

## Legal Study on The Criminal Offense of Tax Invoice Forgery That Has Received Tax Amnesty

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### Abstract

This study aims to determine how the legal consequences of criminal acts of falsification of tax invoices that have received tax amnesty. Criminal acts in the field of taxation are violations of the rules of the tax law that cause state financial losses and people who commit criminal acts can be prosecuted criminally. Falsification of tax invoices is a concern of legal problems among the community that has the potential to harm state revenue. Many people falsify tax invoices but do not understand the impact on the state. By falsifying tax invoices, the taxpayer will reduce their tax payable. This research uses normative legal research methods with a statutory approach, conceptual approach, secondary data type. As a result of this study, researchers found a form of criminal liability for the criminal act of falsifying tax invoices that have obtained tax amnesty in criminal law in Indonesia, in the form of excuse (*schulduitsluitingsgrond-faits d'exuce*) as a reason for criminal elimination (*strafuitsluitingsgronden*), so that the perpetrator should be stopped from investigating at the investigation level or if it has entered the trial stage, the Panel of Judges should issue a verdict of release from all legal charges for the actions committed by the defendant (*ontslag van recht vervolging*), even though the Criminal Act of Falsification of Tax Invoice is proven or the unlawful nature is not lost, but the defendant cannot be held criminally responsible, because there are reasons that excuse according to the law.

## 1. Introduction

Tax is one of the important elements in the legal system of every country, including Indonesia. Taxes not only serve as an instrument of state revenue collection, but also as a tool to achieve economic and social policies. As part of the tax collection effort, tax invoices serve as legal evidence showing the transactions made and the tax that has been levied or paid. In Indonesia, the tax system is regulated through a series of laws and regulations that aim to ensure taxpayer compliance, optimise state revenue, and maintain fairness and legal certainty for all parties involved. Tax crimes are violations of tax laws that result in financial losses to the state, and individuals who commit such offences may be subject to criminal prosecution.

The most common tax offence in Indonesia is the unauthorised issuance of Value Added Tax (VAT) invoices. However, problems arise when tax invoice forgery occurs, which is unlawful and detrimental to the state. Falsification of tax invoices not only results in a loss of state revenue, but can also disrupt healthy business competition and lower public trust in the tax system. Many tax evasion cases in Indonesia involve the use of tax invoices that do not reflect actual transactions. This practice has the potential to cause considerable losses of state revenue, which can even reach trillions of rupiah. Provisions regarding fictitious tax invoices are regulated in Article 39A of Law Number 28 of 2007 concerning the Third Amendment to

Law Number 6 of 1983 concerning General Provisions and Tax Procedures (hereinafter referred to as Law No. 28/2007)<sup>1</sup>.

Issuing or using tax invoices, tax collection receipts, tax withholding receipts, or tax deposit receipts that are not based on actual transactions; or issuing tax invoices without being confirmed as a Taxable Entrepreneur, shall be punished with imprisonment for a minimum of 2 (two) years and a maximum of 6 (six) years, as well as a fine of at least 2 (two) times and a maximum of 6 (six) times the amount of tax payable stated in the tax invoice, tax collection receipts, tax withholding receipts, or tax deposit receipts. Based on Article 39 of Law No.28/2007, people involved in falsifying tax invoices can be prosecuted in court and threatened with imprisonment for a minimum of 2 (two) years and a maximum of 6 (six) years. Tax amnesty aims to provide an opportunity for taxpayers to report previously undisclosed assets and income, with the promise of reduced or eliminated sanctions. While the main objective of this policy is to increase the tax base and increase state revenue, there are concerns that this policy could be utilised by tax invoice fraudsters to avoid strict enforcement. The tax amnesty policy has the potential to be a shortcut for tax offenders to avoid the legal consequences that they should receive.

One significant issue in the tax system is the falsification of tax invoices, which is often used by some parties to illegally reduce the tax burden or to obtain unauthorised tax refunds. This criminal offence not only costs the state revenue but also creates injustice among taxpayers who comply with the rules. The government's tax amnesty programme, which provides amnesty for past tax liabilities, raises questions about how the policy affects law enforcement against offences such as tax invoice fraud. The tax amnesty programme is designed to encourage taxpayers to report previously unreported assets in exchange for the removal of administrative sanctions and criminal amnesty. This research aims to evaluate the effectiveness of law enforcement against the criminal offence of falsification of tax invoices in the context of the implementation of tax amnesty.

In this research, the researcher compares the study with three (3) previous studies. First, the study by Nendy Damayanti titled "Law Enforcement in Tax Crimes Against Invalid Tax Invoices by PT. DC" indicates that even if a tax invoice or a specific document equivalent to a tax invoice fulfills formal requirements and the Value Added Tax has been paid, the invoice or document is considered invalid if the information provided does not reflect the actual transaction regarding the delivery of taxable goods and services<sup>2</sup>. To safeguard state revenue, the imposition of fines for tax offenses serves as the primary sanction (*premmum remedium*), while imprisonment is considered an ultimate sanction (*ultimum remedium*). Second, the study by Tanudjaja titled "Law Enforcement in Addressing Tax Crimes Concerning Invalid (Fictitious) Tax Invoices" emphasizes the importance of strict law enforcement, stringent

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<sup>1</sup> Farid Al-Firdaus, "Studi Eksploratif Penanganan Faktur Pajak Yang Tidak Berdasarkan Transaksi Yang Sebenarnya," *JURNAL PAJAK INDONESIA (Indonesian Tax Review)* 1, no. 2 (2018): 14-30, <https://doi.org/10.31092/jpi.v1i2.194>.

