

CHAPTER I

INTRODUCTION

1.1 Background

Tax is a contribution to the state that is payable by those who are obliged to pay it based on the law without receiving an immediate merit of return.¹ It can be said that tax is indebted by the community members to the community. This very principle can be interpreted from the philosophical foundation of Indonesia; Pancasila. Pancasila contains the nature of kinship and mutual cooperation. Mutual cooperation is different from helping, it is an effort carried out jointly without being rewarded, which is aimed to achieve the public interest or common interests, such as making public roads, maintaining regional security, and so on.²

Tax is one form of mutual cooperation that does not need to be conditioned, as it has long existed in Indonesian society. In this framework of thought, tax payment becomes something that is not difficult to justify. Tax is nothing but the sacrifice of every community member for the benefit of the community itself, so technically, the money remains inseparable within the community where the taxpayer lives.³

In accordance with the mandate of the 1945 Constitution of the Republic of Indonesia, tax collection in Indonesia must be based on the law

¹ C.S.T. Kansil, 1986, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, Jakarta: Balai Pustaka, p.324.

² H. Rochmat Soemitro, 2004, *Atas dan Dasar Perpajakan 2*, Bandung: Salemba Empat, p.30.

³ *Ibid.*

and should not be carried out arbitrarily. Conjointly, the basis for tax collection is stipulated in Article 23A of the Third Amendment to the 1945 Constitution of the Republic of Indonesia that states; "Taxes and other compulsory levies for state purposes are regulated by Law".⁴ The elucidation of Article 23A explains that how the people live, as a nation, is determined by the people themselves, with People's Representative Council acting as medium.

Since there is freedom of right for all people to pursue their own personal interests in terms of spending, all actions that place a burden on the people, including taxes, must be determined by the state through laws and with the approval of the People's Representative Council to prioritize the public interest. This is a necessary mechanism for Indonesia who adopted the rule of law. A taxpayer's responsibility to the community is reflected through complying with tax collection. Tax collection is the manifestation of obligation, and it becomes the role of taxpayers to directly and jointly carry out their tax obligations required for the state revenue.⁵

In running its governmental duties, the state requires large amount of funds to finance the public expenditure in the form of routine costs and development costs. The sources of state revenue for each country vary, depending on the source of resources owned by each country. Indonesia is a state that is highly dependent on the taxation sector as its main source of

⁴ Constitution of the Republic of Indonesia of 1945 Article 23A.

⁵ Agus Satrija Utara, 2011, *Pengantar Hukum Pajak*, Jakarta: Pusat Pendidikan dan Pelatihan Pajak. p.1.

revenue. The tax revenue that is collected from the citizens becomes a tool used for general expenses by the government to achieve its goals of improving the welfare of the citizens, national economy, and national development. In carrying out these tasks, it is appropriate for the community, the state apparatus, and the existing tax mechanisms to enforce tax burden in accordance with applicable regulations.⁶

Tax Law, also called Fiscal Law, is the entirety and the rules which include the authority of the government, to take someone's wealth and hand it back to the community through the State Treasury.⁷ Tax Law must provide legal guarantees that are necessary to express strict justice, both for the state and for its citizens.⁸ Consequently, it becomes a part of Public Law which regulates legal relations between the state and its people or legal entities that are obliged to pay taxes, hereinafter referred to as Taxpayers. Therefore, Tax Law also contains elements of Constitutional Law, State Administrative Law, Criminal Law, Criminal Procedural Law, Civil Law and others.⁹

Indonesia has several types of taxes, categorized into Central Tax and Regional Tax. Central Tax, whose collection authority rests with the central government and whose implementation is carried out by the Ministry of Finance through the Directorate General of Taxation, is regulated in the law and its revenue shall go to the State Budget. Central Tax include

⁶ *Ibid.*

⁷ R. Santoso Brotodihardjo, 1986, *Pengantar Ilmu Hukum Pajak*, Bandung: PT. Eresco, p.1.

⁸ Agus Satrija Utara, *Op. Cit.* p.45.

