

Juridical Review of Judicial Considerations in Deciding Tax Criminal Cases (Case Study of Decision No. 582/Pid.Sus/2023/PN.Jkt.Sel)

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ABSTRACT

This study analyzes the judicial review of judge's considerations in deciding tax criminal cases (Case Study of Decision No. 582/Pid.Sus/2023/PN.Jkt.Sel). The research employs normative legal research methodology. The study utilizes statutory approach and case approach. Data collection method relies on library research. The analysis of legal materials applies prescriptive-normative analytical techniques. The research findings reveal that the application of substantive criminal law in tax criminal case Decision No. 582/Pid.Sus/2023/PN.Jkt.Sel, specifically the application of substantive law against defendant Hijrah Saputra as stated in the first subsidiary indictment by the public prosecutor, was not appropriately implemented based on the panel of judges' considerations linked to various evidence presented during the trial. The panel of judges ruled that defendant Hijrah Saputra was legally and convincingly proven guilty of committing continuous tax crimes as regulated under Law Number 6 of 1983. The legal considerations by judges in imposing sentences incorporated both juridical and non-juridical factors. Juridical considerations examined facts discovered during the trial, including the public prosecutor's indictment, defendant's testimony, witness statements, expert testimony, and evidence. Non-juridical considerations were based on the defendant's background, accountability capacity, and resulting consequences. The panel of judges should have strengthened their considerations, particularly regarding aggravating circumstances.

ABSTRAK

Penelitian ini menganalisis tentang tinjauan yuridis atas pertimbangan hakim dalam memutus perkara pidana pajak (Studi Kasus Putusan Nomor 582/Pid.Sus/2023/PN.Jkt.Sel). Penelitian menggunakan metodologi penelitian hukum normatif. Penelitian ini menggunakan pendekatan perundang-undangan dan pendekatan kasus. Metode pengumpulan data menggunakan metode studi kepustakaan. Analisis bahan hukum menggunakan teknik analisis preskriptif-normatif. Hasil penelitian menunjukkan bahwa penerapan hukum pidana substantif dalam perkara pidana pajak Putusan Nomor 582/Pid.Sus/2023/PN.Jkt.Sel, khususnya penerapan hukum substantif terhadap terdakwa Hijrah Saputra sebagaimana tercantum dalam subsidiar pertama yang diperiksa oleh jaksa penuntut umum, tidak dilaksanakan sebagaimana mestinya berdasarkan pertimbangan majelis hakim yang dikaitkan dengan berbagai alat bukti yang dihadirkan selama persidangan. Majelis hakim memutuskan terdakwa Hijrah Saputra terbukti secara sah dan meyakinkan bersalah melakukan tindak pidana di bidang perpajakan secara terus-menerus sebagaimana diatur dalam Undang-Undang Nomor 6 Tahun 1983. Pertimbangan hukum hakim dalam menjatuhkan pidana meliputi faktor yuridis dan non yuridis. Pertimbangan yuridis menelaah fakta-fakta yang terungkap di persidangan, meliputi dakwaan jaksa penuntut umum, keterangan terdakwa, keterangan saksi, keterangan ahli, dan alat bukti. Pertimbangan non yuridis didasarkan pada latar belakang terdakwa, kemampuan pertanggungjawaban, dan akibat yang ditimbulkannya. Seharusnya majelis hakim lebih mempertegas pertimbangannya, terutama mengenai hal-hal yang memberatkan.

ARTICLE HISTORY

Received 12 May 2025
Accepted 25 May 2025
Published 31 May 2025

KEYWORDS

Case; Criminal; Taxation; Judge Consideration.

KATA KUNCI

Perkara; Pidana; Perpajakan; Pertimbangan Hakim.

1. Introduction

Tax is a mandatory contribution to the state owed by individuals or legal entities that is mandatory based on the law without receiving direct compensation and will be allocated for the needs of the people themselves and the needs of the state in supporting the prosperity of the people (Tofiq & Riyadi, 2024). Taxes have a very important role in national life (Margareta & Tanudjaja, 2024). As a source of state revenue, taxes function to finance state expenditures and as a tool to regulate economic growth. Based on Article 23A Paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the government has the authority to collect taxes from the public as citizens. With the collection of these taxes, there will be a transfer of wealth from the public to the government to finance state expenditures without receiving direct counter-performance. In Indonesia, currently the provisions regarding tax law are regulated in Law Number 28 of 2007 concerning General Provisions and Tax Procedures (KUP), which law has also been amended again by Law Number 16 of 2009 concerning the Stipulation of Government Regulation in Lieu of Law Number 5 of 2008 concerning the Fourth Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures. In addition to the Law on General Provisions and Tax Procedures, other statutory provisions relating to taxes include Law Number 36 of 2008 concerning Income Tax (PPH), Law Number 42 of 2009 concerning Value Added Tax (PPN) on Goods and Services and Sales Tax on Luxury Goods (PPnBM), Law Number 28 of 2009 concerning Regional Taxes and Regional Levies, Law Number 21 of 2000 concerning Land and Building Acquisition Fees, and others. As mentioned above, revenue from the tax sector is vital to the survival of a country. Therefore, it is not surprising that tax regulations also contain criminal threats as a means of coercion so that every citizen fulfills their obligation to pay taxes. In the Law on General Provisions and Tax Procedures, criminal provisions are regulated in Articles 38 to 43, namely criminal provisions both for taxpayers and for tax officials (*fiscus*). One of the modes of tax crime is using tax invoices that do not correspond to actual transactions (Pardede, 2020). This is regulated in Article 39A of Law Number 5 of 2008 concerning the Fourth Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures, which states that any person who intentionally:

- 1) Issuing and/or using tax invoices, tax collection evidence, tax deduction evidence, and/or tax payment evidence that are not based on actual transactions; or
- 2) Issuing tax invoices but have not been confirmed as Taxable Entrepreneurs, shall be punished with imprisonment of at least 2 (two) years and a maximum of 6 (six) years and a fine of at least 2 (two) times the amount of tax in the tax invoice, tax collection evidence, tax deduction evidence and/or tax payment evidence at most and at most 6 (six) times the amount of tax in the tax invoice, tax collection evidence, tax deduction evidence, and/or tax payment evidence.

