 2. Research Data Analysis

Source: Research Data, 2024

RESULT AND DISCUSSION

In 2021, the establishment of GAAR principles finally has a clear regulatory legal basis and becomes a guideline in preventing tax avoidance practices. The commitment to draft special regulations related to GAAR is codified in Law Number 7 of 2021 concerning Harmonization of Tax Regulations for the Income Tax cluster in the Elucidation of Article 18. This authority is clarified in PP 55/2022. The Minister of Finance, based on Article 32 paragraph (1), has the authority to prevent the practice of tax avoidance 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 the provisions of laws and regulations in the field of taxation. Then, Article 44 paragraph (3) states that further provisions will be regulated in a Minister of Finance Regulation (PMK). Initially, the GAAR clause was intended by the government to be regulated in the fifth amendment to the Law on General Provisions and Tax Procedures (KUP). GAAR regulations are proposed to be included in the KUP Law as a new article to adopt GAAR regulations at the statutory level. As a way out of parliament's disapproval regarding the existence of this regulation in the KUP Law, the government introduced this GAAR in the Elucidation of Article 18 through the substance over form principle as a guideline. There are several views regarding the GAAR clause which was finally included in the Income Tax cluster HPP Law. GAAR regulations are only found in the Elucidation to Article 18, not mentioned in a separate paragraph. But, regarding GAAR regulations in Indonesia, the informants say that these regulations can not categorize as statutory GAAR because they are not regulated in the article of law.

"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)

According to Law Number 12 of 2011 concerning the Formation of Legislative Regulations, the explanations are an inseparable part of the law. Thus, the GAAR regulations in the Elucidation to Article 18 and the derivative regulations for its implementation can still be applied. In the Elucidation to Article 18, it is stated that tax avoidance activities are an effort made by taxpayers to reduce, avoid, or postpone the payment of taxes that should be owed. FPA Analyst 1 said that this article has characteristics of GAAR. First, the meaning contained in the practice of tax avoidance shows that there are transactions that can produce tax benefits. Second, the purpose of carrying out these transactions is to reduce, avoid or postpone the payment of taxes that should be owed, or in other words to obtain tax benefits. Third, the practice of tax avoidance is contrary to the aims and objectives of statutory provisions in the field of taxation and is therefore abusive.

The DGT Analyst also added that the GAAR element which is guided by the principle of substance over form as the last resort is reflected in Article 32 paragraph (4). From this analysis, we can conclude that GAAR regulations in Indonesia have fulfilled the three GAAR trigger elements according to Arnold (2017). This conclusion is in line with research by Jordi & Hikmah (2023) which states that Indonesia already has a GAAR instrument which is general in nature and acts as a last resort rule and fulfills the elements of GAAR activation.

All informants agree that GAAR regulation is very urgent and important for Indonesia. Tax avoidance schemes continue to develop. To prevent all of this, GAAR is needed to handle transactions that cannot be identified through SAAR. The purpose of GAAR is to give authority for DGT to prevent tax avoidance due to loopholes in tax regulations. This could arise because existing regulations may not be able to keep up with the growing number of avoidance transactions. With GAAR, tax regulations become stricter. Many SAAR regulations do not cover tax avoidance that occurs in Indonesia. This regulated provision will provide legal certainty for Taxpayers and become a reference for the DGT to act according to its authority.

"... there is also tax avoidance outside of that, such as corporate tax sheltering. We have corporate income tax rates and individual income tax rates, but there's a big difference. Individual rate is 35% while corporate is 22%. It could be that the individual with the highest rate will make the body avoid being hit by 35%. Well, if something like this happens, we don't have SAAR. What address do we want to use? So that's why GAAR is urgent, unless the SAAR is really complete, there are no loopholes." (FPA Analyst 1)

GAAR also has challenges when it is implemented in Indonesia. Based on thematic analysis, these challenges are related to design and implementation of GAAR. GAAR regulations must ensure that their interpretation is made in such a way as not to be too broad. FPA Analyst 1 said that the legality of GAAR provision is not yet secure. So, Practitioner 2 emphasized that the government must be careful in preparing GAAR. Academic 2 also added that supporting infrastructure is important to be able to assist DGT in tracing transactions that do not have economic substance. This argument was also confirmed by Tax Auditor informants that there are difficulties for auditors in the field to obtain evidence related to the implementation of GAAR. These results align with Waerzeggers & Hillier (2016) study that GAAR's success in achieving its objectives depends on the design and preparation of GAAR regulations, as well as the available tax authority administrative capacity and infrastructure.