<sup>2</sup> Nendy Damayanti, Puspita Adhy Surya Ningsih, and Andi Ersandi Ramadhan, "Law Enforcement in the Criminal Act of Taxation Against Unauthorized Tax Invoices Carried Out By Pt. Dc," *Journal Lex Suprema* 4, no. 1 (2022): 947-61, <http://money.kompas.com/read/2020/08/07/114100226/palsukan-faktur-pajak-wajib-pajak-ini-divonis-penjara->.

supervision, and taxpayer education to prevent future tax violations<sup>3</sup>. Third, the study by Newman Indra Permana Siallagan titled "Analysis of the Crime of Intentionally Issuing and/or Using Tax Invoices Not Based on Actual Transactions (Case Study of West Jakarta District Court Decision No: 394/Pid.Sus/2020/PN.JKT BRT)" demonstrates two key points: first, the application of criminal law regarding the intentional issuance and/or use of tax invoices not based on actual transactions is evident from the application of Article 39A of the Tax Law and the use of the self-assessment system; second, the judges' considerations in proving this offense were appropriate given the "intent" inherent in the defendant's mindset, consciously executed, indicating the defendant's malicious intent to commit tax crimes from the outset<sup>4</sup>. A legal issue that needs future attention is the regulation and enforcement regarding the resolution of tax disputes, which have the potential to harm state revenue, particularly in cases of invalid tax invoices.

## 2. Methods

In this research, the author employs normative legal research methods, using a legislative approach and a conceptual approach, which involves examining library materials or secondary data<sup>5</sup>. Normative legal research is also known as doctrinal legal research. Normative legal research is a process aimed at discovering legal rules, legal principles, and legal doctrines to address legal issues encountered. This research aims to provide a legal argumentation basis to determine the appropriateness or inadequacy of a phenomenon or what should constitute the law<sup>6</sup>.

## 3. Results and Discussion

### 3.1. Legal Regulation of Tax Invoice Forgery Crimes That Have Received Tax Amnesty in Indonesian Criminal Law

Tax amnesty is a policy that provides an opportunity for taxpayers to report previously unreported assets or income, in exchange for the elimination or reduction of administrative and criminal sanctions. Tax invoice forgery is a criminal offence involving the creation or use of fictitious or false invoices to evade tax obligations or unlawfully obtain tax refunds. This criminal offence is detrimental to the state as it reduces tax revenue that would otherwise be due, as well as creating unfairness in business competition. In the context of tax amnesty, this policy usually only covers offences that occur before the amnesty period and does not protect offences that occur after the period. This means that if someone commits the criminal offence of falsifying tax invoices after the end of the amnesty period, then they can still be subject to legal sanctions according to applicable regulations. Tax amnesty does not provide legal immunity to serious offences, and the government still has the authority to take action against such offences.

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<sup>3</sup> Tanudjaja and Rita Listiyarini, "Penegakan Hukum Dalam Menyelesaikan Tindak Pidana Perpajakan Mengenai Faktur Pajak Tidak Sah (Fiktif)," *Angewandte Chemie International Edition*, 6(11), 951-952. 1, no. April (2024): 971-81.

<sup>4</sup> Newman Indra Permana Siallagan, Harrrtanto, and Putr Hafidati, "Analisis Tindak Pidana Sengaja Menerbitkan Dan /Atau Menggunakan Faktur Pajak Yang Tidak Berdasarkan Transaksi Yang Sebenarnya (Studi Kasus Putusan Pengadilan Negeri Jakarta Barat Nomor: 394/Pid.Sus/2020./PN.JKT BRT)," *Jurnal Pemandhu* 4, no. 1 (2023): 52-62.

<sup>5</sup> Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020).

<sup>6</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2010).

Forgery crimes involve elements of falsity and inaccuracy within an object that appears genuine but contradicts the truth. The forgery of tax invoices is a specific tax crime that harms the state. Law No. 11/2016 aims to increase state revenue by providing an opportunity for taxpayers to report previously undeclared assets by paying a ransom fee. However, this tax amnesty does not exempt offenders from the crime of tax invoice forgery committed after the tax amnesty period ends. The general crime of document forgery is stipulated in Articles 263, 264, and 266 of Law Number 1 of 2023 concerning the Indonesian Criminal Code (hereinafter referred to as Law No. 1/2023). These articles state that anyone who creates or falsifies a document that can create a right, obligation, or debt release, or which is intended as evidence of any matter, with the intent to use or have another person use the document as if it were genuine and unfalsified, shall be punishable by a maximum imprisonment of 6 years if such use can cause harm. "Anyone who intentionally uses a false or forged document as if it were genuine, if such use can cause harm, shall be subject to the same penalty."