An example of a tax crime case is the decision Number 582/Pid.Sus/2023/PN Jkt.Sel With the perpetrator named hijrah Saputra as the director of PT Niaga Petro Bara which is engaged in the trade of large goods. metal or construction goods where the perpetrator hijrah Saputra has intentionally issued tax invoices, tax collection evidence, tax deduction evidence and/or tax highlight evidence that are not based on actual transactions. That based on the data of the Directorate General of Tax Information System (SIDJP) PT. Niaga Petro Bara NPWP: 93.806.123.1-067.000 registered as a Taxpayer at the Tax Office since December 19, 2019, but at the time of registration, the taxpayer was in the area of KPP Pratama Jakarta Setiabudi Empat, but since May 24, 2021 has been transferred by the Directorate General of Taxes, becoming a taxpayer in the work area of KPP Pratama Jakarta Setiabudi Tiga and PT. Niaga Petro Bara NPWP: 93.806.123.1-067.000 has been confirmed as a Taxable Entrepreneur (PKP) on

January 15, 2020; That as a company issuing invoices to user companies that are not based on actual transactions, the Defendant through PT. Niaga Petro Bara has issued Tax invoices that do not correspond to actual transactions. That due to the actions of the Defendant HIJRAH SAPUTRA by intentionally issuing tax invoices not based on actual transactions through PT. Niaga Petro Bara registered as a taxpayer in the KPP Pratama Jakarta, Setiabudi, Tiga area, from January 2020 to December 2021 in 2020 to 2021 has caused losses to state revenue of at least Rp. 10,118,552,357, - (ten billion one hundred eighteen million five hundred fifty two thousand three hundred fifty seven rupiah). On that basis, the Panel of Judges' Decision Declared that the DEFENDANT HIJRAH SAPUTRA was legally and convincingly proven guilty of committing a tax crime as regulated and subject to criminal penalties in Article 39 A letter a Jo. Article 43 Paragraph (1) of Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures as last amended by Law Number 16 of 2009 concerning the Stipulation of Government Regulation in Lieu of Law Number 5 of 2008 concerning the Fourth Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures in conjunction with Article 64 Paragraph (1) of the Criminal Code as the first alternative charge; Sentencing the DEFENDANT HIJRAH SAPUTRA to a prison sentence of 3 (three) years and 6 (six) months minus the time the defendant has been in detention; Sentencing the DEFENDANT HIJRAH SAPUTRA to a fine of 2 x Rp. 10,118,552,357,- (ten billion one hundred eighteen million five hundred fifty two thousand three hundred fifty seven rupiah) = Rp. 20,237,104,714,- (twenty billion two hundred thirty seven million one hundred four thousand seven hundred and fourteen rupiah), if the Defendant does not pay the fine within a maximum of 1 (one) month after the court decision has permanent legal force, then his property can be confiscated by the Prosecutor and then auctioned to pay the fine, in the event that the Defendant does not have sufficient property to pay the fine, then the Defendant is sentenced to imprisonment in lieu of a fine for 6 (six) months. The product of the judge's decision in accordance with the provisions of Article 195 of the Criminal Procedure Code (KUHAP), is valid and has legal force if pronounced in a public trial (Wahyono, 2018). The decision read by the judge is a form of a judge's responsibility to God Almighty, justice seekers, the community, and a higher court. For this reason, the decision must be read in a court hearing (Soekanto & Mamudji, 2008). Because the decision contains accountability, the decision reading must be carried out in a session open to the public and the Court is obliged to inform the public and the parties involved in the case regarding the schedule for reading the decision.

Inappropriate judge's decision will have an impact on the emergence of negative public views of judges and courts (Rumanang, 2016). The low negative public view of judges can be avoided by deciding cases fairly and carefully, so as not to cause disparities in a decision (Ashiddiqie, 2012). Judges in making decisions must pay attention to all aspects in it, namely starting from the need for caution and avoiding as little carelessness as possible, both formal and material to the existence of technical skills in making it (Syahrin, 2021). The importance of an ideal judge's decision in accordance with the function of law in people's lives as a tool to create justice, order, peace and order, but also to ensure legal certainty (Priyono & Intarti, 2019). At the next level, the law is directed as a means of progress and welfare of society which is formed based on the desires and awareness of each individual in society, with the intention that the law can run as aspired by society itself, namely requiring harmony and peace in social life together (Salim, 2019). The law is formed based on the desires and awareness of each individual in society, with the intention that the law can run as aspired by society itself, namely requiring harmony and peace in social life together (Dharmasetya & Gunadi, 2023). People who commit crimes will be held accountable for these actions with criminal penalties according to the mistakes or crimes they have

committed (Kurnianto & Purwadi, 2022). Based on the complexity of the problems above, this study aims to analyze the legal review of judges' considerations in deciding criminal tax cases, focusing on the case study of Decision No. 582/Pid.Sus/2023/PN.Jkt.Sel. This analysis is important for understanding the application of criminal tax law and evaluating judges' considerations in the context of tax law enforcement in Indonesia.

2. Methodology

This type of research is normative legal research, namely legal research conducted by examining library materials or secondary data as basic materials for research by conducting searches for regulations and literature related to the problems being studied (Soekanto & Mamudji, 2008). The approach to this research is the Statute approach and the Case approach. The Statute approach is an approach carried out by examining all laws and regulations related to the legal issues being handled (Marzuki, 2014). The case approach is an approach carried out by examining cases related to issues that have become court decisions that have permanent legal force (Marzuki, 2014).

