

# Turnitin test result

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### **Abstract**

*This research has two objectives: the first is to analyze Value Added Tax (VAT) concepts in Indonesia's provisions and regulations; the second is to analyze the VAT tax dispute according to the 2019 Tax Court decision. It is qualitative research with inductive reasoning using data collection techniques through documentation and literature studies. It emphasizes five concepts that underlie VAT regulation in Indonesia, namely (1) the concept of output, destination principle, and place of supply; (2) input and credit methods; (3) tax invoice; (4) time of supply; and (5) taxable entrepreneur. The core of the VAT dispute is the difference in viewpoints and interpretations of the implementation of laws and regulations in taxation. The main issues of VAT disputes due to different legal interpretations generally include three issues: tax subject, tax object, and tax invoices issuance. Based on the 2019 Tax Court decision, the Tax Auditors only managed to win 32% of their cases. Thus, knowledge regarding the concept of taxation is essential so that readers of laws and regulations, both taxpayers and tax officers, could have a good understanding of the initial concepts that underlie the regulations.*

**Keywords:** tax dispute, value-added tax, tax court decision

### **Abstrak**

*Penelitian ini memiliki dua tujuan. Pertama adalah menganalisis penerapan konsep Pajak Pertambahan Nilai (PPN) di dalam ketentuan peraturan perundang-undangan di Indonesia. Kedua adalah untuk menganalisis sengketa pajak PPN sesuai putusan Pengadilan Pajak tahun 2019. Penelitian ini merupakan penelitian kualitatif dengan penalaran induktif menggunakan teknik pengumpulan data berupa studi dokumentasi dan literatur. Penelitian menyimpulkan bahwa terdapat lima konsep yang mendasari regulasi PPN di Indonesia, yaitu (1) konsep output, destination principle, dan place of supply; (2) input dan credit method; (3) faktur pajak; (4) saat penyerahan; dan (5) pengusaha kena pajak. Inti permasalahan sengketa PPN adalah perbedaan sudut pandang dan penafsiran atas implementasi ketentuan perpajakan. Pokok permasalahan sengketa PPN akibat perbedaan interpretasi hukum secara umum meliputi tiga hal, yaitu subjek pajak, objek pajak, dan penerbitan faktur pajak. Berdasarkan putusan Pengadilan Pajak 2019, Pemeriksa Pajak hanya berhasil memenangkan 32% perkara mereka. Dengan demikian, pengetahuan mengenai konsep perpajakan mutlak diperlukan agar pembaca peraturan perundang-undangan, baik wajib pajak maupun petugas pajak, dapat memiliki pemahaman yang baik terhadap konsep awal yang mendasari regulasi dimaksud.*

**Katakunci:** sengketa pajak, pajak pertambahan nilai, putusan pengadilan pajak

## **INTRODUCTION**

Tax dispute resolution in Indonesia is still problematic because it has not realized the principle of fast, simple, and inexpensive (Hidayah, 2018). Based on statistical data from the Ministry of Finance in 2019, the number of disputes that were submitted to the Tax Court was 12.882 cases, with a total of 10.166 cases decided. Of the total, 67% of the decisions favored the taxpayer, with details of 4.937 fully approved and 1.903 partly approved. Therefore, the appeals and lawsuit process through the Tax Court is an ultimatum remedium. The Tax Court is a judicial institution executing judicial

authority for taxpayers or tax bearers who seek justice against tax disputes (Djarmiko, 2016).

The increase in the number of taxpayers and the level of understanding of tax rights and obligations through a self-assessment system allows an increase in tax disputes between taxpayers and tax officers (Hidayah, 2018). Besides, indecisiveness in law enforcement on the imposition of tax sanctions triggers taxpayers to dare to deviate from the law (Sundari, 2019), which triggers tax auditors to do more of their duties. However, the number of disputes submitted to the Tax Court is not proportional to the availability of human

resources (Rahayu, 2014). This imbalance causes a tax dispute resolution, and legal certainty takes up to three years.

Juridically, tax disputes are initiated from different views and interpretations of tax laws and regulations, particularly due to the tax audit (Djarmiko, 2016). Different views of law, accounting, and economics lead to a conflict of interest for the taxpayer as justice seekers and tax officers. Tax compliance is a social dilemma in which short-term personal interests to minimize tax payments conflict with long-term collective interests to provide sufficient tax funds for public goods (Gangl, Hofmann, & Kirchler, 2015). In this case, the tax authorities seek to increase state revenues. However, the tax officer has limited scope and understanding of the taxpayer's business transactions, so interpretation depends heavily on a belief based on what is written in the law textually. Meanwhile, taxpayers tend to perform tax planning efforts to minimize the tax burden legally.

Another factor that can cause a buildup of tax dispute cases in the Tax Court is derived from the tax auditors themselves. Tax auditors often handle the same case as previous cases which the tax court judge has settled. Even though the judge's ruling earlier had won the appellant, but inspectors did not use it as a reference in the same case handling. Ultimately, these factors lead to the repetition of a tax dispute (Rahayu, 2014).