In addition to the Indonesia Criminal Code, the regulation of Tax Invoice Falsification is also regulated in the Law No.28/2007. Referring to Article 44B of the Law No.28/2007, the finance minister has the authority to request the attorney general to stop the investigation of tax crimes. The investigation will be stopped if the taxpayer pays the tax principal as well as the fine in accordance with Article 44B paragraph (2) of the Law No.28/2007. Prior to the Law Number 7 of 2021 concerning Harmonization of Tax Regulations (hereinafter referred to as Law No. 7/2021), taxpayers had to pay taxes and fines amounting to 3 times the underpaid tax for the investigation to be stopped. In Article 44B paragraph (2) of the Law No.28/2007, the fine to be paid can be 1 times, 3 times, or 4 times the underpaid tax. If the tax crime is due to inadvertence or negligence (Article 38 of the Law No.28/2007) the taxpayer does not need to pay the principal tax and a fine of 1 times the amount of underpaid tax. However, if the criminal offense is committed intentionally, it refers to Article 39 of the Law No.28/2007 and the taxpayer needs to pay the principal tax and a fine of 3 times the amount of underpaid tax. The criminal offense in question is the crime of issuing or falsifying fictitious tax invoices and taxpayers must pay the principal tax and a fine of 4 times the amount of tax in the fictitious tax invoice.

To ensure compliance with the law, law enforcement officials are entitled to use coercive force. The definition of law enforcement can also be seen in terms of its object, especially in terms of law. In this case, the definition in a broad sense, namely enforcement includes the values of justice contained in the sound of formal regulations as well as the values of justice that exist in society. But in a narrow sense, law enforcement only concerns the enforcement of formal and written regulations. Law enforcement is an effort to make law in a narrow sense of form and in a broad sense of material, to guide behavior in all legal actions, both the owner of the legal entity concerned and law enforcement officials who are officially given the duties and authority by law to ensure the implementation of legal norms applied in the life of society and the state<sup>7</sup>.

The government agency that organizes the affairs of state tax administration in Indonesia is the Directorate General of Taxes (DGT), one of the general departments under the auspices

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<sup>7</sup> Al-Firdaus, "Studi Eksploratif Penanganan Faktur Pajak Yang Tidak Berdasarkan Transaksi Yang Sebenarnya."

of the Ministry of Finance of the Republic of Indonesia. The government through the DGT under the supervision of the Ministry of Finance establishes tax regulations and systems to regulate taxes collected from its citizens. In its implementation, DGT encounters various obstacles, including tax irregularities and manipulations (moral hazard) committed by tax authorities and taxpayers<sup>8</sup>. The principle of confidentiality in tax amnesty matters has an impact on the application of law by providing the potential for moral hazard. Moral hazard occurs because of opportunities or opportunities that allow such actions to occur. In essence, the perception of moral hazard is also strongly influenced by intent and motivation.

Coordination between various agencies such as the DGT, the Ministry of Finance (MoF), and the Supreme Audit Agency (BPK) plays an important role in ensuring effective law enforcement against tax offences, including tax invoice fraud. The DGT is responsible for the supervision and enforcement of tax regulations, including the administration of the tax amnesty programme. The MoF plays a role in the formulation of fiscal and tax amnesty policies, while the BPK oversees and ensures that the implementation of such policies is conducted transparently and in accordance with the law. Good coordination between the DGT, MoF, and BPK ensures that serious offences are not overlooked and that tax amnesty is not used as a tool to evade law enforcement. In the case of fraudulent tax invoices, DGT needs to cooperate with law enforcement officials to investigate and prosecute perpetrators. The Ministry of Finance needs to ensure that the tax amnesty policy does not hamper law enforcement, while the BPK should monitor that the implementation of tax amnesty is carried out accountably. BPK conducts audits of state financial management and responsibilities, including in terms of tax revenue. The DGT has primary responsibility for tax administration, including detecting and preventing tax crimes. DGT is also tasked with conducting tax audits and imposing administrative sanctions on taxpayers who commit offences.

Tax invoice is a document used in business transactions commonly carried out by taxable entrepreneurs when delivering taxable goods or taxable services. Tax invoices function as a source of state revenue and finance state expenditures. With the development of exports and imports in Indonesia to increase tax revenue obtained from tax invoices. In general, companies that export do not need to collect taxes because it increases competitive trade abroad but when making it easy to use tax facilities, naughty taxpayers use and do not utilize improperly to break into the state treasury. The mode carried out by this irresponsible person starts from marking up the tax value in order to get a larger restitution to falsifying tax invoices used for fictitious exports. Falsified tax invoices are unauthorized or problematic taxes. By seeing many cases of misuse of tax invoices, the DGT has tightened the tax collection administration system, so the DGT made a policy contained in Law No.28/2007. This policy regulates the procedures for filling out tax invoices, the most significant changes regarding the serial numbering of tax invoices, policy changes to further curb tax administration regarding tax invoices as a policy improvement. And if the criminal law concerns tax amnesty taxpayers, it will be difficult to enforce the law because the data and information from the statement and

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<sup>8</sup> Nirwana Dewi Harahap, "Akibat Hukum Terhadap Wajib Pajak Yang Melakukan Tindak Pidana Perpajakan Ditinjau Dari UU No. 28 Tahun 2007 Tentang Ketentuan Umum Dan Tata Cara Perpajakan," *Jurnal Ilmiah Maksitek* 5, no. 3 (2020): 68, <https://www.makarioz.sciencemakarioz.org/index.php/JIM/article/download/179/172>.