The types and sources of legal materials used in this study are primary legal materials, namely legal materials obtained directly from the first source related to the problem to be discussed, namely decision number 582 / pid.sus / 2023 / PN.Jkt.Sel. Legal materials are also obtained from materials that are binding on the problems studied, such as the 1945 Constitution of the Republic of Indonesia, Law of the Republic of Indonesia Number 16 of 2009 concerning General Provisions and Tax Procedures, Law of the Republic of Indonesia Number 1 of 1946 concerning Criminal Law Regulations, and Law Number 8 of 1981 concerning the Criminal Procedure Code. Furthermore, secondary legal materials are legal materials obtained from books as complementary data to primary data sources, the secondary data sources for this study are data obtained by conducting literature reviews such as scientific books, research results and so on. Finally, tertiary legal materials are materials that provide instructions or explanations for primary data and secondary data, such as dictionaries, encyclopedias and other materials outside the law to support research. The method of collecting legal materials used in this study is library research, namely the author carries out the process of collecting legal materials to answer the problems that have been formulated by analyzing library materials related to the problems being studied, whether sourced from primary, secondary, or tertiary legal materials. The analysis of legal materials in this normative research uses prescriptive-normative analysis techniques. Research analysis is understood as the author's response, response, attitude and stance in an effort to change the available legal materials into scientific information to be used to overcome problems, especially solutions to problems related to research.

3. Results

3.1 Application of Material Criminal Law to Tax Crime Cases Based on Decision Number 582/Pid.Sus/2023/PN.Jkt.Sel

Judges in investigating criminal cases try to find and prove the truth of material law based on the facts revealed in court and uphold the indictment formulated by the public prosecutor. Before the author explains the application of criminal law to tax crimes (decision No. 582 / pid.sus / 2023 / PN.Jkt.Sel), it is necessary to know the position of the case, the indictment of the public prosecutor, the demands of the public prosecutor and the verdict, namely as follows:

Case Position

From the brief explanation outlined in the background above, namely the tax crime

committed by the Director of PT. Niaga Petro Bara which is a company engaged in wholesale trade, metal goods and / or construction goods. Giving more attention by the Author, therefore the Author is interested in researching the study of the verdict that occurred. This position case is in accordance with Criminal Case Decision No. 582 / Pid.Sus / 2023 / PN.Jkt.Sel;

That around mid-2019, Achmad Yasier together with Junaidi Priandi and witness Amirullah met witness Bachtiar Abdullah who is the Director of PT. Samamita which is located at Patra Office Tower Building (Patra Jasa) 17th Floor, Jl. Jenderal Gatot Subroto Kav. 32-34 Kuningan Timur, Setiabudi South Jakarta, with the intention of asking about the progress of the Taxable Entrepreneur Confirmation of PT. Primaco Bina Selaras and PT. Phiton Kanca Buana which has not been completed;

Furthermore, witness Bachtiar Abdullah asked for assistance from witness Rosano Jack Marie as Operational Manager of PT. Aditoya Multi Guna to make the Taxable Entrepreneur Confirmation of PT. Primaco Bina Selaras and PT Phiton Kanca Buana. After the Taxable Entrepreneur Confirmation of the two companies was completed, Achmad Yasier again asked for assistance from witness Rosano Jack Marie to make the deed of establishment, NPWP registration and Taxable Entrepreneur Confirmation (PKP) for PT. Elang Indo Bara and PT. Niaga Petro Bara then Achmad Khadafi alias Vicky Andrean alias Hanafi and the Defendant met with witness Rosano Jack Marie to complete the documents in making the company's deed of establishment, making NPWP registration, PKP confirmation to renting a virtual office where, Achmad Khadafi alias Vicky Andrean alias Hanafi provided an ID card that was not recorded or stored in the Directorate General of Dukcapil database;

The required documents for the deed of establishment in the form of the Decree of the Minister of Law and Human Rights and the Deed of Establishment were signed by Achmad Khadafi alias Vicky Andrean alias Hanafi, the Defendant and Junaidi Priandi at the office of PT Aditoya Multi Guna located in the Patra Office Tower Building (Patra Jasa) 17th Floor, rooms 1702 to 1705, Jl. 32-34 Kuningan Timur, Setiabudi South Jakarta. That for the three companies rented a virtual office owned by PT. Aditoya Multi Guna located in Patra Office Tower Building (Patra Jasa) 17th Floor, Room 1702, Jl. 32-34 Kuningan Timur, Setiabudi South Jakarta for a year at a price of Rp. 6,600,000,- /year which has been paid by Achmad Yasier

Furthermore, in the making of NPWP and confirmation of PKP to KPP Pratama Jakarta Setiabudi, at the time of activation of the electronic certificate, witnesses Romano Jack Marie and the Defendant as Director of PT. Niaga Petro Bara and Director of PT. Elang Indo Bara, namely Achmad Khadafi alias Vicky Andrean alias Hanafi, came directly to KPP Pratama Jakarta Setiabudi Empat and the cost of a complete package of services for making a Deed of Establishment at a Notary's office, processing NPWP and PKP at the Tax Service Office and renting an office address at Patra Office Tower Building (Patra Jasa) 17th Floor, Jl. 32-34 Kuningan Timur, Setiabudi South Jakarta amounting to Rp.5,000,000,- paid by Achmad Yasier

Based on data from the Directorate General of Taxes Information System (SIDJP) PT. Niaga Petro Bara NPWP: 93.806.123.1-067.000 registered as a Taxpayer at the Tax Office since December 19, 2019, but at the time of registration, the taxpayer was in the area of KPP Pratama Jakarta Setiabudi Empat, but since May 24, 2021 has been transferred by the Directorate General of Taxes, becoming a taxpayer in the work area of KPP Pratama Jakarta Setiabudi Tiga and PT. Niaga Petro Bara NPWP: 93.806.123.1-067.000 has been confirmed as a Taxable Entrepreneur (PKP) on January 15, 2020;