DGT must formulate further regulations by the mandate of Article 44 paragraph (1) of PP 55/2022. For the recommendations that will strengthen the effectiveness of GAAR implementation to combat tax avoidance, this study analyze major policy considerations, major features, and administrative aspects based on Arnold (2017).

First, for major policy considerations, all recommendations by Arnold (2017) can be implemented by DGT. Regarding for the scope of tax avoidance, Practitioner 2 said that GAAR must be broad enough. There are no limitations of subject and object of the GAAR application. All Tax Auditor, Objection Reviewer, and Judge also said that the resources are limited while GAAR testing is complex. DGT Analyst added that there needs to be a threshold for transactions entering GAAR. It is important to prioritize the cost against benefit in deciding to use GAAR in a tax avoidance scheme.

"So that's why the GAAR regulations need to be broader, broader in scope, so that they can capture schemes that continue to develop, continue to change. For this GAAR, you can't be too specific." (Practitioner 2)

GAAR must be applied on unacceptable tax avoidance. 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)

Most tax systems have provisions that depend on the Taxpayer's objectives of a transaction based on objective facts and results, not the subjective motives or intentions of the Taxpayer (Arnold, 2017). Practitioner 1 said that GAAR should not apply to a transaction if the purpose of the transaction is a legitimate commercial purpose and not for tax avoidance. However, GAAR's approach as a last resort must still be prioritized. Article 32 paragraph (4) PP 55/2022 has explained that GAAR can be applied if SAAR cannot be applied. Academic 2 said that when DGT can't run SAAR, they can immediately shoot with GAAR. DGT and FPA Analyst, argued that GAAR should be able to fill the void due to the absence of Indonesian tax treaty with partner countries. But the provision that GAAR can be applied when there is no tax treaty must be stated in the regulations.

"Because now we have tax treaty with only 71 countries. Later, for example, with other countries we can use GAAR." (FPA Analyst 2)

Arnold (2017) stated that the wording of the GAAR regulations themselves should be relatively simple so that they are easier to explain to the public and to the judges who are responsible for implementing them. According to the DGT Analyst said that simplicity will of course be applied by using terms that are easy to understand. However, the direction for GAAR settings will be detailed and rigid. In line with this opinion, FPA Analyst 1 also 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)

Regarding tax consequences, this must be stated clearly in the regulations. GAAR must provide rules for determining the tax consequences if applied to a transaction (Arnold, 2017). According to FPA Analyst 1, Practitioner 1, and Academic 1, the tax consequences depend on how the arrangements will be. DGT's authority must be explained whether it only determines the amount of tax payable, recalculates income and expenses, or can also be recharacterized. But if we look at tax regulations outside GAAR, DGT can recharacterize. Then, according Academic 1 opinion, the right to appeal certainly exists, including in the application of GAAR. This is also supported by Article 44 paragraph (2) PP 55/2022, which said that Taxpayers can still make efforts to resolve disputes. From this perspective, Indonesia fulfills it. Taxpayers may appeal all aspects of GAAR. However, taxpayers will certainly think long and hard when submitting an objection and then appeal. Taxpayers do not like this dispute resolution process because it is a long process and uses a lot of resources.

"We also provide efforts in the law. And it still applies now, there are legal options, right? We can object. When we are audited, we can apply quality assurance. You can object, you can appeal, and so on. That is a form of protecting justice." (Academic 1)

Then, for the major features of GAAR based on Arnold (2017) also can implemented in Indonesia. 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)

Indonesian 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. The DGT must prove that there are tax benefits from the transactions carried out by the Taxpayer. Academic 2 said that GAAR should be used for tax avoidance that is blatant or abusive. Not all tax avoidance has to be hit with GAAR. These additional provisions should be considered exceptions in determining the scope of tax avoidance included in GAAR.

"This is used for blatant tax avoidance. Which is abusive. Not everything can be hit like that, but that doesn't mean the SAAR checklist is. When DGT wants to use GAAR, he must be able to prove it." (Academic 2)

GAAR must contains purpose test. DGT Analyst, FPA Analyst, and Academic 2 agreed to use a primary or main purpose approach, or, one of the primary or 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 objectives 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. 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)

Last, for administrative aspects, Indonesian GAAR can apply Arnold (2017) recommendations except ruling which is not suitable with Indonesian tax regulations. Assessment aspect must consider Indonesian tax administration. GAAR must be carried out in the context of a tax audit (Wijaya & Kusumaningtyas, 2020). FPA Analyst 1 stated that the tax audit procedures for GAAR could start from each Tax Office because receipt of tax return starts from there. Unless later, for example, it is stipulated that the GAAR inspection will be carried out at the Regional Office or Head Office. But DGT must provide adequate auditor resources for this. The most important thing is that there is an external party that guarantees the quality of the implementation of GAAR.