Referring to the explanation of Article 29 paragraph (2) of Law no. 28 of 2007 concerning General Provisions and Tax Procedures ("KUP Law") states that the opinion and conclusion of the audit officer must be based on solid and relevant evidence and be based on the provisions of the tax laws and regulations. Thus, the examination in the tax court trial, the judge is required to put forward the principle of *affirmanti incumbit probatio* (wei beweert

*moet bewijzen*) related to evidence (Gangl et al., 2015). The purpose of the *affirmanti incumbit probatio* principle is that "the claimant (not the respondent) bears the proof" (Fellmeth & Horwitz, 2009, p. 24). That is, whoever postulates something, must prove it if the opponent denies the argument. However, in practice, the proof is often more burdened to the taxpayer.

In examining and deciding tax disputes, tax court judges attempt to determine the burden of proof from the formal aspect and material testing based on the judge's wisdom. Judges are required to prioritize the principle of equality before the law through the imposition of evidentiary balanced. A fair assessment of the parties and the validity of evidence from the facts revealed during the tax hearing are not limited to facts and matters raised by the parties. It aims to produce decisions that provide legal certainty and are based on the values of justice.

In principle, Value Added Tax (VAT) is a tax that has a relatively wide base (Iswahyudi, 2018). Disputes relating to VAT, in general, there are three main problems caused by differences in interpretation of the law, including tax subject, tax object, and the issuance of tax invoices. This study aims to analyze the application of the VAT concept in the provisions of tax laws in Indonesia and the abstraction of VAT disputes based on the 2019 Tax Court Decision.

## CONCEPTUAL FRAMEWORK

### *Tax Dispute*

Tran-Nam and Walpole (2016) state that disputes are a normal feature of any human society, regardless of space, time, social tradition, or level of development. In the context of taxation, tax disputes are a common feature of modern tax systems worldwide. Tax disputes occur when the taxpayer disagrees with the view provided

or determined<sup>6</sup> by tax administrators regarding the taxpayer's tax liability or entitlements and related issues and takes several actions regarding this disagreement (p. 323).

Many factors can affect the volume of disputes. Tax disputes arise from the complexity of tax statutory and administration (Tran-Nam & Walpole, 2016). Mayanja et al. (2020) state that tax disputes include irrational tax violations, tax calculation errors, taxation errors, tax law interpretation or interpretation errors, unjustified tax sanctions, irrational tax debt determination, the ambiguity of tax regulations, and other mistakes by the tax officer.

According to Thuronyi (1996), examinations are the main source of disputes in a self-assessment system. Many countries experience tax dispute problems. In some cases, the pile of serious tax cases threatens to delay the collection of income (tax collection).

#### **Legal Interpretation**

A rule never presents actual conditions or cannot regulate every possibility so it always requires interpretation (Freedman & Macdonald, 2008). One of the most common methods of interpretation is a literal interpretation ("*textualism*") by interpreting what is written (Cunningham & Repetti, 2004).

Besides the textualism approach, Cunningham & Repetti describes three other methods of interpretation, namely intentionalism, *purposivism*, and the practical reason (dynamic) method. The intentionalism approach is an interpretation that refers to the "original intent" of drafting a regulation. It seeks to determine what the legislature intended the statute to mean. Thus, it is necessary to know the background and purpose of the rule-makers draw up a regulation clause. Eskridge &

Frickey (1990, p. 322) called it "the most popular grand theory is probably intentionalism".

In contrast, the objective approach or purposivism does not ask what the legislative body means in the law but focuses on determining the meaning and purpose of the law when it is enacted and when it is read (Samaha, 2018). Purposivists will also examine legislative history to identify such goals (Cunningham & Repetti, 2004). Furthermore, the practical reason (dynamic) method of regulation readers will look at various textual, historical, and evolutionary evidence when interpreting regulations (Eskridge & Frickey, 1990).

For the case in Indonesia, the decision of the Tax Court judge refers to Law Number 14 of 2002 concerning the Tax Court. Article 78 of the law states that the Tax Court's decision is taken based on the results of the evidentiary assessment, and based on the relevant tax laws and regulations, and based on the judge's conviction. According to the explanatory memory of article 78, the judge's conviction is based on the assessment of evidence and following the tax laws and regulations.

#### **Value Added Tax (VAT)**

Tait (Tait, 1988) defines the basic concept of Value Added Tax (VAT), "Value added is the value added by producers to raw materials or purchases (other than labor) before selling new products or developing goods and services." Therefore, value-added can be seen from the additive side (wages + profits) or the subtractive side (output-input). Appropriate VAT in principle is achieved through three design norms that require VAT to be imposed on a wide consumption basis at a single rate, collected gradually through all production and distribution chain stages through the credit-invoice method, and imposed on a destination principle (James, 2015).