Based on data from the Directorate General of Taxes Information System (SIDJP) PT. Niaga Petro Bara, NPWP: NPWP: 93.806.123.1-067.000 registered with KLU - 46631 (WHOLESALE TRADE OF METAL GOODS FOR CONSTRUCTION MATERIALS) and tax obligations of PT. Niaga Petro Bara, NPWP: 93.806.123.1-

067.000 are: Income Tax Article 21/22/23/26, Income Tax Article 25/29, Final Income Tax Article 4 (2), Income Tax Article 15, Income Tax Article 19, VAT and PPnBM. The intent and purpose of the Defendant, Achmad Khadafi alias Vicky Andrean alias Hanafi, Achmad Yasier and Junaidi Priandi along with Iwan DP in creating PT Niaga Petro Bara was to sell invoices that were not based on actual transactions (TBTS).

As a company issuing invoices to user companies that are not based on actual transactions, the Defendant through PT. Niaga Petro Bara has issued tax invoices. The tax invoices that have been issued by the Defendant are not based on actual transactions through PT. Niaga Petro Bara have been reported by PT. Niaga Petro Bara in the Annual Tax Return for the VAT Period January 2020 to July 2021. For the use of Tax Invoices from PT. NIAGA PETRO BARA by CV Laskar Madani, there is a payment of compensation (fee) which is transferred to a Bank Mandiri account with account number 60009947726 in the name of Achmad Yasier with the following details:

Table 1. Transaction Details

Transaction Date	Type	Amount (IDR)	Sender Account	Sender Name
20/07/2021	Credit	1,540,000,000	1100001907077	Suwarno
18/08/2021	Credit	1,267,100,000	1100001907770	Suwarno
21/10/2021	Credit	418,800,000	1100001907077	Suwarno
21/10/2021	Credit	132,550,000	1100001907077	Suwarno

That due to the actions of the Defendant HIJRAH SAPUTRA by intentionally issuing tax invoices not based on actual transactions through PT. Niaga Petro Bara registered as a taxpayer in the KPP Pratama Jakarta, Setiabudi, Tiga area, from January 2020 to December 2021 in 2020 to 2021 has caused losses to state revenue of at least Rp. 10,118,552,357,- (ten billion one hundred eighteen million five hundred fifty two thousand three hundred fifty seven rupiah).

3.2 Application of material in case Number 582/Pid.Sus/2023/PN.Jkt.Sel

Application of Article 39A letter a of Law Number 6 of 1983 concerning General Provisions and Tax Procedures

- 1) Elements with Subject "Every Person", Based on the description, it is clear that the legal subject is a person (*natuurlijk persoon*) and/or legal entity (*rechts persoon*) who is capable of committing a criminal act and is responsible for his/her actions. Thus, the Element with Subject "Every Person" has been fulfilled.
- 2) Element "Intentionally issuing and/or using tax invoices, proof of tax collection, proof of tax deductions, and/or proof of tax payments that are not based on actual transactions"

Based on the description, to qualify whether Hijrah Saputra's actions are included as actions carried out by intentionally issuing and/or using tax invoices that are not based on actual transactions, the public prosecutor must first pay attention to and consider the legal facts revealed during the trial. From the trial results, it was found that there was a legal fact of intention from Hijrah Saputra with the intent and purpose of selling tax invoices that were not based on actual transactions (TBTS), based on the Directorate General of Taxes Information System, PT. Niaga Petro Bara, NPWP: 93.806.123.1-067.000, as a company issuing invoices to user companies that were not based on actual transactions, the Defendant Hijrah Saputra through PT. Niaga Petro Bara has issued tax invoices, based on SIDJP data during January-December 2020 PT. Niaga Petro Bara NPWP: 93.806.123.1-067.000, has issued output tax invoices of Rp. 1,400,000,000 (one billion four hundred million rupiah) and based on PK-PM Portal DJP data during January-July 2021 PT. Niaga Petro Bara NPWP: 93.806.123.1-067.000, has issued an output tax invoice of Rp. 8,718,552,357 (eight billion seven hundred eighteen million five hundred fifty two thousand three hundred fifty seven rupiah) is a

truly conscious goal of Hijrah Saputra's actions and at the same time is an error in the form of intent, especially intent as an intention. Issuing a tax invoice not based on a transaction that is actually an unlawful act. This element includes acts that are categorized as unlawful and or acts or actions carried out intentionally are subject to criminal sanctions. According to the explanation of Article 39A, it is stated that: Tax invoices as evidence of tax collection are a very important administrative tool in the implementation of Value Added Tax provisions. Likewise, evidence of tax deductions and evidence of tax collection are a means for crediting or reducing tax payable so that any misuse of tax invoices, evidence of tax deductions, evidence of tax collection, and/or evidence of tax payments can have a negative impact on the success of collecting Value Added Tax and Income Tax. Therefore, the misuse is in the form of issuing and/or using tax invoices, tax deduction evidence, tax collection evidence, and/or tax deposit evidence that are not based on actual transactions that are subject to criminal sanctions Thus, the element of "Intentionally issuing and/or using tax invoices, tax collection evidence, tax deduction evidence, and/or tax deposit evidence that are not based on actual transactions" has been proven in the actions of the defendant Hijrah Saputra.

3) Element "Can cause State Losses"

The definition of losses to state revenue is that the state loses revenue from the taxation sector and/or the state should not pay/issue excess tax payments requested by taxpayers who apply for restitution. The sentence "Can cause losses to state revenue" contains the meaning that losses to state revenue, whether they have already occurred or are potential criminal acts in the taxation sector, can be punished. Thus, the element "Can cause state losses" has been fulfilled and proven legally.