attached documents are managed by the investigation, and/or criminal prosecution of the taxpayer. Data and information submitted by taxpayers based on tax amnesty orders are not requested by anyone and are also not given to any party based on other laws and regulations, except with the consent of the taxpayer himself. The minister, deputy minister, officials of the ministry of finance and parties involved in the implementation of tax amnesty cannot be complained, sued, investigated, investigated or prosecuted either civilly or criminally if in carrying out their functions they rely on numbers up to good faith and in accordance with the provisions of laws and regulations. The authority of Fiscus in Tax Amnesty may in time intersect with the BPK. Chapter VIIIA Article 23E paragraph 1 of the 1945 Constitution of the Republic of Indonesia states the existence of BPK, specifically to consider the management and responsibilities related to state finances, has a free and independent financial audit agency. The scope of BPK's examination of the management and accountability of state finances includes all elements of state finances, as stipulated in Article 2 of Law Number 17 of 2003 concerning the State Finances (hereinafter referred to as Law No. 17/2003), including: the state's right to collect taxes, issue and circulate currency and grant loans, the State's obligation to carry out the general service duties of the State government and pay bills of State revenue to third parties; state expenditure, local revenue, local expenditure, state assets/regional assets managed by themselves or other parties in the form of money, securities, receivables, and other rights that can be valued in money, including state assets divided into state companies/regional companies; the wealth of other parties controlled by the government in the context of carrying out government functions and/or the public interest, the wealth of other departments obtained by using the facilities provided by the government.

In Number 16 of 2009 concerning Stipulation of Government Regulations in Lieu of Law Number 5 of 2008 concerning the Fourth Amendment to Law Number 6 of 1983 concerning General Provisions and Procedures for Taxation Becoming Law (hereinafter referred to as Law No. 16/2009), the provisions in this section authorize the tax authorities to issue tax assessment letters of underpayment, which basically only apply in certain cases within a certain period of taxation. Therefore, those mentioned in this point are only taxpayers who based on the results of the audit or other information do not fulfill their formal and material obligations. The other information is real information obtained from or owned by the Tax Director, including the results of the examination of tax invoices and proof of income tax withholding<sup>9</sup>. Article 39 Law No. 16/2009 explains tax invoices as evidence of tax collection which is an administrative tool in implementing the provisions of value added tax. Evidence of tax withholding and collection is used as a means of crediting or reducing taxes payable so that any misuse of tax invoices, tax withholding receipts, tax collection receipts, and tax deposit receipts has a negative impact on value added tax and income tax. Therefore, misuse that is not based on actual transactions is subject to criminal sanctions. The sanction arrangements that have been regarding tax invoices listed in Article 39A Law No. 16/2009 letters a and b determine: "Every person who intentionally:

- a. Issuing and/or using tax invoices, tax collection receipts, tax withholding receipts, and/or tax deposit receipts that are not based on actual transactions, or;

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<sup>9</sup> Michelle and Tanudjaja, "Analisis Penerapan Sistem Dan Penegakan Hukum Dalam Tindak Pidana Perpajakan Terhadap Pidana Pembuatan Faktur Pajak Fiktif" 2 (2024): 91-103.

- b. Issuing tax invoices but not yet confirmed as a taxable entrepreneur 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 slip, tax withholding slip or tax deposit slip at most 6 (six) times the amount of tax in the tax invoice, tax collection slip, tax withholding slip, and tax deposit slip.”

In legal doctrine, tax laws and regulations are included in the field of state administrative law, so that legal issues arising in relation to violations of tax laws and their enforcement are handled through administrative law settlement mechanisms. Although it is an administrative law, taxation law has different characteristics from other administrative laws because the essence of taxation law is to give broad rights to the state in collecting taxes from taxpayers<sup>10</sup>. Although the state has broad powers, the nature of administrative law and legal regulations related to taxation provides an opportunity for taxpayers to challenge the tax imposed on them based on allegations of irregularities in the calculation of taxes payable. If it cannot be resolved, then the dispute regarding the tax calculation is known as a tax dispute, which can be submitted to the Tax Court. Article 1 number 5 Law Number 14 of 2002 concerning the Tax Court (hereinafter referred to as Law No. 14/2002) in determines: “Tax dispute is a dispute arising in the field of taxation between a taxpayer or taxpayer and an authorized official as a result of the issuance of a decision that can be submitted.”

Tax offenses have a classification in the form of an offense (*culpa*) as an unintentional act and a tax crime in the form of a crime (*dolus*) as an act committed intentionally<sup>11</sup>. Therefore, tax invoices or documents similar to tax invoices that have fulfilled the formal provisions and have paid value added tax, but if they do not match the actual facts regarding the delivery of taxable goods and the delivery of taxable services, the tax invoice or document does not meet the material requirements or is invalid. As for violations of laws and regulations in the field of taxation that have contained controversy, especially regarding criminal sanctions for tax administration with general crimes or special crimes related to taxes, as for things caused by several, among others:

- a. Related to the authority with the investigation between criminal offenses in the field of taxation, especially in the falsification of tax invoices with general criminal offenses and special criminal offenses is a pure criminal offense (generic crimes). It is also related to the legal basis for the imposition of sanctions;
- b. The legal basis for the imposition of criminal sanctions, namely administrative violations in the field of taxation, general violations, and special violations contained in the taxation law are included in the criminal (dependent offense) in the field of administrative law, the Act governing the Act, general criminal law, and special criminal acts. Due to the nature of tax law, the settlement of charges in the event that no tax offense has occurred can be carried out through administrative procedures in other words, by paying tax obligations and fines with the excuse of not filing criminal charges.