⁹ R. Santoso Brotodihardjo, *Op. cit.*

Income Tax, Value Added Tax, Sales Tax on Luxury Goods, and Stamp Duty. Regional tax, whose collection authority rests with the regional government and whose implementation is carried out by the Regional Income Service Office, is also regulated in law and the results will go to the Regional Budget. Regional tax includes Property Tax, Motor Vehicle Tax, Hotel Tax, and so on.¹⁰

In this thesis, the type of taxation concerned is Value Added Tax (VAT). VAT is a direct taxation imposed in each step in the production of a commodity, based on the value added at each step by the difference between the commodity's production cost and its selling price.¹¹ As VAT falls under the category of Central Tax, its collection, report, and depository duty are done by the State Treasurer or other government institution appointed by the Ministry of Finance.¹² In 2017, the data audited by the Central Government Financial Report shows that the Value Added Tax alone reached a sum of 475,4 out of a total of 1.736 trillion Indonesian Rupiah (27%).¹³ Statistics also indicates that in recent years, VAT plays a major role in tax contribution.

The Directorate General of Taxation (DGT), who is holds the main responsibility in carrying out taxation in Indonesia, creates an annual tax

¹⁰ Agus Satrija Utara, *Op. Cit.* p.51.

¹¹ Bryan A. Garner, and Henry Campbell Black. 2014. *Black's law dictionary 10th Edition*. Thomson Reuters. p.1688.

¹² Law Number 42 Year 2009 On the Third Amendment of Law Number 8 Year 1983 Regarding the Value Added Tax of Goods and Services and Tax of Luxury Goods Sale Article 1 Paragraph 27.

¹³ "Realisasi Penerimaan Negara (Milyar Rupiah), 2007-2018." Badan Pusat Statistik. 2017. Jakarta Pusat: Badan Pusat Statistik.

revenue target that serves not only as a taxation goal but also an indication of tax compliance percentage. Concerningly, the tax revenue target has not always been realized over the years. In fact, the tendency for shortfalls are forecasted nearly every year. News reported that from the year of 2008 up to 2017, the tax revenue target was never met.¹⁴ There are a number of factors that causes the failure to achieve the tax revenue target, one of which is due to the leakages from the crediting of Input Tax based on fictitious transactions using tax invoices.

The main tool used in the collection of VAT is called Tax Invoice. A Tax Invoice is a proof of tax levy made by a Taxable Enterprise following the delivery of Taxable Goods or Services, or proof of tax levy due to the import of taxable goods used by the Directorate General of Customs and Excise.¹⁵ This means, when a Taxable Enterprise sells their goods or services after their principal amounts have been additionally charged with VAT, they must issue a Tax Invoice as a proof that they have levied taxes on the person who has purchased those particular goods or services. Aside from that, Tax Invoices also serve as proof of tax levies that can be used as means to credit Input Tax.

Unfortunately, these tax facilities provided by the government is, in reality, often used incorrectly by rogue taxpayers to steal from the state

¹⁴ Kusuma, Hendra. *“Sudah 9 Tahun Setoran Pajak RI Tak Pernah Capai Target.”* Detik Finance. November 15, 2017. Accessed October 22, 2018. <https://finance.detik.com/berita-ekonomi-bisnis/d-3728111/sudah-9-tahun-setoran-pajak-ri-tak-pernah-capai-target>.

¹⁵ Waluyo, 2012, *Akuntansi Pajak*, Jakarta: Salemba Empat, p.315.

treasury. This practice constitutes as an offense and it is commonly known as Tax evasion; a fraudulent or deceitful effort by a taxpayer to escape his legal tax obligation¹⁶, such as deliberate under-statement of taxable income or willful non-payment of due taxes. Data suggests that out of the numerous methods of tax evasion, the most popular one is the usage and issuance of Fictitious Tax Invoice.¹⁷

Fictitious Tax Invoice has been practiced for a very long time in Indonesia, and due to its difficulty to be detected, it becomes the most prevalent method of tax evasion until today. On January 31, 2017, the Minister of Finance, Sri Mulyani Indrawati, stated that the tax subscription in Indonesia is still low at 62,96% and the tax ratio in Indonesia is still at 11%.¹⁸ The Ministry of Finance also reports that fictitious tax invoice makes up for 50% of the fraud committed in relation to taxation.¹⁹

Fictitious Tax Invoices can be defined simply as tax invoices that are not based on actual transactions.²⁰ Through them, Taxable Enterprises can reduce their obligation to deposit taxes to the State Treasury, or even to request restitution out of thin air. As mentioned before, this practice is specifically concerned with Value Added Tax. The collection system of