Related to the invoice credit method, Tait (1988) has formulated the value-added concept, namely subtractive-indirect or the invoice-credit =  $t(\text{output}) - t(\text{input})$  method. Application of this method on added value component (output and input) reduces the liability incurred to obtain the final net tax payable. This method is sometimes referred to as the "indirect" way of assessing value-added tax. The subtractive method is the easiest way to calculate a VAT (output minus input) and then apply the tax rate to that figure. Another consideration in using the invoice credit method is that invoices are important evidence for tax transactions and obligations to create a good audit trail.

Tait (1988) states that a clear way to think about liability to VAT is to recognize that though VAT is charged on the supply of goods and services, these are supplied by "taxable persons" (in Indonesia referred to as "Pengusaha Kena Pajak/ PKP") who must register for VAT and be accountable to the authorities for the tax they have collected. The term taxable person for VAT purposes is used to distinguish the term person in taxpayers because it has a different meaning and function. Based on Article 9 paragraph (1) of the VAT Directive, a taxable person is any person who carries out economic activities specified independently in any place, regardless of the purposes or results of the activity (Schenk & Oldman, 2007, p. 94). The concept of persons as legal subjects consists of individuals and includes fictitious persons or legal persons in the form of legal entities. Furthermore, even if a person or entity is subject to VAT, not all need to be responsible. A taxable person is subject to VAT if they supply goods or services in conducting business.

There are two principles related to tax incidence in the VAT concept, namely the origin principle and destination principle. First, the origin principle is a tax imposed in

the country of production of goods and supply of services, where value is added to the goods and services. According to the origin principle, exports are VAT objects because the VAT burden lies with the producer. Meanwhile, imports are not VAT objects because producers who have to bear VAT are outside the country where the Indonesian VAT Law does not apply. Second, the destination principle is a tax imposed in consumption countries, generally where goods and services are delivered for personal consumption. Based on the destination principle, imports are objects of VAT because consumers, according to the destination principle, are in Indonesia. On the other hand, exports are not VAT objects because the VAT burden lies with abroad consumers. The purpose of applying VAT on a destination basis is to avoid complicated and costly differences from source or residence based on income tax.

VAT and international trade concept that tax laws should define the extent to which taxes are imposed on cross-border transactions or activities, including VAT (Schenk & Oldman, 2007). As cross-border activity develops, it becomes important to decide whether VAT should exempt export or import taxes. Tait (1988) states that the supply of goods and services must be done in a domestic transaction to be subject to VAT. More broadly, the definition of a country includes the continental shelf, territorial sea and excludes free zones. Furthermore, Tait (1988) revealed that VAT would be charged at the prevailing rate at a certain time. In general, options related to the time of supply include (a) when the tax invoice is issued, (b) when the goods are available to consumers or the supply of services, or (c) when making payments.

## RESEARCH METHOD

This research adopts qualitative method with inductive reasoning that focuses on the core problems of VAT disputes in Indonesia due to different legal interpretations. It describes social phenomena by prioritizing social realities found in the study (Wagner, Kawulich, & Garner, 2016). Therefore, relevant theoretical studies or perspectives must follow a good research design that meets scientific standards to help understand and describe the social phenomenon that is focused on (Creswell, 2013). The data collection technique used is a documentation study through the literature with qualitative data analysis. In qualitative research, researchers do not aim to prove the theory as quantitative researchers do, so it seems that the quality is the research label itself (Ali & Yusof, 2011).

As descriptive research, this research describes the phenomenon in detail. In this case, this study describes how the Indonesian tax authorities have done tax audits on VAT based on the current regulations. The number of VAT cases brought to the tax court initiated us to assess how the tax auditor carries out the VAT case examination. For this purpose, we collect data on tax court decisions related to VAT by taking samples from Tax Court decisions that were read at the 2019 hearings, the year of the latest decisions that we can access in April-May 2021 when data collection is carried out.

The data collection process follows the following steps:

1. The researcher accesses the tax court database ([www.setpp.depkeu.go.id/](http://www.setpp.depkeu.go.id/)) and separates VAT cases and non-VAT cases that were decided in a hearing trial during 2019. From this filtering process, we obtained a sample size of 60 cases of tax court decisions that can be analyzed further.
2. After the VAT cases were identified, we downloaded and grouped them based on the emphasis on the subject matter of each case, the reasons for the taxpayer's disagreement on the tax audit results, the point of view of both tax authorities and taxpayers, and how the judge made a decision on the case.
3. We further classified the cases into cases that were won by the taxpayer (fully approved), won by the tax authorities (rejected), and partially approved.
4. We classify the reasons why the panel of judges decided to grant the taxpayer's appeal entirely, partially, or reject.
5. We apply the conceptual framework obtained from the literature review to analyze cases assessed during court proceedings.
6. From the research process above, we abstract the findings.

## RESULT AND DISCUSSION

### *The Implementation of VAT Concept in Indonesia*

The need for a more modern tax system has been felt since the Indonesian economy developed. At the end of 1983, the Government of Indonesia launched the second tax reform after the 1970 tax reform as a measure to optimize revenue receipts from the tax sector. According to Bawazier (2011), the tax reform in Indonesia in 1983 introduced the principle of self-assessment in calculating by simplifying and lowering the rate of Income Tax and imposing Value Added Tax (VAT) as a substitute for Sales Tax. Each emergence of a new system results from the limitations of the existing system (Timmermans & Achten, 2018).

