



The Mistaken Implementation of the Destination Principle to the Value-Added Tax Collection Partners of State-Owned Enterprises (The Study of Case Number 1263/PID.SUS/2019/PN.JKT.PST and 678/PK/PID.SUS/2023)

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ABSTRACT

MAS's first instance decisions in sentenced him to prison and fined him for violating Article 39 paragraph (1) letter i of Law Number 16 of 2009 and acknowledged his VAT debt settlement. At the judicial review level, the criminal fine of 3 times the VAT owed was not proportional (double jeopardy) and the VAT was overpaid, and the Prosecutor was ordered to return it to the defendant MAS, but the person was still criminally guilty. Additionally, the value-added tax law extends the destination principle to state-owned firms. The analysis shows that the defendant MAS's actions constitute administrative tax acts due to the broadening of the destination principle in Article 16A of Law Number 42 of 2009.

INTRODUCTION

The Public Prosecutor at the Central Jakarta District Attorney's Office has charged the former director of PT. CF, known as MAS, for his failure to deposit taxes that were deducted or collected from 89 sales and purchase transactions with PT. PERTAMINA between 2009 and 2012. The total amount of taxes that were not deposited is Rp. 21,061,007,722 (twenty-one billion sixty-one thousand seven thousand seven hundred and twenty-two rupiah), which serves as the tax base.

As per the Public Prosecutor, the Defendant MAS has committed a tax offense by failing to deposit the deducted or collected Value-Added Tax (VAT) amounting to IDR 429,097,664.00 (four hundred twenty-nine million ninety-seven thousand six hundred and sixty-four rupiah), as stated in Article 39 paragraph (1) letter i of Law Number 16 of 2009. This failure has potentially resulted in a loss of state revenue amounting to IDR 2,094,080,126 (two billion ninety-four thousand eighty-one hundred and twenty-six rupiah) from the collected VAT value.

In Decision Number 1263 Year 2019 (1263/PID.SUS/2019/PN.JKT.PST) dated February 17, 2020, the Central Jakarta District Court heard from expert Asep Wahyudin Nugraha, who was serving as the Head of the Objection, Appeal, and Reduction Section IV of the Central Jakarta Regional Office of the Directorate General of Taxes (DJP). Nugraha stated that the state revenue loss was calculated based on the amount of VAT that was not deposited into the state treasury, which amounted to IDR 429,097,664.00 (four hundred twenty-nine million ninety-seven thousand six hundred and sixty-four rupiah). However, the defendant MAS claimed that starting from July 1, 2012, PT. PERTAMINA was responsible for collecting VAT.

Decision Number 1263 Year 2019 established that PT. CF failed to submit VAT Tax Returns (SPT) for the periods of January 2009, February 2009, and October 2012, amounting to IDR 429,097,664.00 (four hundred twenty-nine million ninety-seven thousand six hundred and sixty-four rupiah). In 2019, the defendant MAS paid off the VAT debt of IDR 429,097,664.00, multiplied by 4 administrative fines, totaling IDR 1,716,390,656.00, (one billion seven hundred million sixteen thousand three hundred ninety-six hundred and fifty-six rupiah) as part of the defendant's legal process.

In Decision Number 1263 Year 2019, the judge concluded that the defendant MAS is the subject of the criminal offense alleged by the public prosecutor and cannot provide any reason. According to the judge, PT. CF is a Taxable Entrepreneur (PKP) who has tax obligations, including VAT/PPnBM. The judge determined that the defendant MAS intentionally did not pay the VAT that had been deducted or collected, which is considered an unlawful act. This decision is based on Article 39 paragraph (1) letter i of Law Number 16 of 2009 in conjunction with Article 64 paragraph (1) of the Criminal Code.

The defendant MAS chose not to appeal or file a cassation against Decision Number 1263 Year 2019, which found the defendant guilty of committing a crime in accordance with the relevant laws and regulations. As a result, the defendant MAS was sentenced to six months in prison and fined a total of Rp.