¹⁶ Safri Nurmantu, 2003, *Pengantar Perpajakan Edisi 2*, Jakarta: Yayasan Obor Indonesia, p.150

¹⁷ Dudi Wahyudi. "Kasus Faktur Pajak Fiktif dan Pencegahannya" bppk.kemenkeu.go.id. November 9, 2016. Accessed February 22, 2018. <http://www.bppk.kemenkeu.go.id/id/publikasi/artikel/167-artikel-pajak/23264-kasus-faktur-pajak-fiktif-dan-pencegahannya>.

¹⁸ "Laporan Kinerja Direktorat Jenderal Pajak 2017." [Pajak.go.id](http://pajak.go.id). Accessed October 8, 2018. <http://www.pajak.go.id/laporan-kinerja-tahun-2017-direktorat-jenderal-pajak>.

¹⁹ Dudi Wahyudi. *Op. Cit.*

²⁰ Ichsan Mufti. "Faktur Pajak Fiktif". 1-17. Accessed August 27, 2018. www.scribd.com/doc/152362040/Faktur-Pajak-Fiktif.

Value Added Tax in Indonesia adopts what is known as the Credit Method.²¹

With this system, a Taxable Enterprise who collects VAT when making a sale or delivery, will subtract first from the VAT paid when purchasing the goods or services. The terms used for both instances are Output Tax and Input Tax respectively. When a Taxable Enterprise's Output Tax is greater than its Input Tax, the difference is to be submitted to the State Treasury. On the other hand, when the Input Tax is greater than the Output Tax, the Taxable Enterprise may request for restitution. This gap is where Fictitious Tax Invoice comes to play.

In general, there are 2 (two) forms of state loss caused by this practice. First, the actors are illegally reducing the amount of taxes that must be deposited into the State Treasury, causing a lower tax revenue for the state. Secondly, the actors can even gain tax refunds that are not lawfully owed to them, which equals to theft against the State Treasury. The DGT reveals that the parties involved in this practice is not limited to taxpayers, but also tax officers and relevant legal authorities.

The DGT prohibits taxpayers from using tax invoices that are not based on actual transactions and/or from taxpayers that have not been confirmed as taxable entrepreneurs. Before receiving a tax invoice, it is the taxpayer's duty to ensure whether the issuer has entered the DGT's suspect list. Publishers and users of invalid tax invoices will be investigated for

²¹ Dudi Wahyudi. *Op. Cit.*

criminal acts in the taxation sector. In accordance with Indonesian Tax Law, the issuers and users of invalid tax invoices can be prosecuted in court with the threat of criminal conviction of 2 (two) years and a maximum of 6 (six) years.²²

In the years of 2016-2017 alone, news reported that the DGT has handled 525 fictitious invoices cases, with a potential loss of 1.01 trillion Indonesian Rupiah. Additionally, a remainder of 216 cases are still progressing in the preliminary investigation stage.²³ One of the most recent cases highlights defendant Amie Hamid who was sentenced by the South Jakarta District Court on the 8th of January 2018 to four years and six months imprisonment on the crime he has committed in the field of taxation by selling fictitious tax invoice.²⁴ The Panel of Judges also imposed a fine of one billion rupiah to subsidize for 3 (three) months confinement.

In attempt to eradicate this practice, fundamental changes in the VAT collection system were made. To increase tax revenues optimally and reduce fraud, the DGT reforms the tax administration system by modernizing it.²⁵ In 2013, the implementation of the change in Tax Invoice

²² Law Number 28 Year 2007 Regarding the Third Amendment to Law Number 6 Year 1983 Regarding Taxation General Provisions and Procedures Article 39A.

²³ "DJP Suspend 1.049 WP Terindikasi Penerbit Faktur Illegal." Direktorat Jenderal Pajak. January 25, 2018. Accessed September 04, 2018. <http://www.pajak.go.id/djp-suspend-1049-wp-terindikasi-penerbit-faktur-ilegal>.

