

Faketing of Evidence of Tax Invoice That Has Damage to State Revenue (Number : 131/Pid.Sus/2018/PT SMG)

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ABSTRACT

The term fictitious tax invoice is also known as an illegitimate tax invoice. According to the Director General of Taxes Circular Number 32/PJ/2010, an invalid tax invoice is a tax invoice that is not based on an actual transaction, and is issued by an entrepreneur who has not been confirmed as a taxable entrepreneur. The term fictitious tax invoice is also known as an illegitimate tax invoice. According to the Director General of Taxes Circular Number 32/PJ/2010, an invalid tax invoice is a tax invoice that is not based on an actual transaction, and is issued by an entrepreneur who has not been confirmed as a taxable entrepreneur. Tax Criminal Case in Blitar District Court Decision No. 556/Pid.B/2013/PN. Found in the indictment given the element of forgery of tax invoices committed by the Defendant, For this reason, according to the author, it is necessary to explain the indictment. The results of the analysis from the authors of the paper stated that in this tax invoice falsification case, the judge's decision against the defendant was considered wise and appropriate but different from the public prosecutor in fact it was still not in accordance with the case.

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1. INTRODUCTION

Indonesia is always experiencing developments in line with the development and progress of the times. In connection with the implementation of national development, in the administration of state government, a source of income is needed to finance the state administration as outlined in the form of the State Revenue and Expenditure Budget. Tax is one of the sources of state revenue as a form of mandatory contribution to the state owed by individuals or entities that are coercive under the law, by not getting compensation directly and used for the needs of the state for the greatest prosperity of the people.

In general, regarding the purpose of law, making justice in the matter of tax collection. This principle of justice must always be upheld, both in terms of statutory principles and in daily practice. This is the main joint that must be paid close attention to by every country to launch its efforts regarding tax collection. Therefore, an absolute requirement for making laws (taxes) is also an absolute requirement for the apparatus of each government who is obliged to implement them.

However, in the midst of these noble joint efforts, there are still people who have the heart to commit tax fraud, where this tax evasion could be called a violation of the law

and the risk can be detrimental to state revenues. One form of tax fraud committed by entrepreneurs as taxpayers is issuing and or using tax invoices that are not based on actual transactions or are referred to as fictitious tax invoices.

The term fictitious tax invoice is also known as an illegitimate tax invoice. According to the Director General of Taxes Circular Number 32/PJ/2010, an invalid tax invoice is a tax invoice that is not based on an actual transaction, and is issued by an entrepreneur who has not been confirmed as a taxable entrepreneur. The forms of state losses caused by the fictitious tax invoice mode are: first, by crediting illegitimate or fictitious tax invoices, the perpetrators can reduce the amount of taxes that must be deposited into the state treasury, and secondly, losses can occur when the perpetrators are able to make restitution from the country.

The main mode of fraud in fictitious tax invoices is to credit input tax with evidence of fictitious tax invoices, not based on actual transactions in the notification letter (SPT) for the period of value added tax (VAT). Thus, there are two main perpetrators of this crime, namely the fictitious tax invoice issuer who sells it to other parties, and the user party who buys from the issuer and then credits it in a value added tax notification letter. Thus, in general, the mode of embezzlement of state funds in this way involves several parties. The main perpetrators are fictitious tax invoice issuers and creditors. To smooth the action, this action is sometimes assisted by other parties to avoid attention and supervision.

Perpetrators of criminal acts who deliberately order other people to commit criminal acts, especially in the field of taxation, namely ordering other people to make tax invoices that are not real, then the person who orders them to do so will be subject to criminal sanctions as stipulated in Law Number 16 of 2019 concerning General Provisions and Tax Procedures.

2. DISCUSSION

2.1 Tax Invoice

2.1.1 Definition of Tax Invoice

Tax Invoice is proof of tax collection made by a Taxable Entrepreneur (PKP) who delivers Taxable Goods (BKP) or provides Taxable Services (JKP), or proof of tax collection due to the import of Taxable Goods used by the Director General of Customs and Excise. Taxes can be in the form of Standard Tax Invoices, Simple Tax Invoices, or certain documents designated as Standard Tax Invoices and Sales Invoices which can be equated with Standard Tax Invoices.