1,287,292,922.00 (one billion two hundred eighty-seven million two hundred ninety-two thousand nine hundred twenty-two rupiah), consisting of three times the amount of Rp. 429,097,664.00 (four hundred twenty-nine million ninety-seven thousand six hundred sixty-four rupiah). If the defendant MAS fails to pay the aforementioned fine, the Prosecutor has the authority to seize and auction off their property. In the event that the defendant MAS does not possess any property, they will be subject to a substitute punishment of 6 months imprisonment.

In the context of judicial review, the Supreme Court, in Decision Number 678 Year 2023 (678/PK/PID.SUS/2023) dated August 15, 2023, concluded that the judge's reasoning in Decision Number 1263 Year 2019 contained evident judicial inaccuracies. These inaccuracies stemmed from incorrect legal conclusions and considerations that were not supported by pertinent legal facts presented during the court proceedings.

Decision Number 678 Year 2023 rectifies Decision Number 1263 Year 2019 by applying the principle of criminal proportionality. This principle states that the punishment should be in line with the nature of the defendant MAS's actions. In this case, there was an injustice in law enforcement because MAS paid off a VAT debt of IDR 429,097,664.00 (four hundred twenty-nine million ninety-seven thousand six hundred sixty-four rupiah), resulting in four administrative fines totaling IDR 1,716,390,656.00 (one billion seven hundred million sixteen thousand three hundred ninety-six hundred and fifty-six rupiah). However, MAS was sentenced to a fine of three times the amount of IDR 429,097,664.00 (four hundred twenty-nine million ninety-seven thousand six hundred sixty-four rupiah).

Decision Number 678 Year 2023 states that the VAT debt settlement in the name of the defendant MAS is Rp. 1,716,390,656.00 (one billion seven hundred million sixteen thousand three hundred ninety-six hundred and fifty-six rupiah), minus the criminal fine in Decision Number 1263 Year 2019 which is Rp. 1,287,292,922.00 (one billion two hundred eighty-seven million two hundred ninety-two thousand nine hundred twenty-two rupiah). The resulting amount is Rp. 429,097,664.00 (four hundred twenty-nine million ninety-seven thousand six hundred sixty-four rupiah), which is an overpayment of tax.

The research question is whether the verdicts of the court in a *quo* case, which said that the crime described in Article 39 paragraph (1) letter i of Law Number 16 of 2009, were right when looking at it from the point of view of the destination? Is the judge's legal analysis in a *quo* case accurate in requesting criminal liability for the defendant MAS as a PKP partner of PT. PERTAMINA, in accordance with the terms of Article 16A of Law Number 42 of 2009 the Republic of Indonesia Law Number 42 of 2009, also known as the Third Amendment to Law Number 8 of 1983 regarding Value Added Tax on Goods and Services and Sales Tax on Luxury Goods?

This study aims to analyze the accuracy of the legal considerations that have implications for the sentencing of the accused MAS. MAS has been proven to have violated Article 39 paragraph (1) letter i of Law Number 16 of 2009 and is subject to a fine ranging from Rp. 429,097,664.00 to Rp. 1,287,292,922.00. It is

important to note that MAS has also settled his VAT debt by following the destination principle and the *ultimum remedium* principle in tax law.

LITERATURE REVIEW

1. Implementation Studies

Bullock et al. (2021) identified seven dimensions of implementation studies: context, focus lens, innovation, levers of influence, facilitators or barriers, impact, and policy actors or implementation leaders. If directly observed, the aforementioned aspects indirectly depict a “process” and “causality.”

Supposedly, the implementation process may be tracked from the initial exploration phase until the formulation of the policy. Hence, idea of implementation studies refers to the examination of the policy itself.

Regarding this matter, the process of implementation can be assessed either from the front or from the rear. Elmore (1980) posits that the forward mapping of policy makers and formal structures of policy implementers is predicated on the understanding of the policy problem. Conversely, the backward mapping assumes that policy actors not only comprehend the policy problem but also possess the ability to make decisions based on discretionary power. Similarities exist between the notion of forward mapping and the top-down model version of Sabatier (1986), which emphasizes the need of achieving “clear and consistent objectives” for policy effectiveness, in addition to Elmore.

Regarding the three theories mentioned above, the decisions made by MAS can be regarded as research subjects to elucidate the process of enforcing tax criminal law. Specifically, the Supreme Court has the authority to nullify criminal sentences by relying on its professional expertise and the legal authority, by taking into account some or all of the aspects of the previously mentioned implementation study.