According to Tait (1988), the state imposes a VAT because of dissatisfaction with the existing tax structure. VAT replaces sales tax because it is no longer adequate due to the "cascade tax" (Alavuotunki, Haapanen,

& Pirttilä, 2019). Cascade tax occurs because sales tax is imposed on sales transactions at every distribution stage, from manufacturers, wholesalers to retail traders. The provision of VAT is considered no longer possible to accommodate community economic activities that continue to develop and have not yet achieved the desired development needs. The preamble part of the VAT Law no. 8 of 1983 implies that the replacement of this system aims to increase state revenues, encourage exports, and equal distribution of tax burdens.

At the beginning of its implementation, the VAT Law no. 8 of 1983 only regulates the first direct sale of Taxable Goods (BKP). The Government Regulation then regulates the imposition of VAT for subsequent transactions, from distributors to sub-distributors, and continues to consumers and service delivery (Sastrohadikoesomo, 2004). Within 35 years after enactment on December 31, 1983, the VAT Law No. 8 of 1983 has undergone four changes. The current VAT Law is Law No. 42 of 2009, which lastly amended through Law No. 11 of 2020. In line with the very dynamic development of business and economic transactions, the basis for considering these changes is to enhance legal certainty further and justice, create a simple taxation system, and secure state revenues so that national development can be independently carried out.

Value-added itself arises from the use of production factors in each line in preparing,

producing, distributing, and trading goods or providing services to consumers. All costs of obtaining and maintaining profit, including capital interest, land rent, wages, and entrepreneur's profit, are value-added elements that form the basis for VAT imposition. The rates that apply to taxable goods and services are made simpler by applying the same tariff, namely one tariff for all types of taxable goods.

The concept of value-added that underlies and is contained in Law No. 42 of 2009 as amended by Law no. 11 of 2020, including (1) output and destination principle; (2) input and credit methods; (3) invoice method. Table 1 contains a description of the basic concepts of VAT under the law. Regarding destination principle and place of supply, Article 4 has summarized all the concepts of destination principle and object provisions. The definition of taxable goods and services is limited to goods and services that are taxed according to law. The VAT Law in Indonesia adopts a concept put forward by Alan A. Tait. In the indirect method, all outputs and inputs are objects that are subject to VAT. However, with certain considerations, there are exceptions to some outputs and entries that are not subject to VAT, or it is also known as the negative list. The negative list is regulated in Article 4A paragraph (2) and (3) of the VAT Law, such as transaction tools, which come from direct sources. Besides, there are also other considerations related to objects owing VAT that is not collected or exempted.

**Table 1. Fundamental Concepts under Indonesian VAT Law**

No.	Concept	Article	Description
1.	t(Output), Destination Principle, & Place of Supply	Article 4	Types of transactions that are subject to VAT are (a) supplies in the customs area, (b) imports, (c) exports, and (d) utilization
		Article 4A paragraph (2)	4 groups of goods transactions that are not subject to VAT

		Article 4A paragraph (3)	17 groups of service transactions that are not subject to VAT
		Article 16B	VAT facilities (deviation from the principle of neutrality) in the form of: <ul style="list-style-type: none"> <li>• VAT payable, but not collected, or</li> <li>• VAT payable, but exempted (no VAT)</li> </ul>
		Article 16C	The object of VAT is in the form of self-building activities as a form of anti-avoidance rule and equal treatment of VAT for home purchases
		Article 16D	The object of VAT is in the form of asset delivery which according to its original purpose is not for sale by the Taxable Entrepreneur, except only for the supplies of sedans and station wagons.
		Article 16E	Overseas passport holders can reclaim VAT that has been paid
		Article 16F	Following the destination principle, the <b>buyer of taxable goods or recipient of taxable services</b> is jointly responsible for paying taxes, as long as they cannot show evidence that the tax has been paid
2.	t(Input) & Credit Method	Article 9	<ul style="list-style-type: none"> <li>• Following the value-added concept in the form of Output – Input, t(input) can be credited as long as there is t(output).</li> <li>• Following Article 9 paragraph (8) of the VAT Law, in essence, Input Tax can be credited with Output Tax. However, Article 9 paragraph (8) of the VAT Law makes exemptions from Input Tax which cannot be credited for certain expenses due to certain legal considerations according to the Output - Input concept.</li> </ul>
		Article 16B	<ul style="list-style-type: none"> <li>• Input VAT on the supply of the receiving facilities are free of VAT can be credited because it is still in tune with the concept of t(Output) – t(Input).</li> <li>• Input VAT on supplies that get exempted VAT facilities cannot be credited because it is not in line with the concept of t (Output) - t (Input).</li> </ul>
3.	Time of Supply	Article 11	<ul style="list-style-type: none"> <li>• VAT collection adheres to the accrual principle so that VAT debt occurs at: <ol style="list-style-type: none"> <li>a. at the time of supply of taxable goods or taxable services even though the payment for supply has not been received or has not been fully received or</li> <li>b. at the time of taxable goods import.</li> </ol> </li> <li>• VAT is payable for transactions via electronic commerce, it is subject to the provisions of Article 11 of the VAT Law by the principle of neutrality.</li> <li>• VAT payable occurs at the time the payment was received before: <ol style="list-style-type: none"> <li>a. supply of taxable goods or services, or</li> <li>b. before commencing the utilization of Intangible taxable goods or taxable services from outside the customs area.</li> </ol> </li> <li>• Determination of when payable based on cash basis above refers to the principle of ability to pay and the concept of wherewithal to pay.</li> </ul>
4.	Invoice Method	Article 13	<ul style="list-style-type: none"> <li>• Following the self-assessment system, taxable persons or PKP are required to collect payable VAT and provide a Tax Invoice as proof of tax collection.</li> <li>• Tax Invoice is a tax collection evidence and can be used as a means to credit Input Tax.</li> <li>• In principle, a Tax Invoice must be made at the time of supply or at the time of receipt of payment if payment occurs before supply.</li> </ul>