2.1.2 Matters Included in the Invoice

- 1) Company name or seller identity, this section includes the company name, logo and address.
- 2) Name of consumer or buyer who transacts complete with address.
- 3) Serial number or transaction number.
- 4) Invoice date.
- 5) Transaction details.

2.1.3 Types of Tax Invoices

a. Output Tax Invoice

This type of document is created when there is a sale of taxable goods or taxable services classified as luxury goods.

b. Input Tax Invoice

This type of invoice is created when a taxable seller purchases goods or services from another taxable entrepreneur.

c. Substitute Tax Invoice

If there is an error in filling out the previous invoice that has been issued, this is where the

purpose of this replacement tax invoice is made.

d. Combined Tax Invoice

This invoice document contains all invoices for sales of taxable goods or services for one month.

e. Tax Invoice Paid

This type of invoice, also known as PPN digunggung, is only made by retail traders, so the names of the buyers and sellers and their signatures are not mentioned.

f. Disability Tax Invoice

It is said to be defective when the tax invoice does not explain the name or serial code. Defective tax invoices can be replaced by issuing a Replacement Tax Invoice.

g. Canceled Tax Invoice

When there is a cancellation of the transaction at a later date, the entrepreneur is obliged to make invoice corrections.

2.1.4 Tax Invoice Function

- 1) As proof of tax collection by entrepreneurs (according to the VAT Law Article 1 Number 23.
- 2) Demonstrate compliance with the law as an entrepreneur;
- 3) As a basis for making invoice corrections if one day an error occurs in filling out the invoice.

2.2 Punishment for Perpetrators Who Deliberately Instruct Others to Make Tax Invoices Case Study (Number: 131/Pid.Sus/2018/PT SMG)

2.2.1 Legal Basis Regarding Tax Invoices

The tax invoice has a legal basis in Law (UU) Number 42 of 2009 concerning Value Added Tax and Sales Tax on Luxury Goods. While the technical implementation of tax invoices is regulated by the Minister of Finance Regulation (PMK) Number 151/PMK. 03/2013 and regulations of the Director General of Taxes.

2.2.2 Case Chronology

a. Party

- 1) CHONDRO HUTOMO
Alias BING TJOENG
(Chondro) Defendant
- 2) ABDUL CHALID Alias
TENGGU (Tengku)
- 3) STANLEY GEORGE
KARINDA (Stanley)
- 4) Mr. BURHAN for PT. Itrasal
- 5) Mr. SIAUW BUDI for PT.
Traju and Advertise
- 6) Mr KUS for PT. Indraya and
New Star
- 7) Ms. NING for New Star
- 8) SUKIRNO (Chondro
Employee)
- 9) SIAUW ADRIAN (Invoice
User)

b. Chronology

Chondro together with Tengku whose prosecution was filed in separate case files, between 2010 and 2015 at Puri Anjasmoro Blok M-2/1A Kel. Tawang Sari, West Semarang District, Semarang City or at the Sayangan Shop having the address Jl. MT. Haryono Semarang and/or at

Ruko Graha Padma Semarang, or at least somewhere else.

In the jurisdiction of the Semarang District Court, which has the authority to examine and adjudicate based on Article 84 paragraph (2) and (4) of Law Number 8 of 1981 concerning the Criminal Procedure Code, that is, to commit several acts which are related in such a way that they are seen as continuing actions, as representatives, attorneys, employees of taxpayers, or other parties who order to do, who participate in committing or who help commit criminal acts in the field of taxation, deliberately issuing and/or using tax invoices, proof of tax collection, proof of tax withholding, and/or evidence tax payments that are not based on actual transactions, such actions are carried out in the following ways:

