

# Can Input Tax of That Discovered on The Audit Process Be Treated as Value Added Tax (VAT) Credit? A Legal Perspective Analysis

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**Abstract-- Conceptually, Value Added Tax (VAT) Input Tax on purchase of taxable goods or services that have been paid and collected by VAT Enterpreuner is considered as VAT credit and can be credited with Output Tax in computing the VAT payable on the respective VAT Return period. It is worth noting that Article 9 Paragraph 8 Letter i of Indonesian VAT Law stipulated that the Input Tax which is not disclosed in the respective VAT Return and discovered on audit process cannot be credited or deducted from the accrued Output Tax. This has triggered issues and is detrimental for taxpayers due to the respective Input Tax has been substantially deposited to the state through collection carried out by VAT Operator. This research is conducted by adopting juridicial normative approaches and examining the legal theories and principles to formulate and submit the justice and legal protection for taxpayers who have deposited Input Tax through the collection carried out by VAT Operator. The provision of Article 9 paragraph 8 letter i of The Indonesian VAT Law which governing that Input Taxes that are not disclosed in the VAT Return and discovered at the time of audit processes cannot be credited is contradictory with the fairness principle and legal protection for taxpayers who have pay or collect VAT.**

**Keywords: VAT Input Tax, Legal Analysis, Tax Credit**

## I. INTRODUCTION

From the constitution perspective, Indonesian Taxation is enforced based on Article 23A of 1945 Indonesian Constitution (i.e. UUD 1945), “All taxes and other levies for the needs of the state of a compulsory nature shall be regulated by law”. In this regard, tax is an enforceable contribution exposed on all Indonesian citizens, foreign nationals and residents as mandated by constitution. Article 23A of Indonesian Constitution can be considered as the main legal source of taxation legal system in Indonesia.[1]

Generally, self assessment system is adopted in Indonesian tax system. In this context, taxpayers assess themselves on the income they have received or have accrued and to pay the tax which they calculate on this income in accordance with Indonesian tax law. Therefore, voluntary compliance became the most critical backbone

adopted on this system. Self assessment system confirms that taxpayers can assess their tax obligation to upswing the voluntary compliance and social contribution.[2] Under this system, taxpayers are able to (1) Determine the tax obligation hinge on the taxable income; (2) Register to acquire Taxpayers’ Identification Number (i.e.NPWP) and assign as VAT Enterpreuner; (3) Report the tax obligation under tax return form; (4) Calculate, and re-calculate the tax payable amount; (5) Paid the tax payable; and (6) Perform bookkeeping and record all relevant documents as tax return’s supplements.[3]

Further, the VAT Enterpreuner’s obligation is to report and account for the calculation of the total VAT and Sales Tax on Luxury Goods that are actually owed and to report on crediting Input Tax to Output Tax and payment or tax settlement that has been carried out by the VAT Entrepreneur himself Taxable and/or through another party in a tax period through a VAT notification in accordance with the provisions of tax legislation.[4]

In case that the taxpayer failed to meet the tax obligations in accordance with statutory regulations, the taxpayer will be subject to penalties (i.e. both administrative and criminal penalties). The administrative penalties include interest sanctions, fines and increase sanctions such as: (1) Failing to submit the tax return shall be subject to a fine in accordance with article 7 paragraph 1 of the Indonesian General Provisions and Tax Procedures Law in the amount of Rp. 500,000.00 (five hundred thousand rupiah) for the monthly period, Rp. 100,000,000 (one hundred thousand rupiah) for other tax returns, and in the amount of Rp1,000,000.00 (one million rupiah) for the annual Corporate Income Tax return; (2) For data that is not fully reported or reported incorrectly in the tax return is subject to an administration of interest of 2% per month from underpaid taxes (article 9 paragraph 2a, 2b and article 13 paragraph 2 of the Indonesian General Provisions and Tax Procedures Law; and (3) Taxes withheld/collected or not deposited or included SPT after being reprimanded, or making incorrect accounting are subject to administrative sanctions

of an increase of 50% -100% of the outstanding or underpaid tax payable.

However, if the violation has an impact on the occurrence of state losses, then criminal penalties can be applied, including imprisonment as regulated in article 38, article 39, and article 39A of Indonesian General Provisions and Tax Procedures Law. Violations due to negligence and have an impact on the occurrence of state losses, as stipulated in article 38 of the Indonesian General Provisions and Tax Procedures Law, can be subject to a financial penalty of at least 100% and a maximum of 200% of the amount of tax owed not paid or underpaid, or imprisoned for a minimum of 3 (three) confinement month or a maximum of 1 (one) year. If the violation is conducted on purpose and causes loss to the state's income, as regulated in article 39 of the Indonesian General Provisions and Tax Procedures Law, taxpayers shall be sentenced to a minimum of 6 (six) months and a maximum of 6 (six) years and a penalty of at least 200% and a maximum of 400% of tax outstanding or underpaid is applied.