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<sup>10</sup> Siswantari Pratiwi, “Delik Penyertaan Dalam Kitab Undang-Undang Hukum Pidana (KUHP),” *Binamulia Hukum* 1, no. 11 (2022).

<sup>11</sup> Savitri Ramadhita and Sartika Nanda Lestari, “Perlindungan Hukum Terhadap Investor Atas Pencabutan Izin Usaha Perusahaan Sekuritas Oleh Otoritas Jasa Keuangan (Kasus PT Brent Securities),” *DIPONEGORO LAW JOURNAL*, vol. 8, 2019.

In the opinion of the researcher, in the case of a tax crime that has become a public concern related to fictitious tax fraud, it is an extraordinary crime that not only harms the state based on the aspect of tax revenue but also has a huge impact on the destruction of the order of economic activity and society at large. However, in this criminal act, the government provides forgiveness to the perpetrator. Article 1 paragraph (1) Law Number 11 Year 2016 concerning the Tax Amnesty (hereinafter referred to as Law No.11/2016) states the elimination of taxes that should be owed, not subject to tax administrative sanctions and criminal sanctions in the field of taxation, by disclosing assets and paying ransom. Meanwhile, Article 20 Law No.11/2016 explains that data and information sourced from the statement letter and its attachments administered by the ministry of finance or other parties related to the implementation of this Law cannot be used as the basis for criminal investigations, investigations, and/or prosecutions against taxpayers. Therefore, the tax amnesty law will be used by a number of parties to launder the proceeds of crime. In the elimination of criminal elements of taxpayers who have received tax amnesty is a step to enforce the law in Indonesia, especially if the money is the result of corruption and fraudulent acts that cause losses to the State. If there is a case of individual or corporate taxpayers who have participated in tax amnesty whose assets come from money laundering crimes, the provisions of information data management and criminal provisions of the Tax Amnesty Law are ignored and must be investigated, investigated, and prosecuted based on the Criminal Procedure Code<sup>12</sup>.

Legal arrangements for the crime of falsifying tax invoices that have obtained tax amnesty in Indonesian criminal law for cases of fictitious tax invoices must be resolved with special measures because of the impact on state revenue. The crime of falsifying tax invoices is very difficult to trace by the perpetrators, usually the perpetrators of falsifying tax invoices are intellectuals. That is, people who have deep knowledge or understanding of taxes and armed with existing knowledge, the perpetrators can easily trick tax officials. In principle, legal remedies are intended to provide guidance and provide a deterrent effect, and must contain elements of coercion such as the imposition of fines or compensation. It is expected that there will be a spirit of professionalism for tax investigators and the police to handle cases of irregularities or violations of tax law in the future. That is, if there is a true discovery or criminal offense in a tax case, the case will be immediately coordinated with police investigators.

Therefore, coordination between law enforcement officers is needed to reduce crime in the field of taxation. To enforce the law in the field of taxation, administrative sanctions and criminal sanctions are required. The strategy of legal formulation policy in the field of *Ultimum Remidium* means that in enforcing violations of tax law, administrative sanctions are prioritized, while the application of criminal sanctions is carried out if the methods used are no longer effective to make taxpayers comply with tax provisions.

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<sup>12</sup> Ribut Hari Wibowo, "Pendekatan Keadilan Restorative Dalam Penghentian Penuntutan Berdasarkan Keadilan Restoratif," *Jurnal Hukum Progresif* 9, no. 2 (2021): 146-57, <https://doi.org/10.14710/jhp.9.2.146-157>.



### 3.2. Legal Evidence on the Crime of Falsification of Tax Invoice that Has Obtained Tax Amnesty Based on Indonesian Judicial Practice

The use of criminal law efforts in tackling crime is one way to overcome social problems, including in law enforcement policy. This also applies in tackling crime in the field of taxation. Law enforcement aims to restore public security and order disturbed by criminal acts, thus creating legal certainty. Law enforcement is a process to realize the rule of law into reality. If tax law enforcement runs in accordance with the provisions in the tax law, the interests of the state, society, and taxpayers are protected. However, if the taxpayer commits a tax crime, the three interests are not protected. The state's interest in tax revenue is not achieved, which can threaten the implementation of national development which is in the public interest. In addition, taxpayers as individuals are also subject to criminal sanctions<sup>13</sup>. The tax proceeds collected by the government are not only used to finance routine expenses, but also for development in various fields. The implementation of national development in Indonesia covers various sectors with the hope of increasing national income and ensuring equitable income distribution for all Indonesian people. The close relationship between the government as a tax collector and the people as tax subjects creates a legal relationship between the two, which places tax law within the scope of public law. The tax amnesty system in Indonesia provides an opportunity for taxpayers to disclose unreported assets in exchange for the elimination of administrative and criminal sanctions. While the main objective of this programme is to increase tax compliance and improve tax administration, there are negative impacts that need to be considered. One of the main impacts is the possible incentive for tax offenders to continue committing offences in the hope of availing tax amnesty in the future. Offenders may feel that the programme provides an escape from legal consequences, which may reduce the deterrent effect of punishment and encourage them to engage in tax fraud or evasion.