- 1) In 2005 Chondro was introduced by Stanley to Tengku, and at that time Chondro already knew that Tengku could create or issue tax invoices that were used to reduce Value Added Tax (VAT) or tax invoices that were not based on actual transactions;
- 2) Around 2010 Chondro met Tengku again in Semarang. In several hotels such as Gumaya, Ciputra, and Santika. During the meeting Chondro asked about the possibility of re-marketing tax invoices that were not based on actual transactions, which was later agreed that Chondro would become an intermediary selling tax invoices from

Tengku, With a tax invoice price offered around 15-20% of the VAT value;

- 3) Based on the agreement between Chondro and Tengku, in the end Chondro ordered an input tax invoice from Tengku to fulfill the request of the other party at least from Mr. BURHAN for PT. Itrasal, Pak SIAUW BUDI for PT. Traju and Advertise, Pak KUS for PT. Indraya and New Star, Ms. NING for New Star;
- 4) How to order input tax invoices from Tengku is done by Chondro by first receiving notes or ordering documents or receiving emails from those ordering tax invoices which Chondro then forwards to Tengku. Then the ordered tax invoice was submitted by Tengku sending it to Chondro at the dear shop. Jl. MT. Haryono Semarang or Ruko at Graha Padma Semarang. If a tax invoice is sent to Toko Sayangan, it will be received by a Chondro employee named Sukirno, who is then ordered by Chondro. users who come to Toko Sayangan, and if a tax invoice is sent to the Ruko at Graha Padma it will be received by SIAUW ADRIAN.
- 5) Payment from tax invoice users for ordering tax invoices by transferring from Chondro's BCA account or to a BCA account in the name of JHONY IRFANA, after which Chondro will transfer to a BCA account in

the name of ABDUL CHALID (Tengku);

- 6) Chondro also takes the difference on input tax invoices submitted to other parties. When purchasing through Tengku, the defendant then pays an average of 15-20% of the VAT value stated on the tax invoice and delivers it to another party at an average price of 35-45% of the VAT value stated on the tax invoice. So that Chondro gets a difference of around 20% to 25% as a profit margin;
- 7) The tax invoices that are not based on actual transactions, which are obtained from Chondro have been used as credits in Periodic VAT SPT reports from user companies or user taxpayers who place orders with Chondro. the actual transaction because it is not based on a real transaction or there is no delivery of goods from the seller to the buyer, which means only buying and selling tax invoice numbers and/or tax invoice papers. The details of the number of tax invoices traded by Chondro to be used by PT. Itrasal, CV. Advertise, CV. TrajuMas, PT. Indraya Sentamas, CV. BTL News Star, PT. So Jaya Makmur as a user tax payer is as follows;

NO	NAME	TAX YEAR	VAT VALUE	SHEET INVOICE TAX
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1	PT. Itrasal	2010 - 2013	439,014,962	58
2	CV. advertise	2012 - 2015	168,356,470	15
3	CV. Traju Mas	2013	8,000,000	3
4	PT.Indraya Sentamas	2013	81,735,560	7
5	CV. BTL News Star	2010 - 2011	255.127.150	15
6	PT. So Jaya Makmur a Prosperous	2010 - 2013	2,373,205,600	124
	Amount		3,325,439,742	222

- 8) As a result of Chondro's actions together with Tengku, it has caused losses to State revenue from the taxation sector of at least the amount of Value Added Tax (VAT) in each tax invoice which is not based on actual transactions during 2010 to 2015, namely Rp. 3,325,439,742,- (three billion three hundred twenty five million four hundred thirty nine thousand seven hundred forty two rupiah);
- 9) Chondro's actions constitute a criminal offense as stipulated and punishable by crime in Article 39 A letter a Jo. Article 43 paragraph (1) of Law of the Republic of Indonesia Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures as amended several times, most recently by Law of the Republic

of Indonesia Number 16 of 2009 Jo. Article 64 paragraph (1) of the Criminal Code.