As an illustration, the Supreme Court presumes that there is a mistake in the implementation of the law to significant facts. However, the law explicitly states two things: **firstly**, the law enforcement process is to be carried out because there are no provisions in the law that indicate otherwise, and **secondly**, the occupation of a judge is obligated to assess the principles of equity for any instances of unjust applying the law (*equity contra legem*). Therefore, they must consider contextual factors such as ideas or interests of a policy as a whole in order to generate legal consequences through their rulings.

The purpose of the law is not unilateral as it is contingent upon the substance of the matter, but it is universally aimed at achieving justice in society. Bullock et al. (2021) have emphasised in their implementation study that the development process acknowledges the concept of “policy transfer.” Regarding this matter, every policy provide a challenge for those responsible for implementing it, who are derived from policy makers. Therefore, it is crucial to comprehend the underlying framework that includes interests and policy actors in order to effectively prioritize actions.

2. Understanding the Destination Principle in Consumption Tax and Its Development in Indonesia's Tax Law

A principle is the fundamental essence or beginning point of a norm, expressed widely by the intellect, originating from a source or cause (Wagiman & Mandagi, 2016). Meanwhile, the legal principle is the core of legal regulations as it serves as the most comprehensive foundation for the creation of legal regulations or as the *ratio legis* of regulatory laws (Wagiman & Mandagi, 2016).

The destination principle is a well-established concept in the value-added tax (VAT) system. Hikmah (2020) asserts that the destination principle applies universally to all countries worldwide, provided that the tax levied on final consumption and its legal regulations are specified in Article 4 of Law Number 42 of 2009, the elucidation of Article 7 paragraph (2) of Law Number 42 of 2009, and the general explanation of Law Number 42 of 2009. In the VAT system of Indonesia, the destination principle is implemented, whereby taxable goods and/or taxable services are collected as final consumption (Febrianti et al., 2021). The VAT destination principle, in its connection to international relations, always revolves around the concept of remitting payment to the ultimate consumer country (Frunza, 2019). Typically, under a VAT system that establishes its tax jurisdiction according to the destination principle, tax is imposed in the country where the goods and services are consumed, often where they are supplied for that specific purpose (Schenk & Oldman, 2007).

For the purpose of the destination principle, the VAT system, being a consumption tax, designates the producer or seller as the VAT collector responsible for the administrative burden and legal obligations. Haula et al. (2011) argue that the regulation of VAT collectors may be expanded to cover State-Owned Enterprises as the ultimate consumers of private company sellers, as specified in Article 16A of Law Number 42 of 2009.

3. The *Ultimum Remedium* Principle in the Context of Criminalization

The term "*ultimum remedium*" or "*ultima ratio*" refers to the final instrument, as per Hamzah (2009). Based on the idea of *in dubio pro libertate* (if in doubt, do not impose illegal restrictions), Santoso (2022) argues that the principle of *ultimum remedium* serves as a moral guideline for formulating laws and regulations. The principle of *ultimum remedium* operates as a moral guideline, resulting in the absence of legal penalties for those who violate it.

Regarding the concept of *ultimum remedium* as a framework for legislative preparation, there exist several principles, namely the penal value principle, the utility principle, and the humanity principle. These principles are seen as impediments for legislators, hindering the smooth implementation of criminalization.

Santoso (2022) said that the penal value concept highlights the severity of the criminal act and the extent of mistakes, while the utility principle highlights the inefficiency of lawmakers who believe that the criminal justice system is always the ultimate solution to societal issues.

Particularly, Santoso (2022) voiced apprehension about the absence of unbiased and dependable research that elucidates the extent to which criminalization is necessary in various laws and regulations that include criminal

elements. This statement is consistent with the following quotation (Herring, 2012):

“Any ‘respectable theory of criminalisation’ needs to accept the ‘last resort principle’. This principle applies not only to the creation of new offences but to the expansion of existing offences. In order to respect freedom, civil liberties and privacy, any expansion of the criminal law should involve a thorough investigation into whether it is necessary.”