4) Not Sure "Committing several acts that are in various forms, so that they must be viewed as continuous acts". That this element is the formulation of Article 64 paragraph (1) of the Criminal Code which in criminal law theory is known as "Vorgezette Handeling" or continuous acts which means that there is a unity of will, the acts are of the same type and legally the acts have the same classification, while the time limit for the occurrence of the act is not too long.

Based on the series of legal considerations as mentioned above, where the Defendant's actions in issuing tax invoices not based on actual transactions were carried out continuously in the period January 2020-December 2021. In addition, it turns out that the Defendant's actions are similar actions with the same qualifications, namely issuing tax invoices not based on actual transactions, in this case according to the Panel of Judges, the Defendant's actions were also carried out continuously in a period that was not too long, namely January 2020-December 2021, so that The Defendant's actions consist of several actions that are very closely related to each other continuously as a continuing action. Likewise, the element of committing several actions that are basically like appearance, so that they must be viewed as a continuing action, has been legally fulfilled. Then the Panel of Judges Judged:

- a) Declared that the Defendant Hijrah Saputra had been legally proven and promised to commit "a tax crime committed continuously"
- b) Sentencing the Defendant Hijrah Saputra to imprisonment for 2 (two) years and 6 (six) months and a fine of 2 x Rp10,118,552,357.00 = Rp20,237,104,714.00 (twenty billion two hundred thirty-seven million four thousand seven hundred and fourteen rupiah) if the Defendant Hijrah Saputra does not pay the fine within 1 (one) month after the court decision has permanent legal force, then his assets can be confiscated by the Prosecutor

and then auctioned to pay the fine, in the event that the Defendant Hijrah Saputra does not have sufficient assets to pay the fine, then he will be punished with imprisonment for 3 (three) months which is calculated proportionally;

- c) Determining the period of arrest and detention that has been served by the Defendant to be deducted entirely from the sentence imposed;
- d) Determining that the Defendant remains in detention;
- e) e. Determining the evidence;
- f) Charging the Defendant with court costs in the amount of Rp10,000.00 (ten thousand rupiah).

All parts of the cumulative charges have been fulfilled therefore, according to the Panel of Judges Hijrah Saputra, it is declared legally proven and justified therefore the Defendant must be sentenced to a criminal sentence.

3.3 Implementation of a substitute sentence (subsidiary) to a fine

Based on the explanation of the elements above in the decision in case Number 582/Pid.Sus/2023/PN.Jkt.Sel, the judge stated that the defendant was legally and convincingly guilty of committing a tax crime continuously. With consideration of the element "Intentionally issuing and/or using tax invoices, proof of tax collection, proof of tax deductions, and/or proof of tax payments that are not based on actual transactions" As has been applied to the defendant who was charged with violating Article 39A letter a of Law Number 28 of 2007 in conjunction with Article 43 paragraph (1) concerning the third amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures as last amended by Law Number 16 of 2009 concerning the Stipulation of Government Regulation in Lieu of Law Number 5 of 2008 concerning the Fourth Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures in conjunction with Article 64 of the Criminal Code. Threatened with imprisonment of 2 (two) years 6 (six) months and a fine of $2 \times \text{Rp. } 10,118,552,357 = \text{Rp. } 20,237,104,714$ (twenty billion two hundred thirty seven million one hundred four thousand seven hundred and fourteen rupiah) with the provision that if the defendant does not pay the fine within 1 (one) month after the court decision has permanent legal force, then his property can be confiscated by the prosecutor and then auctioned to pay the fine. In this case, the defendant does not have sufficient property to pay the fine, so he is punished with imprisonment for 3 (three) months which is calculated proportionally.

In terms of the author's analysis related to the application of material criminal law that is applied is not appropriate and is not based on applicable regulations. The application of criminal law in the form of imprisonment as an alternative to a fine is not appropriate because tax crimes have special characteristics and focus more on returning state losses (underpaid taxes). Therefore, the threat of punishment is heavier and the fine is higher but can be avoided by paying the fine. As stipulated in Article 65 paragraph (1) of Law Number 1 of 2023, the principal penalties referred to in Article 64 letter a consist of: imprisonment, detention, supervision, fines and social work.

The provisions of Article 44C paragraph (1) of Law Number 7 of 2021 state that the fines referred to in Article 39 and Article 39A cannot be replaced with imprisonment and must be paid by the convict and Article 44C paragraph (3) of Law Number 7 of 2021 states that in the event that after a search and confiscation of assets is carried out, the convict does not have sufficient assets to pay the fine, he can be sentenced to imprisonment for a period not exceeding the imprisonment sentenced. The author is of the opinion that the imposition of a substitute sentence on the defendant is not in accordance with positive law in Indonesia, the imposition of a substitute sentence decided in the South Jakarta Court is considered not long enough when compared to the nominal fine that must be paid.

3.4 Application of the Rules of Continuing Acts contained in Article 64 paragraph (1) of the Criminal Code in Decision Number 582/Pid.Sus/2023/PN.Jkt.Sel

In this verdict, the defendant was charged with 2 charges, namely, first, Article 39A letter a in conjunction with Article 43 paragraph (1) of Law Number 6 of 1983 concerning General Provisions and Tax Procedures as amended several times by Law of the Republic of Indonesia Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions of Taxation and most recently by Law Number 16 of 2009 concerning the Stipulation of Government Regulation in Lieu of Law Number 5 of 2008 concerning the Fourth Amendment to Law Number 6 of 1983 concerning General Provisions of Taxation. Second, Article 39 paragraph (1) letter d in conjunction with Article 43 paragraph (1), Law Number 6 of 1983 concerning General Provisions and Tax Procedures as amended several times by Law of the Republic of Indonesia Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions of Taxation and most recently by Law Number 16 of 2009 concerning the Stipulation of Government Regulation in Lieu of Law Number 5 of 2008 concerning the Fourth Amendment to Law Number 6 of 1983 concerning General Provisions of Taxation.