²⁴ "Penerbit Faktur Pajak Fiktif Divonis Pidana TPPU 4 Tahun 6 Bulan, Aset Rp27 Miliar Dirampas Untuk Negara." Direktorat Jenderal Pajak. January 10, 2018. Accessed September 04, 2018. <http://www.pajak.go.id/penerbit-faktur-pajak-fiktif-divonis-pidana-tppu-4-tahun-6-bulan-aset-rp27-miliar-dirampas-untuk>.

²⁵ Firninda Yosi Anggraini Putri. "Analisis Kebijakan Faktur Pajak Terbaru: 3." Jurnal Akuntans UNESA. Accessed August 27, 2018. <http://jurnalmahasiswa.unesa.ac.id/index.php/jurnal-akuntansi/article/view/6419>

serial numbering were made, wherein the numbering is no longer done solely by the concerned Taxable Enterprise but is done by the DGT. The Tax Service Office will be more selective in giving Tax Invoice Serial Number, only enterprises who are considered feasible and secure, and has completed the verification and re-registration process is given the Tax Invoice Serial Number.²⁶

In the same year, the Ministry of Finance issued a new regulation for Electronic Tax Invoicing known as *E-Faktur*. On July 1, 2016, *E-Faktur* was nationally enforced on every Taxable Enterprise in Indonesia. Prior to this, a common modus operandi is where Fictitious Tax Invoices were issued by Enterprises that haven't been officially inaugurated as a Taxable Enterprise. That particular method has become obsolete since the implementation of *E-Faktur*, that gives access to the DGT full monitoring and control over all Tax Invoices uploaded to the system, minimalizing its misuse. However, despite the more integrated system and increased punishment imposed on caught perpetrators of this crime, cases of Fictitious Tax Invoice remain rampant here in Indonesia.²⁷ Even with the establishment of the Fake Invoice Handling Task Force in 2014 and 2015, they have not been able to prevent the recurrent cases until present date.

²⁶ *Ibid.*

²⁷ Farid Al-Firdaus. " *Studi Eksploratif Penanganan Faktur Pajak yang Tidak Berdasarkan Transaksi yang Sebenarnya.* " *Jurnal Pajak Indonesia* 1, no. 2 (January 19, 2018): 14-30. Accessed August 27, 2018. www.jurnal.stan.ac.id/index.php/JPI.

Based on this information, it can be concluded that the DGT's efforts alone is not enough to solve Indonesia's taxation problem, other factors must be pointed out, addressed, and analyzed as well. For instance, taxation leakages happen in most developing countries and the scenario is much worsened by the fact that their governments may not have exerted enough effort to create a clean taxation environment that encourages taxpayers to fulfill their obligation.²⁸

It is natural that citizens dislike taxation because it reduces their disposable income. The same goes for businesses who view tax as a cost, a burden. However, it is proven that such is not the sole reason why taxpayers evade tax. Research proves that a disorganized system such as corruption, lack of awareness, weak administration and supervision, and many other factors weigh into their ethical consideration to evade tax.²⁹

When the required revenue for smooth government operation cannot be raised, often times the government resorts to increase tax rates or borrowings which create more problem such as debt trap, instead of fixing the real issue. On the other hand, tax evasion can lead to serious problems such as economic growth stagnation.³⁰ Thus, instead of only relying on the DGT to create more system reforms, there is the need to shift the attention towards the existing legal and administrative loopholes that may have

²⁸ Rahmawati and Saifullahi Shehu Ibrahim. "An Appraisal of the Tax Evasion and Tax Avoidance System in Indonesia." *AKUNTABILITAS* 8, no. 2 (August 2015): 121-32.

²⁹ *Ibid.*

³⁰ *Ibid.*

caused tax evasion along with the ethical reasons that cause taxpayers' unbothered behavior towards tax.

Considering that the criminal practice of Fictitious Tax Invoice has failed to be uproot for decades long, the author finds this persisting issue in Indonesia's field a taxation an intriguing case to be studied. This thesis will consist of the author's research on how the presumable limitations of the tax arrangement in Indonesia pertain to the act of Fictitious Tax Invoice.

It will include analysis on existing laws and regulations and its effect on the taxation environment in Indonesia as developing country and how they relate to the factors that contributes to the issuance of Fictitious Tax Invoice. The author will also analyze the legal mechanisms that are used counter this issue. The author believes it is crucial for the issue of Fictitious Tax Invoice specifically to be resolved in order for Indonesia to get optimal tax revenue, so it can be properly allocated for national development. Based on the foregoing, the author decided to choose the title "Juridical Analysis on Fictitious Tax Invoice."