2.2.3 *Article of Charge*

The actions of the Defendant CHONDRO HUTOMO Alias OH BING TJONG Alias BING TJOENG constitute a criminal offense as stipulated and punishable by crime in Article 39 A letter a Jo. Article 43 paragraph (1) of RI Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures as amended several times, most recently by RI Law Number 16 of 2009 Jo. Article 64 paragraph (1) of the Criminal Code.

a. Article 39 A letter a Republic of Indonesia Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures

Article 39A Tax invoice as proof of tax collection is a very important administrative tool in implementing the provisions of Value Added Tax. Likewise, proof of tax withholding and proof of tax collection is a means for crediting or reducing tax payable so that any misuse of tax invoices, proof of tax withholding, proof of tax collection, and/or proof of tax payment can result in a negative impact on the successful collection of Value Added Tax and Income Tax. . Therefore, this misuse takes the form of issuing and/or using tax invoices, proof of withholding taxes, proof of tax collection, and/or proof of tax payments that are not based on

transactions that are actually subject to criminal sanctions.

b. Article 43 paragraph (1) of Republic of Indonesia Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures

Article 43 Paragraph (1) Those convicted for committing criminal acts in the field of taxation are not limited to taxpayers, representatives of taxpayers, proxies of taxpayers, employees of taxpayers, public accountants, tax consultants or other parties, but also those who order committing, participating in committing, recommending, or assisting in committing criminal acts in the field of taxation.

c. Article 64 paragraph (1) of the Criminal Code:

If between several acts, even though each of them constitutes a crime or violation, there is such a relationship that it must be seen as one continuous action, then only one criminal rule shall be applied, if different ones are applied which contain the most serious principal punishment.

2.2.4 *Ruling on the Judgment*

a. Judge

- Receive appeal requests from the Public Prosecutor;
- Improving the District Court Decision 973/Pid.Sus/2017/PN Smg., March 12 2018, the appeal being requested is merely regarding the length of time the defendant Chondro Hutomo als Oh Bing Tjong als Bing Tjoeng was sentenced to a sentence so that the full injunction reads:

- 1) Declare the Defendant Chondro Hutomo a.s. Oh Bing Tjong a.s. Bing Tjoeng has been proven legally and convincingly guilty of committing a criminal act in the field of taxation "Deliberately issuing or assisting in making tax invoices that are not based on actual transactions, which were carried out continuously";
- 2) Sentenced imprisonment to the Defendant for 2 (two) years;
- 3) Fully reduce the period of imprisonment that has been served. Defendant on the sentence imposed;
- 4) Ordering the Defendant to remain in custody;
- 5) Stating that the evidence is attached in the case study directory of the supreme court decision (Number: 131/Pid.Sus/2018/PT SMG).
- 6) Burdened the Defendant to pay court fees at two levels of court, which at the appeal level was set at IDR 5,000.00 (five thousand rupiah).

2.3 Results of Analysis of the Criminal Code of Forgery of Tax Invoices for the Study Shirt (Number: 131/Pid.Sus/2018/PT SMG)

Remember Decision Court Tall Semarang Number: 31/Pid.Sus/2018/PT SMG, departs from the indictment prepared by the Public Prosecutor and also on the demands of the Public Prosecutor, which is no different from the indictment. For this reason, the author

begins to analyze the decision from the Public Prosecutor's indictment.

Tax Criminal Case in Blitar District Court Decision No. 556/Pid.B/2013/PN. It was found in the indictment given that there was an element of falsification of tax invoices committed by the Defendant, for this reason, according to the author, it is necessary to explain the indictment.

Therefore, the results of the analysis from the authors of the paper stated that in this case of tax invoice falsification, the judge's decision against the defendant was considered wise and appropriate but different from the public prosecutor in fact it was still not in accordance with the case.

In the trial facts it was sufficiently proven that the defendant had committed the crime mentioned above with evidence and witnesses who had proven that the defendant had been guilty of distributing fake tax invoices to companies that were legal entities and this had been proven at trial.