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			<ul style="list-style-type: none"> <li>• In certain cases, the time of making a Tax Invoice may not be the same as those times, for example when the delivery of taxable goods or services to the government treasurer.</li> </ul>
5.	Taxable Persons	Article 13	Following the self-assessment system, taxable persons or PKP are required to collect payable VAT
		Article 16A	The VAT payable on the delivery of Taxable Goods or Taxable Services to the VAT Collector is collected, paid, and reported by the VAT Collector, but the taxable persons still make the Tax Invoice

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Source: Processed by Authors

Furthermore, related to the concept of the tax credit method in Article 9, input tax can be credited as long as there is an output tax. However, with certain considerations, for example, matching cost against revenue, there may be input taxes that are not allowed to be credited as stipulated in Article 9 paragraph (8). The concept of time of supply relates to when a tax invoice is made. The concept of taxable persons in principle is a Taxable Entrepreneur (PKP), but due to the consideration of certainty of tax receipts, consumers are appointed as levies. It aims to fulfill the principle of simplicity since consumers no longer bear the burden of compliance (Saptono & Khozen, 2021).

#### ***A Note from 2019 Tax Court Decision***

The essence of tax disputes is differences in viewpoints and interpretations of the implementation of laws and regulations in taxation, especially differences in legal, accounting, and economic views (Ali in Djatmiko, 2016). The subject matter of the VAT dispute due to differences in legal interpretation generally leads to the correction of the tax auditor on the Tax Imposition Basis and/or crediting of Input Tax. We summarize the case contents of the 60 Tax Court decisions determined in the 2019 hearing trial in Table 2. In general, taxpayers dominated the gains with good results from their appeals; namely, 48% of the sample size we analyzed was fully approved, and 20% were partially approved. On the other hand, the tax audit

results on VAT that were successfully maintained were only 32%.

The disputed value in the tax court decision that we analyze is IDR 254,854,767,639. Of this amount, the tax that the tax auditors fully maintained along with interest was IDR 60,599,029,955. They received an additional IDR 4,018,838,291 from the "partially approved" case they managed to defend. However, it should also be noted that in the "partially approved" case, the appeal filed by the taxpayer gave them the advantage of VAT overpayment of IDR 19,133,702,254.

Our findings show that at least the corrections in the VAT area cover three issues: tax subject, tax object, and issuance of tax invoice. First, the subjective scope of the VAT system in the world relies heavily on the concept of a taxable entrepreneur (Pengusaha Kena Pajak/ PKP) (Darussalam, 2018). Based on Article 9 paragraph (1) of the VAT Directive, a taxable entrepreneur is any person who carries out economic

entrepreneurs and economic activities in practice. For example, Article 16D of the VAT Law regulates the imposition of VAT on the supply of taxable goods in the form of assets that, according to their original purpose, are not for sale by a taxable entrepreneur. Referring to the literal legal interpretation or textualism method, the sale of used cars by the entrepreneur is an asset that is not subject to VAT payable

**Table 2. Summary of VAT Disputes under 2019 Tax Court Decision**

Subject Matter	Fully Approved	Partially Approved	Rejected
Number of decision (n=60)	29 (48%)	12 (20%)	19 (32%)
1. Correction to Tax Base			
a. subjective scope	1	-	1
b. interpretation of transactions as objects/non-objects of VAT	12	13	16
c. reimbursement	12	-	1
2. Correction to Input Tax crediting			
a. Incomplete Tax Invoice	1	7	-
b. Tax Invoice used before NSFP date	4	-	-
c. Tax Invoice is used outside the NFSP allowance	5	-	-
d. joint responsibility	-	1	-
e. Do not have a direct relationship with business activities	-	5	2
f. Could not test the goods and/or the cash flow	-	5	-
g. Confirmation "None" from KPP	-	5	-

Source: Authors' work

activities independently anywhere, regardless of the objectives and results of the activities carried out (Schenk & Oldman, 2007). Based on that definition, a taxable entrepreneur has basic elements, which include (i) persons; (ii) carry out economic activities; (iii) at any place; (iv) independently. By referring to that definition of taxable entrepreneur, VAT is only imposed on transactions related to the economic activities of the taxable entrepreneur that make the supply.