The author realizes that there are previous papers which are similar to this thesis, titled;

1. "Analysis of the Application of Electronic Tax Invoice as an Effort to Prevent Fictitious Tax Invoice Issuance" as translated from the original title in Indonesian language "*Analisis Penerapan Faktur Pajak Elektronik Sebagai Upaya Mencegah Penerbitan Faktur*

Pajak Fiktif” written by Nisrina Atikasari, Heru Susilo, and Rizki Yudhi Dewantara from Universitas Brawijaya.

2. “Analysis of The Implementation of The Latest Tax Invoice Policy” as translated from the original title in Indonesian language “*Analisis Penerapan Kebijakan Faktur Pajak Terbaru*” by Firminda Yosi Anggraini Putri from Universitas Negeri Surabaya.

The difference between the previous papers and this thesis is that this thesis attempts to find out whether there are limitations in Indonesia’s tax arrangement that could have caused the prevalence of Fictitious Tax Invoice. This thesis also attempts to analyze the legal mechanisms that have been or will be used to counter Fictitious Tax Invoice. Whereas the first previous paper only analyzes the effect of the implementation of the Electronic Tax Invoice System on Fictitious Tax Invoice, and the second paper only concerns how the newest policy at that time has affected the practice of Fictitious Tax Invoice.

1.2 Research Question

Based on the background discusses above, the author proposes the following research questions:

- 1) What are the limitations of the tax arrangement in Indonesia that could have caused the practice of Fictitious Tax Invoice?
- 2) What are the legal mechanisms that can be used to counter the practice of Fictitious Tax Invoice?

1.3 Research Purpose

Based on the research questions formulated above, the purpose of this research is:

- 1) To understand and analyze the substance of the possible limitations of the Indonesian Tax Law and its implication on the illegal practice of Fictitious Tax Invoice.
- 2) To discuss and analyze the existing and the possible countermeasures for Fictitious Tax Invoice.

1.4 Research Benefit

This research aims to analyze the plausible limitations that may exist in Indonesia's tax arrangement that hinders optimal tax revenue due to Fictitious Tax Invoice, as well as to analyze the legal mechanisms that are used to counter of Fictitious Tax Invoice. This research is written in hope that it can be useful for the author, readers, and other parties concerned.

1) Theoretical Benefits

This research is expected to add insight regarding the theoretical aspect in the field of law, especially for the development in the field of Tax Law.

2) Practical Benefits

This research may be used as a material consideration or a reference for various parties as an input or as a refinement for similar researches in the future.

1.5 Systematic of Writing

This thesis will consist of 5 (five) chapters. The order and layout of each chapter as well as the subject of discussion are as follows:

Chapter I: Introduction

This chapter contains the background, research questions, research purpose, research benefits, and systematics of writing.

Chapter II: Literature Review

This chapter is divided into 2 (two) sections, namely the theoretical framework and conceptual framework. The theoretical framework revolves around the field of taxation; tax, Value Added Tax, Value Added Tax collection, self-assessment system, tax avoidance and evasion, and Fictitious Tax Invoice. The author will begin by describing the general taxation scheme, leading to Value Added Tax as a form of taxation in Indonesia and its relationship with the act of Fictitious Tax Invoice. The conceptual framework consists of brief definitions of the concepts that are relevant to this

thesis, namely; tax, tax invoice, Value Added Tax, tax evasion, and Fictitious Tax Invoice.

Chapter III: Research Methods

This chapter describes the method of collection of data. In addition, the author will also include data analysis procedures.

Chapter IV: Discussion and Analysis

This chapter includes the author's analysis on Indonesia's tax arrangement regarding the practice of Fictitious Tax Invoice. The author will present the analysis result that lead to the assumption that Indonesia's tax arrangement consists of limitations that could have led to the act of Fictitious Tax Invoice, and how the state uses the existing or planned legal mechanisms to counter it.

Chapter V: Conclusion and Recommendation

This chapter will summarize the formulation of the problems described in this thesis. Lastly, the author will attempt to provide recommendations for the practice of Fictitious Tax Invoice