Continuing acts are mentioned as articles that are juncto with the core criminal act, namely Article 39A, and Article 39 paragraph (1). The element of continuing acts is mentioned as the fourth element/last element in the decision. In the section explaining the element of continuing acts, it is explained as follows: Considering, that several acts that have advantages over each other can be viewed as one continuing act. According to the opinion of (Hamzah, 2017) in his book Introduction to Indonesian Criminal Law, p. 536 which is summarized from Memorie Van Toelichting Article 64 of the Criminal Code, namely: *"In the case of a continuing act, first there must be one decision of will. The act is of the same type. The judge's decision supports this direction by saying:*

- 1) There is a unity of will;
- 2) The acts are of the same type; and
- 3) Time relationship factor (the distance is not too long).

That from the considerations as mentioned above, it has been proven that as a company issuing invoices to user companies that are not based on actual transactions, the Defendant through PT. Niaga Petro Bara has issued fictitious tax invoices. Based on SIDJP data during January-December 2020 PT. NIAGA PETRO BARA NPWP: 93.806.123.1-067.000 has issued Output Tax Invoices. Based on PK-PM data from the DJP Portal during January-July 2021 PT. NIAGA PETRO BARA NPWP: 93.806.123.1-067.000 has issued an Output Tax Invoice. That the tax invoice issued by the Defendant is not based on actual transactions through PT. Niaga Petro Bara has been reported by PT. Niaga Petro Bara in the Annual Tax Return for the VAT Period for the January 2020 to July 2021 Period. That due to the actions of the Defendant HIJRAH SAPUTRA by intentionally issuing tax invoices not based on actual transactions through PT. Niaga Petro Bara is registered as a taxpayer in the KPP Pratama Jakarta, Setiabudi, Tiga area, since January 2020 to December 2021, 2020 to 2021 has caused a loss to state revenue of at least Rp. 10,118,552,357, - (ten billion one hundred eighteen million five hundred fifty two thousand three hundred fifty seven rupiah). Even though the defendant knew that this act was against the law. Considering, that because all elements of Article 39A letter a of Law Number 28 of 2007 Jo. Article 43 paragraph (1) Concerning the Third Amendment to Law Number. 6 of 1983 Concerning General Provisions and Tax Procedures as last amended by Law Number 16 of 2009 Concerning the Stipulation of Government Regulation in Lieu of Law Number. 5 of 2008 Concerning the Fourth Amendment to Law Number. 6 of 1983 Concerning General Provisions of Taxation jo. Article 64 paragraph (1) of the Criminal Code have been fulfilled, then the Defendant must be declared to have been proven legally and

convincingly committed the crime as charged. The section above is the section that should explain which of the defendant's actions are considered proven to fulfill the continuing act. The provisions of Article 64 paragraph (1) of the Criminal Code state 'if between several actions, although each is a crime or violation, there is a relationship in such a way that it must be viewed as one continuing act, then only one criminal regulation is imposed, if different, the one imposed contains the most severe principal criminal threat'

3.5 Judge's Considerations in Deciding on Criminal Sentences in Criminal Case Decision Number 582/Pid.Sus/2023/PN.Jkt.Sel

Pertimbangan hakim merupakan salah satu aspek terpenting dalam menentukan terwujudnya nilai dari suatu putusan hakim yang mengandung keadilan (*ex aequo et bono*) dan mengandung kepastian hukum (Wahyudi et al., 2024). Hakim dalam pemeriksaan suatu perkara juga memerlukan adanya pembuktian, di mana hasil dari pembuktian itu kan digunakan sebagai bahan pertimbangan dalam memutus perkara (Batistuta, 2024). Pembuktian merupakan tahap yang paling penting dalam pemeriksaan di persidangan (Delpiro & Rusdiana, 2021). Hakim juga mempunyai pertimbangan dari aspek yuridis dan non yuridis adalah:

1) Legal Aspect

Legal considerations are the judge's considerations in basing his decision on formal provisions of laws and regulations. The judge, legally, may not impose the sentence unless with at least two valid pieces of evidence, so that the judge obtains the conviction that a crime actually occurred and the defendant is guilty of committing it (Article 183 of the Criminal Procedure Code). The valid evidence referred to is: a) witness statements; b) expert statements; c) letters; d) instructions; e) statements from the defendant or things that are generally known so that they do not need to be proven (Article 184). In addition, it is also considered that the defendant's actions are against formal law and fulfill the elements of the crime committed. In the case with decision Number 582/Pid.Sus/2023/PN.Jkt.Sel in the legal considerations as follows:

a) Public Prosecutor's Charge

Defendant HIJRAH SAPUTRA (Director of PT. Niaga Petro Bara which is a company engaged in wholesale trade, metal goods or construction, with office address at Patra Jasa Office Tower Building, 17th floor, room 1702, Jl. Jend. Gatot Subroto, Kav.32-34, Rt.001/003, East Kuningan, South Jakarta) together with ACHMAD KHADAFI alias VICKY ANDREAN alias HANAFI (Director of PT. Elang Indo Bara which is a company engaged in wholesale trade, metal goods or construction, with office address at Patra Jasa Office Tower Building, 17th floor, room 1702, Jl. Jend. Gatot Subroto, Kav.32-34, Rt.001/003, East Kuningan, South Jakarta / Case of ACHMAD KHADAFI alias VICKY ANDREAN alias HANAFI has been decided and has permanent legal force based on the Decision of the South Jakarta District Court Number. 910 / Pid. Sus / 2022 / PN.JKT.SEL dated February 16, 2023), JUNAIDI PRIANDI (Director of PT. Phiton Kanca Buana which is a company engaged in the wholesale trade of construction materials and other materials, whose office address is at Patra Jasa Office Tower Building, 17th floor, room 1702, Jl. Jend. Gatot Subroto, Kav.32-34, Rt.001/003, Kuningan Timur, South Jakarta / The JUNAIDI PRIANDI case has been decided and has permanent legal force based on the Decision of the South Jakarta District Court Number. 911 / Pid. Sus / 2022 / PN.JKT.SEL dated February 16, 2023), ACHMAD YASIER Bin NYAK NEH MURNI and IWAN DP (Based on the determination of the Suspect by the PPNS Investigator of the South Jakarta I Regional Tax Office) (each was prosecuted separately/splitzing) and PT. Niaga Petro Bara was registered as a taxpayer in the KPP Pratama Jakarta, Setiabudi, Tiga area, since January 2020 to December 2021 or at least at a certain time in 2020 to 2021, located at the KPP Pratama Office, Jakarta, Setiabudi, Tiga, located at Jl. Raya Pasar Minggu No.11,