In addition, tax amnesty may provide a sense of security for offenders, making them feel that they can "clean up" their tax records without facing severe penalties. This may reduce the motivation to comply with tax laws consistently, in the belief that they can avoid future penalties. The effectiveness of law enforcement may also be affected if the programme is not accompanied by close supervision, reducing long-term compliance and increasing the risk of programme abuse. In the application of legal principles to tax invoice falsification cases, there are some discrepancies. The evidentiary principle requires the prosecution to prove that the invoice was falsified, but in practice, the evidence required is often very complex and difficult to gather. This can hamper the legal process and result in inadequate judgements. The principle of legality requires a clear definition of counterfeiting, but laws are often not specific enough, creating legal uncertainty. As a result, offenders may utilise legal loopholes to avoid sanctions. The principle of proportionality is also often poorly applied, where sanctions do not always reflect the severity of the offence, so perpetrators may feel the legal risks are not daunting enough.

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<sup>13</sup> Refniayu Dwiasty, Mulyati Pawennei, and Baharuddin Badaru, "Kepastian Hukum Terhadap Perlindungan Justice Collaborator Dalam Perkara Tindak Pidana Korupsi," *Journal of Lex Philosophy (JLP)* 5, no. 1 (2024).

The evidentiary system in the current era faces great challenges that need to be addressed more severely, especially efforts to prove the criminal act of falsification of tax invoices. This is because the types of evidence specified in the Criminal Procedure Code are used to prove the existence of a criminal offense of falsification of tax invoices. Indonesia itself has a negative proof system according to the Law, this is regulated in Article 184 of the Criminal Procedure Code, the purpose of the negative proof system according to the Law is that the defendant's guilt must be proven and the method of proof is determined by law and the judge's belief is based on the elements of proof and the method of proof. This means that people cannot be convicted solely based on the judge's belief, but the judge's belief must be sourced from legal facts such as relevant legal facts relating to or relating to a criminal offense and the perpetrator of a criminal offense that provides valid evidence that has been previously determined by law, such as:

a. Evidence of Criminal Offenses

Evidence is a rule that contains explanations and instructions on legal procedures in accordance with the law in proving the guilt charged to the defendant. Evidence is also a rule that regulates the evidence that is valid according to the law and can be used by the judge to prove the alleged guilt.

b. Evidentiary system

The system of evidence according to the current criminal procedural law book adheres to the *negatief wettelijke* system, namely the system according to the Law to a limit stated in Article 183, which reads:

“the judge may not impose a sentence on a person unless with at least two valid evidences, he obtains a conviction that a criminal offense really occurred and the defendant is guilty of committing it.”

The element of intent in Article 39 paragraph (1) of Law No. 6 /1983 as amended by Law No. 16 /2009 is intent in a broad sense. What is meant by deliberation with awareness of the possibility is that this deliberation will occur if a person commits an act with the intention of causing a certain result. but the person is aware. that if he does an act to achieve that certain result. the act “may” cause other consequences which are also prohibited and also punishable by law. If we examine Article 39A letter a in conjunction with Article 43 paragraph (1) of Law No. 28 /2007 as last amended by Law No. 16 /2009, in conjunction with Article 64 paragraph (1) of the Indonesia Criminal Code, that a Tax Invoice is evidence of tax collection (VAT) made by a Taxable Entrepreneur who makes delivery of Taxable Goods or Taxable Services. For this reason, tax invoices must meet formal and material requirements. Formal tax invoice if filled in completely, clearly and accurately as needed, which must contain information about the delivery of taxable goods or delivery of taxable services. A tax invoice is material if the information regarding the delivery of Taxable Goods, delivery of Taxable Services, export of Tangible Taxable Goods, export of Intangible Taxable Goods, export of Taxable Services, import of Taxable Goods, or utilization of Taxable Services and Intangible Taxable Goods from outside the customs area within the Customs Area<sup>14</sup>.

<sup>14</sup> Harry Fauzi et al., “Penanganan Terhadap Penyalahgunaan Narkotika Melalui Pendekatan Restorative Justice Di Wilayah Kota Banda Aceh,” *LAWYER: Jurnal Hukum* 1, no. 1 (2023): 7-12, <https://doi.org/10.58738/lawyer.v1i1.139>.

In legal doctrine, legal regulations regarding taxation issues belong to the field of state administrative law, so that the legal problems that arise are related to violations of tax regulations and their application<sup>15</sup>. The law is implemented through an administrative law settlement mechanism. Although it is an administrative law, taxation regulations have different characteristics from other administrative laws because the nature of taxation law is to give broad authority to the state to collect taxes from taxpayers. The state has the right to determine taxpayers and force them to fulfill their obligations. In accordance with the Law No. 6/1983, law enforcers are given the option or choice to apply administrative sanctions and criminal sanctions according to their authority in taking action against every unauthorized tax invoice error contained in the Law No. 6/1983. The substance of the act, the materiality of the error, and the negative impact of the error need to be given the provisions of the implementing regulations or delegation of laws and regulations. This is to provide parameters as a limitation for law enforcers to exercise discretion to avoid the occurrence of freedom of interpretation or legal interpretation such as grammatical, systemic, historical, and sociological interpretation to find the meanings written in the Law for the fulfillment of the public interest<sup>16</sup>.