There are often different interpretations of law related to the interpretation of

according to its original purpose. However, the determination is not solely based on the written clause in the statutory regulations but needs to review the underlying concept. According to Siegel (2009), the fundamental problem of textualism is that it is too simple to assert that legal texts are laws. Over the centuries, limited judicial powers in judicial practice deviated from the text of the law in appropriate cases. Therefore, interpretation with an intentionalism approach is needed to see the initial intentions of regulators.

Based on our review of Tax Court decisions, it is necessary to investigate further whether the sale was made in the context of personal activities (for example, because the car was purchased and used for personal purposes) or whether the sale was made as a business activity (for example, the car was bought and used solely for effort). Another possibility is if someone obtains an inheritance that is then sold (there is the delivery of taxable goods). The term "person" is, in principle, not an entrepreneur, and there is no process of producing goods. However, in determining it, it is necessary to re-examine the definition of economic activity.

Our explanation above emphasizes that it is very important to interpret the term "economic activity" broadly. However, the limited interpretation is not in line with the purpose of VAT to impose taxes on all delivery of goods and services (Doesum & Nellen, 2013). Based on the definition of economic activity in Article 9 of the VAT Directive, Darussalam (2018) concludes among them as follows: (i) activity can be classified as an economic activity only if the activity is carried out sustainably and is carried out based on 'value'; (ii) economic activities that the aim do not always to gaining profit, thus what is relevant in determining the taxable entrepreneur status is the nature of the activity itself; (iii) economic activities must be activities that are carried out regularly so that activities that are incidental or only occasional cannot be considered economic activities; (iv) economic activity is deemed to have commenced since the activity was prepared (for example, purchasing company assets for operational activities); (v) a person can carry out two types of activities simultaneously, namely economic activities and non-economic activities. A person who does not carry out economic activities cannot have the status of a taxable entrepreneur. Therefore, defining economic

activities is an important element of the taxable entrepreneur concept so that it does not cause errors in concluding the taxable entrepreneur status.

Indonesian VAT Law has defined a taxable entrepreneur as an entrepreneur who supplies taxable goods or services. Based on that definition, we can summarize as follows: (i) to be classified as PKP, a person must be an entrepreneur; (ii) The entrepreneur delivers the taxable goods and services subject to VAT under the VAT Law. In the VAT Law, the definition of an entrepreneur has been formulated in Article 1 point 14, namely an individual or entity in any form that in business activities or work produces goods, imports goods, exports goods, conducts trading business, utilizes intangible goods from outside the region, conducting service business including exporting services or utilizing services from outside the customs area. However, the definition of 'entrepreneur' imposes restrictions on business activity or work. Thus, an individual or entity carrying out activities outside the formulated business activities is not included in the definition of an entrepreneur based on the VAT Law.

According to entrepreneurs who produce goods, Article 1 point 16 of the VAT Law has formulated the definition of producing, namely processing activities through the process of changing the shape or nature of an item from its original form into new goods or having new uses or activities to process natural resources, including order other individuals or entities to carry out these activities. Furthermore, in the memory of the explanation of Article 5 paragraph (1) of the VAT Law, relating to the imposition of Sales Tax on Luxury Goods (Pajak Penjualan Barang Mewah/PPnBM), including the definition of production is the activity of assembling, cooking, mixing, packaging, bottling, as well as other activities that can be equated

with that activity. Concerning entrepreneurs conducting trading businesses, the meaning of trade has been formulated in Article 1 paragraph 12 of the VAT Law, namely buying and selling business activities, including exchanging goods without changing their form or nature.

Referring to some of these definitions, in determining whether a person can have the status of a taxable entrepreneur, it is necessary to determine whether an economic activity produces goods or as trade and whether a party carries out a buying and selling business. The party who should collect and deposit taxes is the taxable person who does business. The crediting of output tax minus input tax occurs in a business process, so the added value exists.

The second issue of the VAT dispute is due to differences in legal interpretations concerning the scope of transaction subject to VAT (object or non-object). VAT is imposed on every type of economic transaction; however, it is limited to exempt transactions. The concept of a transaction that is subject to VAT (taxable transaction) itself is the delivery of goods that can be in the form of tangible and intangible goods, movable goods, immovable goods, and delivery of services. VAT is also imposed on export and import activities and transactions deemed as deemed supply activities. Furthermore, Article 1 point 5 of the VAT Law formulates the definition of service as any service activity based on an engagement or legal action that causes goods, facilities, facilities, or rights to be available for use, including services performed to produce goods due to orders or requests with materials and on instructions from the customer. There are no further details regarding taxable goods and taxable services in the VAT Law because all output and inputs are subject to VAT. However, with certain

considerations, taxable goods exemptions are regulated in Article 4A of the VAT Law, including 4 (four) groups of non-taxable goods and 17 (seventeen) groups of non-taxable services.