Therefore, according to the analysis provided, the concept of *ultimum remedium* or *ultima ratio* is considered to be a form of soft law. Further study is necessary to determine the extent to which criminal law is necessary in the context of criminalization, in order to transform the function of the principle of *ultimum remedium* into hard law.

METHODOLOGY

The researcher employs doctrinal legal research using a case-based methodology, focusing on the *ratio decidendi* of Decision Number 1263/PID.SUS/2019/PN/JKT.PST and Decision Number 678PK/PID.SUS/2023, which have prescriptive implications. This study employs a conceptual approach to examine value-added tax (VAT) collectors as a research reference. This is necessary because the legal standards pertaining to the research topic either lack a specific definition or provide a broad definition (Marzuki, 2012).

In addition, this analysis utilizes secondary data from several legal sources, including Law Number 16 of 2009, Law Number 42 of 2009, Decision Number 1263/PID.SUS/2019/PN/JKT.PST, Decision Number 678PK/PID.SUS/2023, and other pertinent primary legal standards. Subsequently, the researcher consults scholarly legal science journals, tax policy journals, theses, dissertations, and research papers that pertain to this specific topic and are of a scientific nature, published by secondary sources. The technical analysis of data focuses on the textual content of legal norms and *ratio decidendi*, employing grammatical, teleological, and/or systematic interpretations.

RESEARCH RESULT AND DISCUSSION

a. Examining Court Considerations Regarding the Criminal Offense of Failing to Remit Taxes Withheld or Collected According to the Destination Principle

In Decision Number 1263/PID.SUS/2019/PN/JKT.PST, the initial panel of judges declared the defendant MAS guilty of intentionally failing to deposit legally and convincingly deducted or collected taxes, as specified in Article 39 paragraph (1) letter i of Law Number 16 of 2009. The amount in question is IDR 429,097,664.00 (four hundred twenty-nine million ninety-seven thousand six hundred and sixty-four rupiah), which originated from the calculation of Value-Added Tax (VAT) resulting from transactions between PT. CF and PT. PERTAMINA.

According to the legal facts presented in the trial, one of which is that PT. CF is classified as a Taxable Entrepreneur (PKP) and so has tax liabilities, including VAT/PPnBM. The tax base for the period January 2009 to 2012, resulting from 89 sales and purchase transactions between PT. CF and PT.

PERTAMINA, amounts to IDR 21,061,007,722 (twenty-one billion sixty-one thousand seven thousand seven hundred twenty-two rupiah). PT. PERTAMINA has collected IDR 2,094,080,126 (two billion ninety-four thousand eighty-one hundred twenty-six rupiah) in VAT from these transactions. Furthermore, PT. CF failed to deposit a VAT amounting to IDR 429,097,664.00 (four hundred twenty-nine million ninety-seven thousand six hundred sixty-four rupiah).

Nevertheless, the researcher believes that in order to determine the criminal acts committed by the individual responsible for the crime, it is crucial to first establish a precise understanding of VAT and VAT collectors, as well as their context and resulting implications. Legally, the meaning of Value Added Tax (VAT) is not explicitly defined, despite the existence of Law Number 7 of 2021, which amends the Law of the Republic of Indonesia Number 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods. However, the concept of “added value” is generally regarded as follows:

“Value added is the value that a producer (whether a manufacturer, distributor, advertising agent, haridresser, farmer, racehorse trainer or circus owner) adds to his raw materials or purchases (other than labor) before selling the new or improved product or service. That is, the inputs (the raw materials, transport, rent, advertising and so on) are bought, people are paid wages to work on these inputs, and when the final good or service is sold, some profits is left. So value added can be looked at from the additive side (wages plus profit) or from the subtractive side (output minus inputs)” (Haula et al., 2011; Tait, 1988).

or represented numerically, specifically (Haula et al., 2011; Tait, 1988):

$$\text{Value added} = \text{wages} + \text{profits} = \text{outputs} - \text{inputs}$$

Moreover, VAT, also known as value-added tax, is an indirect tax in which the responsibility of collecting and paying the tax does not fall on the party intended to bear the tax burden, known as the tax destination (Ritonga, 2017). VAT is a collection of indirect taxes that are imposed on the consumption of goods and services. It is considered a general indirect tax on the consumption of goods and services. From the perspective of the group, VAT is a collection of taxes on consumption, while from the perspective of the institution collecting the tax, it is a group of central taxes (Haula et al., 2011; Mardiasmo, 2011).