Rt.2/2, Pancoran, Kec. Pancoran, South Jakarta or at least in a place that is still included in the jurisdiction of the South Jakarta District Court, has intentionally issued and/or used tax invoices, tax collection evidence, tax deduction evidence and/or tax payment evidence that are not based on actual transactions, also applies to representatives, attorneys, employees of taxpayers or other parties who order, participate in, encourage, or assist in committing criminal acts in the field of taxation, if between several acts, even though each is a crime or violation, there is a relationship in such a way that it must be viewed as one continuing act. That the Defendant has been charged by the Public Prosecutor with an Alternative charge, namely the Charge:

1. First: Article 39 A letter a of Law Number 28 of 2007 Jo. Article 43 paragraph (1) concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures as last amended by Law Number 16 of 2009 concerning the Stipulation of Government Regulation in Lieu of Law Number 5 of 2008 concerning the Fourth Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures Jo. Article 64 of the Criminal Code.
2. Second: Article 39 paragraph (1) letter d Jo. Article 43 paragraph (1) of Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures as last amended by Law Number 16 of 2009 concerning the Stipulation of Government Regulation in Lieu of Law Number 5 of 2008 concerning the Fourth Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures in conjunction with Article 64 of the Criminal Code.

The actions of the Defendant HIJRAH SAPUTRA are subject to criminal penalties as regulated in Article 39 A letter a of Law Number 28 of 2007 in conjunction with Article 43 paragraph (1) concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures as last amended by Law Number 16 of 2009 concerning the Stipulation of Government Regulation in Lieu of Law Number 5 of 2008 concerning the Fourth Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures in conjunction with Article 64 of the Criminal Code..

2) Non-Legal Aspects

For non-legal considerations, the basis for the judge's considerations has two categories, namely: philosophical aspects and sociological aspects..

a) Philosophical aspect

Philosophical considerations, namely considerations or elements that emphasize the value of justice for the accused and the victim. Meanwhile, according to Bagir Manan, reflect philosophical values or values contained in the ideals of law (*rechtsidee*). Needed as a means of guaranteeing justice. Justice is generally interpreted as an act or actor who is just, while fair is not biased, not siding with the right. Justice in philosophy as stated in the basic values of the State, this can be exemplified if two principles are fulfilled, first not harming someone and second treating each human being what is their right. In Case Number 582 / Pid.Sus / 2023 / PN.Jkt.Sel, with the existence of aggravating and mitigating circumstances for the defendants in the decision which is one example of the philosophical aspect. In principle, the basis for consideration in the philosophical aspect that reflects justice is difficult to find a benchmark for the parties to the dispute. Fair for one party, not necessarily fair for the other party.

b) Sociological Aspects

A decision that meets sociological considerations is a decision that does not

conflict with the laws that exist in society (community customs). Meanwhile, sociological considerations according to M. Solly Lubis reflect the demands or needs of society that require a solution as a means of ensuring benefits. Sociological aspects are useful for examining social backgrounds such as education, residential environment and work, and knowing the defendant's motives for committing a crime. In addition to the defendant's background, considerations that cannot be ignored are how much impact the State experiences due to the crime committed and the state of the state that is harmed when this crime is committed.

In the case with decision Number 582/Pid.Sus/2023/PN.Jkt.Sel in the Non-judicial considerations on the Sociological Aspect as follows:

- 1) Aggravating circumstances
 - a) The Defendant's actions do not support the Government's Program in increasing state revenue from the taxation sector;
 - b) The Defendant is convoluted;
- 2) Mitigating circumstances:
 - a) The Defendant has never been convicted before;
 - b) Considering, that because the Defendant was sentenced and the Defendant had not previously filed a request for exemption from payment of court costs, then based on Article 222 paragraph (1) of the Criminal Procedure Code, the court costs in this case must be borne by the Defendant.

3.6 Author's Analysis Regarding Judges in Handing Down Decisions in Case Number 582/Pid.Sus/2023/PN.Jkt.Sel Using Legal Considerations and Non-Legal Considerations

Based on the explanation above, the judge in making a decision on case Number 582/Pid.Sus/2023/PN.Jkt.Sel used legal and non-legal considerations. Legal considerations relate to facts that can be proven in the conference and the facts that are truly contained in the law, so that in deciding a case the judge must consider the charges of collecting general data, fraudulent statements, witness statements, expert statements and other related evidence. The judge in imposing a minimum sentence must have at least 2 valid pieces of evidence, so that based on the evidence the judge can decide that the perpetrator is truly guilty and did it, namely by bringing evidence with witness statements at the closing. And also in sentencing the judge must also look at the articles charged against the defendant. While non-legal considerations are seen from aggravating and enlightening things, such as the background of the crime, goals, motives, economic and social conditions of the perpetrator and the error of fraud and the consequences of his actions.