The application of criminal action to overcome crime is seen as an effort to overcome social problems, including in the field of law enforcement policy. The same applies to the eradication of crimes in the field of taxation. Law enforcement is basically useful in restoring public security and order disturbed by criminal sanctions, in order to create legal certainty. Law enforcement is a process to realize the wishes of the law to become a reality. The application of sanctions against criminal offenses including tax crimes is intended to provide legal certainty and a sense of justice to the community. If law enforcement agencies, especially tax law, operate in accordance with the tax law, then the three interests above will be protected. If the taxpayer commits a tax crime, then the state's interests are no longer protected<sup>17</sup>. The State's interest in the form of tax revenue is not achieved, which then threatens the non-implementation of national development as the public interest. Taxpayers themselves as rights holders are also subject to criminal sanctions. The application of criminal sanctions as a deterrent effect for the perpetrator of the act is clearly intended so that the perpetrator of the crime does not repeat his actions. In principle, the main purpose of tax law is not just to impose criminal sanctions as against criminal acts in general; therefore, the purpose of tax law is for the public to understand the provisions of the tax law in order to optimize the revenue of the State Budget (APBN).

In the opinion of the researcher, legal proof and the application of tax amnesty for the crime of falsification of tax invoices based on judicial practice in Indonesia by making efforts to eradicate tax crimes related to unauthorized tax invoices also by preventive and punitive means. Preventive countermeasures have the target of implementing preventive measures against various standard violations. In this case, preventive efforts to eradicate the criminal

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<sup>15</sup> Mukhlis, *Hukum Pelaksanaan Pidana Di Indonesia* (Pekanbaru: Taman Karya, 2019).

<sup>16</sup> Asmadi Syam, "Measuring The Concept Of Restoration In Criminal Justice System," *Jurnal Ilmiah Kebijakan Hukum* 16, no. 2 (2022): 363-76.

<sup>17</sup> Rezky Ayu Lestari, Syarif Saddam Rivanie, and Slamet Sampurno Soewondo, "SIGn Jurnal Hukum Implementation of Restorative Justice for Narcotic Abusers : " 5, no. 1 (2023): 207-20.

act of falsifying tax invoices against illegal taxpayers can be carried out by improving internal control which is carried out regularly and not only during audits. It is hoped that the Tax Office can continue to improve control capabilities through improving internal information systems, external control and supervision and coordinating with various parties to prevent tax crimes to prevent tax crimes. Legal proof of actions taken by the competent authority to ensure the compliance of taxpayers and prospective taxpayers with tax regulations to fulfill the provisions and provisions of the tax law. Such as submitting annual tax returns, keeping records and other relevant information, and paying taxes on time. Legal proof is carried out in the form of sanctions for failure to submit annual tax returns, interest for late payments, and criminal prosecution for tax evasion<sup>18</sup>.

In addition, repressive countermeasures can also be taken against violations of the rules, to provide a deterrent effect for violators. In this case, efforts to take action against perpetrators of tax crimes on unauthorized tax invoices can be carried out by taking legal remedies that have a deterrent effect on the perpetrators. In principle, legal efforts are made to provide guidance and create a deterrent effect, and must have an element of coercion such as fines or compensation. Law No. 16/2009 also provides sanctions that are quite severe for the practice, this certainly upholds the aspect of justice as a representation of the water budget function which is very important for State financing. This can build an opinion as a warning system for tax criminals, and can provide a deterrent effect with the severity of the sanctions given.

#### 4. Conclusions

Legal Regulation on the Criminal Act of Falsification of Tax Invoice that Has Obtained Tax Amnesty in Criminal Law in Indonesia has not been regulated explicitly and clearly, both in Law No. 16/2009 and Law No. 11/2016. However, the Criminal Act of Falsification of Tax Invoice has been regulated in Article 184 of Law No. 16/2009 as an *lex specialis* and the Criminal Act of Forgery of documents in general in Article 263 of the Indonesia Criminal Code (*lex generalis*). For criminal liability for the criminal act of falsification of tax invoices that have obtained tax amnesty in Indonesian criminal law, can use the provisions of Article 11 Paragraph (5) sub letter d and Article 11 paragraph (6) of the Law No. 11/2016 as a reason for the elimination of criminal (*strafuitsluitingsgronden*) in the form of excuse (*schulduitsluitingsgrond-faits d'exuce*), so that the perpetrator should be stopped at the investigation level or if it has entered the trial stage, the Panel of Judges should issue a verdict of release from all legal charges for the actions committed by the defendant (*ontslag van recht vervolging*), even though The Criminal Act of Falsification of Tax Invoices is proven or the unlawful nature is not lost, but the defendant cannot be held criminally responsible, because there are reasons that excuse according to the law. The legal proof of the crime of tax invoice forgery based on Indonesian judicial practice should be consistent with the proof of criminal procedural law in general in the Criminal Procedure Code (*lex generalis*) and the Criminal Code as a special procedural law (*lex specialis*) relating to the elements of the crime of tax invoice forgery, After that, the Judge will consider the criminal responsibility of the Defendant, whether there are reasons for criminal erasure in the form of justification or excuse. In the case

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<sup>18</sup> Asmadi Syam, "Measuring The Concept Of Restoration In Criminal Justice System."

of the criminal act of falsification of tax invoices that has obtained tax amnesty, the provisions of Article 11 Paragraph (5) sub-letter d and Article 11 paragraph (6) of the Tax Amnesty Law as a reason for criminal abolition in the form of excuse, so that the perpetrator should be stopped at the investigation level or if it has entered the trial stage, the Panel of Judges should issue a verdict of release from all legal charges for the actions committed by the defendant (ontslag van recht vervolging).