The notion of VAT may be described by several key qualities. Firstly, it is a general, objective, and neutral form of indirect tax. It is based on the consumption of taxable goods or domestic taxable services. Additionally, VAT operates using either the credit method or the invoice method (Darussalam et al., 2018; Haula et al., 2011; Rosdiana & Irianto, 2012; Sukardji, 2015).

Furthermore, researchers must elucidate the notion of VAT collectors in addition to the previously mentioned concept of VAT. As stated in Article 1 number 27 of the Republic of Indonesia Law Number 42 of 2009, also known as the Third Amendment to Law Number 8 of 1983 regarding Value Added Tax on

Goods and Services and Sales Tax on Luxury Goods, the following is written: A Value Added Tax Collector is an official appointed by the Minister of Finance to collect, deposit, and report taxes owed by Taxable Entrepreneurs on the delivery of Taxable Goods and/or the delivery of Taxable Services to the government.

According to the legal definition provided, the term “Entity” is subject to legal regulations in Chapter VA titled “Special Provisions” as mentioned in Article 16A of Law Number 42 paragraph (1) of 2019, which states: Taxes on the delivery of Taxable Goods and/or the delivery of Taxable Services to Value Added Tax Collectors are collected, deposited, and reported by the Value Added Tax Collectors. The specific procedures for collecting, depositing, and reporting taxes by Value Added Tax Collectors are determined by the Minister of Finance.

Since January 1, 1995, the concept of VAT collectors has expanded to include not only sellers of taxable goods or services who are Taxable Entrepreneurs (PKP), but also Government Treasurers, State-Owned Enterprises (BUMN), and Business Actors in Electronic Trading (PMSE) who are appointed by the Minister of Finance.

The latest concept of VAT collection, as outlined in Article 3 of the Regulation of the Minister of Finance of the Republic of Indonesia Number 8/PMK.03/2021, focuses on the procedures for collecting, depositing, and reporting Value Added Tax (VAT) and Sales Tax on Luxury Goods. This regulation designates State-Owned Enterprises and certain companies directly owned by State-Owned Enterprises as VAT collectors. It is important to note that PKP is not the sole VAT collector, as the Minister of Finance has also appointed other collectors, including BUMN as mentioned earlier.

The Minister of Finance appointed PMSE VAT collectors in accordance with Article 1 number 17 of the Regulation of the Minister of Finance of the Republic of Indonesia Number 60/PMK.03/2022. This regulation pertains to the procedures for appointing collectors, collection, deposit, and reporting of Value Added Tax on the Utilization of Intangible Taxable Goods and/or Taxable Services from Outside the Customs Area Within the Customs Area Through Electronic System Trading (referred to as PMK Number 60 of 2022):

“The Value Added Tax Collector for Electronic Trading is a designated business entity responsible for collecting, depositing, and reporting Value Added Tax on the utilization of intangible taxable goods and/or taxable services from outside the Customs Area within the Customs Area through electronic trading. This appointment is made by the Minister of Finance.”

The concepts outlined in the idea of PMSE VAT collectors, as described above, align with the neutrality of VAT and the VAT collecting method based on the destination principle, as indicated in the following statement, “describe that the destination principle is a taxation principle where the total and rate of tax that must be paid on the consumption of an item is imposed on the last jurisdiction the goods were consumed, regardless of the origin of the goods obtained” (Andreana & Inayati, 2022).

Furthermore, the Directorate General of Taxes (DGT) oversees the management of PMSE VAT collectors. Individuals involved in this process are assigned a tax identification number and are obligated to establish a digital

account. They must also regularly update their information on the designated application or website (Putri & Wijaya, 2022). The DGT administers digital transactions, such as the submission of NPWP or NIK and sales recapitulation, to supervise and explore potential taxes in the marketplace (Fitriandi, 2020). The VAT collected and paid, as well as the billing or order history, is verified by a VAT tax document or invoice, which is comparable to a standard VAT tax invoice issued by the PMSE VAT collector (Marbun & Rahayu, 2023).