In this case, according to the author, the judge's decision was considered very wise in accordance with the actions that had been committed by the Defendant, because from the results of the final decision the Defendant was tried with a prison sentence of only 2 years because the Defendant only distributed it.

2.3.1 Judge's Decision

In the case of falsification of decision tax invoices (Number: 131/Pid.Sus/2018/PT SMG), according to the authors, the decision handed down by the judge after an appeal was deemed fair enough, even though the judge in his decision was not careful in considering the articles in the laws and regulations that become the basis for sentencing and the articles of laws and

regulations which form the legal basis for the decision, accompanied by aggravating and mitigating circumstances for the defendant. the defendant's actions were very detrimental to state revenues from taxes and disturbed the community.

Whereas based on the facts revealed at trial, the users of tax invoices that did not match the actual transactions made by the Defendant, in fact, had already paid all the taxes they should have paid, so that in this way there would be no more losses to the state in the a quo case. Based on the theory regarding the purpose of law as described by the Panel of Judges of First Instance in their decision, that the element of legal certainty has been fulfilled because state losses have been paid, the Defendant has been found guilty and the Defendant has been sentenced;

Regarding the duration of the sentence imposed on the Defendant, the Panel of Judges at Appellate Level disagrees with the Panel of Judges of First Instance on the grounds that as has been previously considered that the users of tax invoices that do not match the actual transactions made by the Defendant, in fact have paid all the taxes that should have been they pay. So that there is no longer any loss to the state in the a quo case, so it is fair if the defendant is sentenced to 2 years in prison, fully deducting the detention period that the defendant has served. Because the accused had been arrested and detained.

So the judges who examined and tried in this case were wise enough and all the judge's decisions were acceptable to the public. 2.3.2 Prosecutor's analysis

In the case of tax invoice falsification, according to the author's analysis, it seems that the investigating prosecutors are still not perfect in investigating the case. Because the investigating prosecutor did not prosecute

users of fake tax invoices, namely companies that are legal entities. Where in fact even though these companies have paid losses to the state but these companies are not accused by the prosecutor, even though the investigating prosecutor can sue companies that are legal entities because they have committed a series of lies with the fraud article contained in Article 378 Criminal Code explained that what is meant by fraud is a condition carried out by anyone with the intention of unlawfully benefiting oneself or others, by using a false name or false prestige, by deception, or even a series of lies, to move other people to surrender something to him, or in order to give a debt or write off a debt, is threatened with fraud by a maximum imprisonment of four years.

The fraud committed by the company has been used as an advantage for itself so that the tax paid is less than it should be. In the indictment it is stated that criminal sanctions for perpetrators of fraud cases are subject to imprisonment for 4 years, but basically companies that are legal entities cannot be sentenced to imprisonment, therefore when the prosecutor charges with Article 378 of the Criminal Code it can be a consideration for the judge in deciding the case Fraud committed by legal entities.

3. CONCLUSION

A tax invoice is a letter of proof to pay taxes that must be paid by taxpayers truthfully, therefore there should be no fraud in paying taxes as was the case with the defendant Chondro who forged proof of tax invoices which caused losses to state revenues.

From the results of the analysis, the author stated that the judge's decision was wise enough in accordance with the actions committed by the defendant, but it was different from the public prosecutor in investigating the tax invoice falsification case,

according to the author, the chronology of the case was not in accordance with the demands given by the public prosecutor.

ACKNOWLEDGEMENTS

The author has several notes in responding to the prosecutor's demands on cases and the results of court decisions, including:

- 1) The public prosecutor should be more reactionary and thorough in addressing the chronology and problems of cases so that the prosecution can be adjusted

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according to the chronological events that occurred, in order to achieve legal certainty and justice.

- 2) In responding to this problem, the prosecutor's office and the court must consider matters that influence the occurrence of aggravating or mitigating considerations for the defendant, in order to achieve a court decision that is based on the value of justice and achieve a solution to solving the problem used by the community.