Based on the author's analysis, the judge's legal considerations were appropriate, namely that they fulfilled the elements charged for the crime, however, based on non-legal considerations in the criminal sentencing process, it was not in accordance with the provisions of the regulations or was not based on applicable law, which in Article 44C paragraph (1) of Law Number 6 of 1983 concerning general provisions and Tax Procedures explains that the related fines referred to in Article 39 and Article 39A cannot be accompanied by imprisonment and must be paid by the convict. Meanwhile, in its application, the judge decided to violate Article 39A letter a of Law Number 28 of 2007 in conjunction with Article 43 paragraph (1) concerning the third amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures as last amended by Law Number 16 of 2009 concerning the Stipulation of Government Regulation in Lieu of Law Number 5 of 2008 concerning Amendments to Articles of Law Number 6 of 1983 concerning General and Tax Procedures in conjunction with Article 64 of the Criminal Code. Threatened with imprisonment of 2 (two) years 6 (six) months and a fine of 2 x Rp. 10,118,552,357 = Rp. 20,237,104,714 (twenty billion two hundred thirty seven million one hundred four thousand seven hundred and fourteen rupiah) with

the provision that if the defendant does not pay the fine within 1 (one) month after the court decision has permanent legal force, then his property can be confiscated by the prosecutor and then auctioned to pay the fine. In this case, the fraudster does not have sufficient property to pay the fine, so he is punished with imprisonment for 3 (three) months which is calculated proportionally. In the case of incorrect application of fraud so that the judge in considering a case that is wrong and not based on applicable law. According to the Author, the judge in imposing a sentence should also consider aggravating factors other than the fraudster being convoluted, namely by considering the Defendant's actions do not support the Government's Program in increasing state revenue from the taxation sector which can cause losses to the state.

4. Discussion

The criminal case Decision No. 582/Pid.Sus/2023/PN.Jkt.Sel presents a significant example of tax fraud prosecution in Indonesia's legal system. This case highlights several crucial aspects of criminal tax law application and judicial decision-making processes that warrant careful analysis. The case involves sophisticated tax fraud committed through PT. Niaga Petro Bara, demonstrating the complex nature of modern tax evasion schemes. The defendant, Hijrah Saputra, as the company's director, was found to have deliberately issued fictitious tax invoices, causing substantial state losses amounting to IDR 10,118,552,357. This case exemplifies what scholars like Soemitro (2019) describe as systematic tax evasion through corporate vehicles. The court's application of Article 39A letter a of Law Number 6 of 1983 raises important legal considerations. As noted by Hamzah (2017), the continuing acts doctrine (*voortgezette handling*) requires three essential elements: unity of will, similarity of acts, and temporal proximity. The court successfully established these elements in the defendant's systematic issuance of fraudulent tax invoices from January 2020 to December 2021.

However, the court's decision regarding substitute imprisonment for unpaid fines presents a controversial aspect. According to Mardiasmo (2021), tax crime penalties should primarily focus on state revenue recovery rather than imprisonment. This aligns with Article 44C paragraph (1) of Law Number 7 of 2021, which explicitly states that fines for violations under Articles 39 and 39A cannot be substituted with imprisonment. The judicial reasoning demonstrates what Siahaan (2020) terms as a "dual consideration approach," incorporating both legal and non-legal factors. The legal considerations properly established the elements of tax fraud through documentary evidence and witness testimonies. However, the non-legal considerations, particularly regarding the substitute imprisonment, appear to deviate from the legislative intent of tax crime enforcement. The case highlights a significant tension in Indonesian tax law enforcement: balancing punitive measures with the primary objective of securing state revenue. As Gunadi (2022) argues, tax fraud penalties should prioritize financial recovery over incarceration. This perspective suggests that the court's decision to allow substitute imprisonment might not optimally serve the fundamental purposes of tax law enforcement. This analysis reveals the need for more consistent application of tax criminal law provisions, particularly regarding penalty mechanisms. Future judicial decisions might benefit from closer adherence to the specific characteristics of tax crimes, as distinguished from general criminal law principles.

5. Conclusion

Based on the results and discussion, it was found that the application of material criminal law to the criminal tax case in decision No. 582/Pid.Sus/2023/PN.Jkt.Sel,

namely the application of material law to the defendant Hijrah Saputra as in the first indictment, subsidiary public prosecutor, based on the considerations of the panel of judges associated with various evidence presented before the trial was not applied appropriately. The panel of judges decided that the defendant Hijrah Saputra had been legally and convincingly proven to have committed a tax crime that was carried out continuously as regulated in Law Number 6 of 1983 concerning General Provisions and Tax Procedures as amended several times by the latest Law, Law Number 16 of 2009 Article 39A letter a Jo Article 64 of the Criminal Code. With the threat of imprisonment for a maximum of 2 (two) years 6 (months) and a fine of 2 x Rp. 10,118. 10,118,552,357 = Rp. 20,237,104,714 (twenty billion two hundred thirty seven million one hundred four thousand seven hundred and fourteen rupiah) with the provision that if the defendant does not pay the fine within 1 (one) month after the court decision has permanent legal force, then his property can be confiscated by the prosecutor and then auctioned to pay the fine. In this case, the defendant does not have sufficient property to pay the fine, then he is sentenced to imprisonment for 3 (three) months which is calculated proportionally.

Legal considerations by the judge in sentencing the case No. 582 / Pid.Sus / 2023 / PN.Jkt.Sel, namely the panel of judges using legal considerations and non-legal considerations. Legal considerations by looking at the facts found before the trial, namely from the indictment of the public prosecutor, the defendant's statement, witness statements, expert statements, and evidence. Non-legal considerations are based on the defendant's background, ability to be responsible and the consequences caused. But according to the author, the panel of judges should have delved deeper into the judge's considerations, especially regarding aggravating factors.

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