Nevertheless, there is criticism regarding the legislators' desire to broaden the scope of VAT collectors, including government treasurers, government agencies, and institutions. They are granted the authority, among other things, to collect VAT as specified in Article 1 number 27 of Law Number 42 of 2009. However, it is argued that the appropriate phrase to be used should be "to deduct" rather than "to collect," thereby establishing the term VAT withholding, as indicated in the following statement (Sukardji, 2008):

"Entering the VAT collection pattern by the VAT Collector into the system causes a distortion in the VAT procedure. Once the VAT Collector has collected the outstanding VAT, it promptly transfers the VAT in question to the state treasury. This activity is conducted without taking into account that the PKP partner, who submits the BKP/JKP and issues the tax invoice, may have a certain amount of input taxes that are eligible for credit. Submitting the BKP or JKP will disrupt the cash flow of the PKP."

Based on the researcher's analysis, if Decision Number 1263/PID.SUS/2019/PN/JKT.PST aligns with the expansion of the VAT destination principle and/or the evolving concept of VAT collectors, then the defendant MAS should not be held criminally liable for the charges brought by the public prosecutor. This is because it is not possible to hold someone criminally responsible without prior wrongdoing and criminal actions, as supported by the following arguments.

According to the legal provisions stated in Article 16A of Law Number 42 of 2009, along with Article 2 of the Regulation of the Minister of Finance of the Republic of Indonesia Number 85/PMK.03/2012, PT. PERTAMINA is authorized to collect, deposit, and report Value Added Tax (VAT) or Value Added Tax and Sales Tax on Luxury Goods. Additionally, PT. CF is recognized as a partner PKP.

Furthermore, PT. PERTAMINA has a legal duty to deposit the deducted or collected VAT into the state treasury, as mandated by Article 3 of PMK Number 85 of 2012. This obligation differs from the obligations of PKP, as outlined in Article 3A paragraph (1) and Article 13 paragraph (1) of Law Number 42 of 2009.

PKP partners must comply with the legal requirements for issuing tax invoices, as stated in Article 13 paragraph (1) of Law Number 42 of 2009, along with the provisions of Article 19 of Government Regulation of the Republic of Indonesia Number 1 of 2012. These regulations pertain to the implementation of Law Number 8 of 1983, which concerns Value Added Tax on Goods and Services and Sales Tax on Luxury Goods. The most recent amendment to this law is Law Number 42 of 2009, as stated in PP Number 1 of 2012. Additionally, PKP partners are obligated to submit periodic VAT SPTs, which must be signed by the

management, directors, or their representatives, in accordance with Article 3 paragraph (1) and Article 4 of Law Number 16 of 2009. For the purpose of cost effectiveness and administrative convenience for PKP partners, it is feasible to utilize sales/commercial invoices instead of tax invoices. However, it is important to note that this substitution does not have legal standing as a replacement for tax invoices (Sukardji, 2015).

The consequences of not reporting or being late in reporting the VAT periodic SPT by both the State-Owned Enterprise (BUMN) VAT collector and the partner PKP for the self-assessment system are administrative sanctions in the form of fines. These fines are outlined in Article 7 paragraph (1) of Law Number 28 of 2007 in conjunction with Law Number 16 of 2009. The original fine amount of IDR 50,000.00 is increased to IDR 500,000.00, which is a 1,000% increase. The reason for this increase is unclear, whether it is due to the perception that the VAT money belongs to another taxpayer or because the warning letters issued to encourage reporting of the VAT periodic SPT (formal compliance) have not been effective (Mulyodiwarno, 2018).

The supervision required for VAT collector compliance in reporting VAT periodic tax returns is governed by the Regulation of the Director General of Taxes Number PER-147/PJ/2006 dated September 26, 2006. It involves cross-checking the reported information with the records of PKP partners, as outlined in the "Instructions Book for Completing VAT Periodic Tax Returns" in 1990 (form code 1485) and the "Instructions Book for Completing VAT Periodic Tax Returns" in 1993 (form code 1195). Failure to submit the VAT periodic tax return within 20 days will result in the issuance of a warning letter by the DGT (Sukardji, 2008).