All informants agree that the implementation of GAAR by the DGT must be accompanied by stricter audit procedures than other tax avoidance practices. This guidance must be supported by laws, government regulations, minister of finance regulations, DGT regulations, and circular letters that can explain to taxpayers how GAAR will be applied. It must consider the Indonesian tax regulation hierarchy (Hapsari & Irawan, 2022). Practitioner 1 stated that there is no example of a country that is most suitable for Indonesia. FPA Analyst also emphasized to not be adopted entirely when benchmarking other countries. DGT must look at its suitability to the taxation system and the characteristics of taxpayers in Indonesia. Indonesia also can adopt GAAR Panel. Both FPA and DGT Analyst, also Academic 1 and Practitioner 1 agreed that the GAAR Panel could come from external or internal DGT. The personnel can come from the DGT, Ministry of Finance, consultants, or academics.

"Well, this GAAR panel, for example, is like the one in India and the UK. This can be useful because it is a division or unit that is independent from the DGT." (Practitioner 1)

For ruling, according to DGT Analyst, GAAR is guided by substance over form. The Tax Auditor said that the audit will test whether the transaction does not have a tax avoidance motive. Even though there has been a request for advance ruling, and it has been answered by the DGT, it still does not rule out the possibility that testing related to GAAR will still be carried out. FPA Analyst, Practitioner 1, and Academic 2 also agree that it would be difficult to implement this ruling in Indonesia. Ruling is only an affirmation regarding the interpretation of a regulation, not related to the issue of tax avoidance in a transaction.

"Actually, this ruling could be a solution, but here we don't have the practice of ruling." (FPA Analyst 1)

In other countries, specifically for violation GAAR, has a much higher penalty than other avoidances in general. The imposition of penalties in connection with the application of GAAR can be justified as reasonable and necessary for the effectiveness of GAAR (Arnold, 2017). However, Indonesia does not yet have Statutory GAAR. To implement this, FPA Analyst 1 said that GAAR and its higher penalties must be regulated by amending the KUP Law.

CONCLUSION

GAAR principle through substance over form cannot yet be categorized as statutory GAAR. However, GAAR regulation is very urgent and important for Indonesia. The GAAR regulations in the Elucidation to Article 18 and its implementing regulations can still be applied because explanations are an inseparable part of the law. GAAR regulations in Indonesia also fulfilled the three GAAR trigger elements according to Arnold (2017). This conclusion is also in line with research by Jordi & Hikmah (2023).

This GAAR's effectiveness depends on its design and implementation. These results align with Waerzeggers & Hillier (2016) study that GAAR's success in achieving its objectives depends on the design and preparation of GAAR regulations, as well as the available tax authority administrative capacity and infrastructure. Thus, DGT must anticipate these challenges before implementing GAAR. GAAR implementing regulations can consider Arnold (2017) criteria which include major policy considerations, major features, and administrative aspects to strengthen the effectiveness of GAAR. GAAR must consider all major policy considerations based on Arnold (2017). GAAR must be broad enough to handle all forms of unacceptable tax avoidance and uses as last resort provision. The major features important key are that definition of transaction and tax benefit tend not to be defined but it must be measurable. GAAR must contain purpose tests which use a primary or main purpose approach. For administrative aspects, Indonesian GAAR can apply Arnold (2017) recommendations in assessment, guidance, and GAAR Panel. Ruling is not suitable with Indonesian tax regulations. Penalties can be higher, but it must be regulated by amending the KUP Law.

The limitation includes the qualitative nature of the study. The authors cannot meet directly with all informants. So, the interview cannot expand on a wider scope as compared with physical in-person meeting. The authors have made the best efforts to choose the best resource informants that are available in GAAR discussions. However, this also does not free informants' bias. The result of this research contributes to give recommendation for strengthening the legality and effectiveness of Indonesian GAAR provisions. For further study, the authors recommend using comparative study about GAAR regulation in other countries and interview with more informants to have a better point of view.

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