VAT is imposed on delivery based on laws and regulations and categorized as a payable VAT delivery (scope of VAT supplies). The provision is under Article 4 paragraph (1) of the VAT Law. One of the transactions included in the delivery of VAT payable is the delivery of goods within the territory of a country that the taxable entrepreneurs carry out regarding their business activities. In determining whether delivery of goods includes delivery that is payable VAT, five cumulative requirements must be fulfilled: (i) the transaction in question must meet the criteria for the delivery of goods (supply of goods); (ii) the submission must have a 'value' (for consideration); (iii) the delivery must be made within the territory of the country concerned (within the territory); (iv) the submission must be made by a taxable person, and (v) PKP must carry out the delivery activities within the scope of the economic activities it does (acting as such) (Pato & Marques, 2015).

The concept of delivery of goods can be further elaborated by referring to the explanation by Tait (1988) that what is meant by the delivery of goods is (i) the transfer of exclusive ownership of an item from one party to another; (ii) the transfer of goods occurring in one place at a time based on an agreement, such as a sale and purchase; (iii) use of company goods or assets for personal use; (iv) transfer of assets from business activities. Therefore, the concept of delivery of goods is in line with the cumulative requirements in the VAT Law regarding the delivery of goods subject to tax by entrepreneurs.

Terra (1988) explains several points regarding the scope of VAT: (i) The scope



of the VAT does not matter who becomes a taxable entrepreneur, where the taxable entrepreneur lives, or the location of a permanent place of the taxable entrepreneur. As long as taxable entrepreneur carries out economic activities independently, the VAT concept will apply to economic activities carried out by taxable entrepreneur; (ii) However, this economic activity becomes irrelevant if the economic activity carried out is the delivery of goods or services that have no "value"; (iii) The two points above become irrelevant if the economic activities carried out by taxable entrepreneur occur outside the territorial scope of the VAT that a country has determined. Economic activity must be carried out within the territorial territory of a country to be subject to VAT.

In line with the delivery must be done within the country's territory (customs area) (within the territory), almost all countries that apply the VAT system as a form of consumption tax use the destination principle as collecting VAT to the origin principle. Based on this principle, the imposition of VAT is only made where the goods or services are actually consumed, or also known as the place of consumption. However, it is not always possible to determine the place of consumption in practice. It is not easy to apply the rules regarding the allocation of taxation based on the location of actual consumption (place of actual consumption). Almost all literature uses the concept of a place of supply to determine where the VAT is payable on the consumption of these goods or services, make it easier to determine the place of consumption of goods or services. Theoretically, the place of supply is the same as the place of consumption (Millar, 2009).

The territorial scope of VAT is one of the criteria in determining whether a transaction is subject to VAT or not,

especially for cross-border transactions, namely exports and imports. VAT is an indirect tax that focuses on transactions or deliveries. Thus, the main criterion determining the territorial scope of the imposition of VAT is by reference to the location of the transaction. If a transaction occurs within the country's territory, the transaction can be included in the transaction scope, which is subject to VAT (William, 1996).

According to the VAT Law in Indonesia, VAT is a domestic tax. This principle is stated in the general explanation of Law No. 8 of 1983: "Keeping in mind the system, this law can be called the Law on Value Added Tax on Goods and Services and Sales Tax on Luxury Goods to show that the two types of taxes regulated here constitute a single unit as a tax on domestic consumption." Therefore, based on the above explanation, we could outline that the territorial scope of VAT in Indonesia is all transactions that occur domestically.

The general explanation of the VAT Law changes the editorial "tax on domestic consumption" to "VAT is a tax on consumption of goods and services in the customs area which is imposed stratified on each production and distribution line. Based on the determination of the territorial scope of VAT in Indonesia with the boundaries of the customs area, the delivery of taxable goods and services made outside the Indonesian customs area will not be subject to VAT. Article 1 point 1 of the VAT Law, Indonesian Customs Areas include: (i) Indonesian land areas; (ii) Indonesian territorial waters; (iii) airspace over Indonesia; (iv) certain places in the Exclusive Economic Zone where the Customs Law applies; and (v) the continental shelf to which the Customs Law applies.

Furthermore, another issue that often creates differences in interpretation is the

determination of the basis to impose VAT on reimbursements. Reimbursement is a condition in which a company first pays or bills a bill from a service provider, and then the company bills the bailout to a third party according to an agreement between the company and the third party (Darussalam, 2018). The company invoices to third parties are often an issue in VAT practice because it is considered a reimbursement, one of the basic types of VAT taxation. The definition of reimbursement is regulated in Article 1 number 19 of the VAT Law.