Lastly, in the event of a tax audit as specified in Article 31 of Law Number 28 of 2007 in conjunction with Law Number 16 of 2009 regarding material corrections through the contra checking method of the PPN PKP partner's periodic VAT Return, the tax auditor must adhere to the *ultimum remedium* principle in order to issue a determination rather than a proposal for an initial evidence audit (RIKBUKPER).

According to the legal analysis provided in the previous discussion, the defendant MAS, who is a PKP partner of PT. PERTAMINA, did not submit a VAT periodic SPT despite issuing a tax invoice for 89 sales transactions. This behavior is considered a tax administration matter rather than a criminal act, which means that the defendant cannot be held criminally liable. Furthermore, if the tax examiner conducting the tax audit of the defendant MAS adheres to the legal norm that reads "*vitium clerici nocere non debet.*" This implies that any mistakes made by administrators should not result in unfair treatment or disadvantage.

b. Issue of Criminal Liability for Value-Added Tax Collecting Partners of State-Owned Enterprises

According to the legal analysis provided in the previous discussion, the defendant MAS, who is a PKP partner of PT. PERTAMINA, did not submit a VAT periodic SPT despite issuing a tax invoice for 89 sales transactions. This behavior is considered a tax administration matter rather than a criminal act,

which means that the defendant cannot be held criminally liable. Furthermore, if the tax examiner conducting the tax audit of the defendant MAS adheres to the legal norm that reads "*vitium clerici nocere non debet.*" This implies that any mistakes made by administrators should not result in unfair treatment or disadvantage.

The Decree of the Director General of Taxes Number KEP-389/PJ/2020, known as Renstra DJP 2020-2024, was implemented on August 31, 2020. This decree establishes the strategic plan for the Directorate General of Taxes for the period of 2020-2024. It is internally binding and confirms the direction of DJP policies and strategies. The main focus is on strengthening tax supervision, including comprehensive law enforcement. It also involves redefining criminal and administrative violations and implementing systematic decision-making processes for criminal tax law enforcement. The ultimate goal is to optimize tax revenues (Direktorat Jenderal Pajak Kementerian Keuangan Republik Indonesia, 2020).

Examining the 2020-2024 DJP Strategic Plan, it involves redefining criminal and administrative violations. This means that tax authorities have the power to evaluate factual evidence and interpret tax laws to determine whether a violation is administrative or criminal. This decision depends on various factors, including the "focus lens," which is a part of the overall policy implementation process (Bullock et al., 2021).

Currently, failing to submit a VAT periodic tax return is typically regarded as a violation of tax laws. However, whether this violation leads to a determination or a proposal for an initial evidence examination is at the discretion of the tax auditor and the Head of the Audit Implementation Unit (UP2) (Sultony, 2018). Due to the significant authority held by the tax auditor and the Head of UP2, it is crucial that they adhere to the legal principle of *vitium clerici nocere non debet*, the expansion of the VAT destination principle, and the principles of *ultimum remedium* and reparation against the defendant MAS.

In light of the 2020-2024 DJP Strategic Plan outlined above, researchers are required to perform a comprehensive examination of tax crimes that possess the following attributes. **Firstly**, individuals such as tax authorities, taxpayers and other third parties or entities as subjects of tax crimes (Henry, 2017; Hiariej, 2021; Kurniawan & Purwoleksono, 2019; Mulyana, 2020). **Secondly**, it encompasses both formal violations and criminal offenses, although distinguishing between them in a normative legal manner can be challenging. There appears to be an overlap in determining whether a violation should be subject to administrative or criminal penalties (Hiariej, 2016; Nahak, 2015; Putra et al., 2022; Santoso, 2023).

Thirdly, the oversight and implementation of tax offenses are contingent upon the specific tax that has been infringed, as dictated by the relevant tax legislation. These measures are enacted to safeguard the rights of the individual under suspicion or the taxpayer in question (Saidi & Djafar, 2011). **Fourthly**, tax crimes include both imprisonment and fines as criminal penalties, which might lead to a situation of double jeopardy, contradicting the principle of *una via* (Naibaho et al., 2021). **Fifthly**, tax crimes might be classified as a last resort,

aimed at providing compensation and/or restoring justice (Ardiyansyah & Wahyudin, 2023; Djatmiko, 2019; Mulyana, 2020; Nugroho, 2011).