## 5. Reference

- Al-Firdaus, Farid. "Studi Eksploratif Penanganan Faktur Pajak Yang Tidak Berdasarkan Transaksi Yang Sebenarnya." *JURNAL PAJAK INDONESIA (Indonesian Tax Review)* 1, no. 2 (2018): 14-30. <https://doi.org/10.31092/jpi.v1i2.194>.
- Asmadi Syam. "Measuring The Concept Of Restoration In Criminal Justice System." *Jurnal Ilmiah Kebijakan Hukum* 16, no. 2 (2022): 363-76.
- Damayanti, Nendy, Puspita Adhy Surya Ningsih, and Andi Ersandi Ramadhan. "Law Enforcement in the Criminal Act of Taxation Against Unauthorized Tax Invoices Carried Out By Pt. Dc." *Journal Lex Suprema* 4, no. 1 (2022): 947-61. <http://money.kompas.com/read/2020/08/07/114100226/palsukan-faktur-pajak-wajib-pajak-ini-divonis-penjara->.
- Dwiasty, Refniayu, Mulyati Pawennei, and Baharuddin Badaru. "Kepastian Hukum Terhadap Perlindungan Justice Collaborator Dalam Perkara Tindak Pidana Korupsi." *Journal of Lex Philosophy (JLP)* 5, no. 1 (2024).
- Fauzi, Harry, Seri Mughni Sulubara, Murthada, and Syafridha Yanti. "Penanganan Terhadap Penyalahgunaan Narkotika Melalui Pendekatan Restorative Justice Di Wilayah Kota Banda Aceh." *LAWYER: Jurnal Hukum* 1, no. 1 (2023): 7-12. <https://doi.org/10.58738/lawyer.v1i1.139>.
- Harahap, Nirwana Dewi. "Akibat Hukum Terhadap Wajib Pajak Yang Melakukan Tindak Pidana Perpajakan Ditinjau Dari UU No. 28 Tahun 2007 Tentang Ketentuan Umum Dan Tata Cara Perpajakan." *Jurnal Ilmiah Maksitek* 5, no. 3 (2020): 68. <https://www.makarioz.sciencemakarioz.org/index.php/JIM/article/download/179/172>.
- Lestari, Rezky Ayu, Syarif Saddam Rivanie, and Slamet Sampurno Soewondo. "SIGn Jurnal Hukum Implementation of Restorative Justice for Narcotic Abusers : " 5, no. 1 (2023): 207-20.
- Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group, 2010.
- Michelle, and Tanudjaja. "Analisis Penerapan Sistem Dan Penegakan Hukum Dalam Tindak Pidana Perpajakan Terhadap Pidana Pembuatan Faktur Pajak Fiktif" 2 (2024): 91-103.
- Muhaimin. *Metode Penelitian Hukum*. Mataram: Mataram University Press, 2020.
- Mukhlis. *Hukum Pelaksanaan Pidana Di Indonesia*. Pekanbaru: Taman Karya, 2019.
- Pratiwi, Siswantari. "Delik Penyertaan Dalam Kitab Undang-Undang Hukum Pidana (KUHP)." *Binamulia Hukum* 1, no. 11 (2022).
- Ramadhita, Savitri, and Sartika Nanda Lestari. "Perlindungan Hukum Terhadap Investor Atas Pencabutan Izin Usaha Perusahaan Sekuritas Oleh Otoritas Jasa Keuangan (Kasus PT Brent Securities)." *DIPONEGORO LAW JOURNAL*. Vol. 8, 2019.
- Siallagan, Newman Indra Permana, Harrtonto, and Putr Hafidati. "Analisis Tindak Pidana Sengaja Menerbitkan Dan /Atau Menggunakan Faktur Pajak Yang Tidak Berdasarkan Transaksi Yang Sebenarnya (Studi Kasus Putusan Pengadilan Negeri Jakarta Barat Nomor: 394/Pid.Sus/2020./PN.JKT BRT)." *Jurnal Pemandhu* 4, no. 1 (2023): 52-62.
- Tanudjaja, and Rita Listiyarini. "Penegakan Hukum Dalam Menyelesaikan Tindak Pidana Perpajakan Mengenai Faktur Pajak Tidak Sah (Fiktif)." *Angewandte Chemie International Edition*, 6(11), 951-952. 1, no. April (2024): 971-81.

Wibowo, Ribut Hari. "Pendekatan Keadilan Restorative Dalam Penghentian Penuntutan Berdasarkan Keadilan Restoratif." *Jurnal Hukum Progresif* 9, no. 2 (2021): 146–57. <https://doi.org/10.14710/jhp.9.2.146-157>.