In practice, reimbursement is often included in the definition of reimbursement in the phrase "all costs requested or required" so that the reimbursement bill is payable VAT without relating it to the delivery of taxable services by the company to a third party. Let's see it from a textual interpretation. The phrase should be related to the reason why the fee was requested, that is, because of the delivery of taxable services, the export of taxable services, or the export of intangible taxable goods. Thus, reimbursement transactions that are bailed out should not be subject to VAT if the party collecting the reimbursement does not submit taxable goods or services.

The third VAT dispute issue relates to the issuance of invoices and tax credits. As a tax on consumption, VAT is not intended to be charged to the taxable entrepreneur who makes the delivery. The purpose of VAT is to impose a tax on personal consumption by end consumers, whereas consumption carried out in business activities is, in principle, not subject to VAT (Lamensch, 2015). To ensure that taxable entrepreneurs do not bear the VAT burden, they have the right to credit the input tax it pays on the acquisition of goods and services against the output tax it collects when delivering goods and services (Doesum & Nellen, 2013). Input tax is a tax imposed when a

taxable entrepreneur purchases taxable goods or taxable services utilization.

Meanwhile, output tax is the tax imposed when a taxable entrepreneur sells taxable goods or supplies taxable services. Through this input tax crediting method, no VAT is charged to taxable entrepreneurs. The right to credit input tax also guarantees that taxable entrepreneur only collects VAT on the amount resulting from the deduction between output tax and input tax, thus indicating that VAT is only imposed on added value. Thus, the principle that underlies the right to credit input tax is the principle of neutrality.

In line with the issuance of invoice and tax crediting disputes, Djatmiko (2016) details the object of the dispute, which is divided into two parts, namely Output Tax and Input Tax. Disputes relating to Output Tax include corrections to the Tax Imposition Base arising from the examination result of the VAT periodic tax return equalization with the circulation value according to the Annual Corporate Income Tax Return. In the case of material disputes, other causes of tax base corrections arise due to the delivery of taxable goods or services in customs or bonded areas, exports, foreign aid projects, to differences in interpretation regarding the existence of delivery of goods and services is an object of VAT.

Disputes related to input taxes include: (i) corrections resulting from negative confirmation by the appellant on input taxes credited by the appellant; (ii) correction due to the statement of the appellant that the Input Tax Invoice is incomplete; (iii) Tax Invoice used before the NSFP date; (iv) Tax Invoice that used outside the NFSP allowance; (v) not directly related to business activities; (vi) cannot be tested for the flow of goods and/or cash; (vii) joint responsibility; and (viii) other corrections which essentially doubt the validity of the transaction formalities. For example,

several cases of different interpretations related to crediting input taxes, including the exception of obtaining BKP or JKP that do not have a "direct relationship" with business activities, for instance, a taxable entrepreneur who runs a business in the field of air transportation (airplanes) pay VAT on outsourcing services, so the direct relationship is anticipated. In addition, there are differences in understanding regarding the issuance of tax invoices. For example, the date error in the tax invoice is considered not to comply with Article 13 paragraph (9) of the VAT Law, so that input tax cannot be credited.

## **CONCLUSION AND SUGGESTION**

### ***Conclusion***

Five concepts underlie the VAT regulation in Indonesia, namely (1) the concept of output, the destination principle, and the place of supply; (2) input and credit method; (3) invoice method; (4) time of supply; and (5) taxable person. Furthermore, the essence of tax disputes is the difference in perspective and interpretation of the implementation of laws and regulations in taxation. The main issues of VAT disputes due to different legal interpretations generally include three issues, namely the tax subject, the tax object, and the issuance of tax invoices. In practice, there are differences in interpretation between the literally written clauses in the law and the original intent behind the making of the regulation. In interpreting a statutory regulation and elaborating on differences in interpretation, one can refer to the intentionalism approach to find out the original intent of the regulator. Readers of laws and regulations need to understand the initial concepts that underlie the formation of related regulations. The VAT dispute case that was read out in the 2019 hearing trial by only fully defending 32% of the corrections by the tax auditors conveyed a

message about the need for prudence in interpreting economic activities and regulations. Thus, knowledge of the concept of taxation is vital to be able to implement regulations correctly.

### ***Suggestion***

With the large proportion of VAT disputes with the subject matter of the interpretation of VAT objects or non-objects in economic transactions, whether fully or separately approved or rejected, it appears that this area needs to get better consent. Therefore, we suggest that tax auditors do not override the principle of legal certainty solely to achieve performance targets. Meanwhile, taxpayers are advised to anticipate potential disputes by making an initial analysis of VAT aspects on possible business transactions. Our findings that show the number of disputes resulting from the lack of availability of transaction evidence strengthens our suggestion that taxpayers need to prepare better transaction documentation. For some activities that are technical in nature and without violating the law, such as tax invoices used before or outside the NSFP date (as long as the taxpayer has fulfilled their VAT obligations), it is better if the tax auditors no longer bring this issue as part from the correction since it is very unlikely that they will be able to defend the case at the tax court level.

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