From a strict perspective, it is not considered legal and can be classified as a tax crime, taking into account the principle of *ultimum remedium* and the fact that tax law falls under administrative law. In this context, the handling of a violation should be governed by the legal principle of *vitium clerici nocere non debet*.

If the defendant MAS, acting as a PKP partner of PT. PERTAMINA, is accused by the Public Prosecutor of engaging in another scheme, such as violating Article 39 paragraph (1) letter c of Law Number 16 of 2009, due to the core element of the crime (*bestanddeel*) being the failure to submit a Tax Return (SPT), which is objectively considered a violation of criminal law (*wederrechtelijk/tegen het recht*), then the court must consider the principle of *ultimum remedium* and/or the principle of *reparatoir*, as these are characteristics of tax crimes as mentioned earlier.

Therefore, it can be concluded that there is an obvious mistake in the previous decision and the overall execution of the criminal justice system (including the ability of tax administration in law enforcement) against the defendant MAS, who is a partner of PT. PERTAMINA, in terms of accurately interpreting the facts and applying tax laws to address the legal issues at hand.

However, tax crimes sometimes lack clarity in terms of their objectives and the specific behaviors that are considered illegal (*mala prohibita*) and punishable by criminal penalties. Consequently, the current criminal tax law strategy lacks effectiveness and flexibility, undermining the idea of legality and jeopardizing legal certainty. Moreover, it creates loopholes for manipulating cases or presenting false evidence.

Finally, the decision number 678 Year 2023 corrected the criminal fine of defendant MAS in decision number 1263 Year 2019, stating that an overpayment of IDR 429,097,664.00 (four hundred twenty-nine million ninety-seven thousand six hundred and sixty-four rupiah) should be appreciated. However, it fails to declare defendant MAS as a PKP partner of PT. PERTAMINA, which is a logical fallacy. According to its legal position, defendant MAS is obligated to report the VAT periodic SPT and issue a tax invoice for tax administration actions.

CONCLUSIONS AND RECOMMENDATIONS

Based on the above summary, this study can be summarized as follows: **Firstly**, MAS, as a PKP partner of PT. PERTAMINA, engaged in fraudulent activities by failing to submit a VAT periodic SPT. Additionally, they were required to issue a tax invoice or sales invoice in accordance with the regulations stated in Article 13 paragraph (1) of Law Number 42 of 2009, Article 19 of PP Number 1 of 2012, and Article 6 of PMK Number 85 of 2012. It is important to note that these actions can be considered as a violation of tax administration, but not necessarily a criminal act. PT. PERTAMINA, as a state-owned enterprise (BUMN), is legally obligated to remit taxes that have been deducted or collected. This obligation is based on the destination principle and the regulations outlined in Article 16A of Law Number 42 of 2009, in conjunction with Article 2 of PMK Number 85 of 2012.

Secondly, the defendant MAS's failure to submit a VAT periodic SPT, as a PKP partner of PT. PERTAMINA, is considered a violation of objective tax law rather than a tax crime. This violation is addressed through the criminal justice system, including tax administration in the field of law enforcement. Therefore, it can be argued that the decision made by the verdict a quo is a logical fallacy in terms of evaluating the material facts and tax law construction. Consequently, the individual in question should not be held criminally accountable for the actions of tax administration.

The author advises the Supreme Court to enhance the capacity of Judges in applying the destination principle, as established in Law Number 42 of 2009 and now recognized as a globally acceptable standard. The second conclusion of the author is that lawmakers should develop the specific structure of tax crimes that are deemed significant (*mala prohibita*) in Law Number 16 of 2009, in conjunction with Law Number 7 of 2021, based on the principle of *in dubio pro libertate*.

ADVANCED RESEARCH

The study initially focused solely on court decisions rendered on behalf of MAS, a body that is affiliated with the tax law enforcement system in Indonesia and is part of the criminal justice system. The Directorate General of Taxes (DGT) must conduct additional research to determine the most effective approach to addressing tax administration violations in accordance with the value-added tax destination principle and tax crime investigations. This will help to mitigate tax crime complications in the eyes of the law.

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