Directorate General of Taxation (DGT) embodied an authority to conduct audits to ensure the taxpayers' compliance in accordance with article 13 paragraph 1 of the Indonesian General Provisions and Tax Procedures Law, "Within a period of 5 (five) years after the time the tax becomes due or the Tax Period ends, part of the Tax Year, or Tax Year, the Director General of Taxes may issue a Tax Assessment Letter (i.e. SKPKB). If based on the results of the examination, it is known that the taxpayer has not reported the tax payable, the SKPKB is issued and is subject to an administration penalty of 2% per month from the tax that is less or not reported ". The results of the examination if there is tax payable or not paid, then the Underpayment Tax Assessment Letter will be issued, if there is an overpayment of the tax payable will be issued the Overpayment Tax Assessment Letter (i.e. SKPLB) and if the tax paid is correct then a Nil Tax Assessment Letter (i.e. SKPN) will be issued.

It is worth noting that if tax examination result suggested a violation of criminal acts in the field of taxation and impact on the occurrence of State losses, then sanctions can be imprisonment or imprisonment as regulated in article 38, article 39 and article 39A of the the Indonesian General Provisions and Tax Procedures Law. To find out whether the Taxpayers are committing tax offenses that result in state losses, the preliminary evidence is examined first in accordance with Article 43A paragraph (1) of the Indonesian General Provisions and Tax Procedures Law, "Director General of Taxes based on information, data, reports, and complaints has an authority to examine preliminary evidence before investigations of criminal acts in the field of taxation is carried out". Preliminary

Evidence Check is an examination carried out to obtain Preliminary Evidence regarding an alleged Tax Crime has occurred. The preliminary evidence examination aims to explore whether the violations found are strong enough evidence and meet the requirements of a criminal offense.

With respect to the VAT Law, to calculate the VAT payable amount, not entire input taxes that have been paid and collected can be credited (deducted) from the output tax. It is essential to understand that there is uncreditable Input Tax in calculating VAT as depicted in Article 9 paragraph (8) letter i of the VAT Law, "Crediting Input Tax as referred to in paragraph (2) cannot be applied to expenses for: (i) the acquisition of Taxable Goods or Taxable Services for which Input Tax was not reported in the VAT Return, which was discovered at the time of the examination".

In connection with the outlined issues above, this research formulates the following problems: how to treat Input Tax in accordance with Article 9 paragraph 8 letter (i) of the VAT Law, which positing that the Input Tax which not reported on the VAT Return and discovered at the time of tax examination cannot be considered as tax credit? It is prominent to assess the legal and justice aspects for those who have paid Input Tax through the collection carried out by the VAT Entrepreneur. This has caused problems and is detrimental for taxpayers because in substance the Input Tax has deposited to the state through the collection and reporting carried out by the VAT Entrepreneur.

## II. RESEARCH METHOD

The research carried under a normative legal or doctrinal study of a qualitative nature which explains the treatment of input taxes that are not reported in the VAT Return and discovered at the time of examination which cannot be counted as a tax credit or deduction of the accrued VAT output tax as regulated in Article 9 paragraph (8) letter i of the VAT Law. The analysis is carried out in a juridical normative manner by considering the principles and legal theories to find justice and legal protection for taxpayers who have paid VAT Input Tax through the collection carried out by VAT Entrepreneur.

## III. FINDINGS AND DISCUSSION

### 1. Value Added Tax

Value Added Tax (VAT) is a tax that is imposed at the time of purchase or acquisition of taxable goods or taxable services through collection carried out by a VAT Entrepreneur. The VAT collection is carried out by issuing a VAT Invoice as described in Article 1 paragraph (24) of

the VAT Law.[5] "Tax Invoice is a proof of tax collection made by a VAT Entrepreneur who handover th Taxable Goods or Taxable Services".[6] Taxable Person for VAT purposes is an Entrepreneur who handover Taxable Goods or surrenders of Taxable Services subject to tax according to the 1984 Value Added Tax Law and its amendments. VAT collectionby Taxable Entrepreneurs is an Output Tax that must be collected and deposited to the state treasury as described in Article 1 paragraph (25) of the VAT Law, "Output Tax is Value Added Tax that is payable which must be levied by VAT Entrepreneurs that deliver Taxable Goods, handover Taxable Services, export of Tangible Taxable Goods, export of Intangible Taxable Goods, and/or export Taxable Services".

VAT Entrepreneurs who make purchases, collect the Input Tax (PM) which is a VAT tax credit that can be calculated with the Output Tax as stipulated in article 1 paragraph 23 of the General Taxation Provisions Law, "Tax Credit for Value Added Tax is Input Tax that can be credited after deducting the preliminary refund of the excess tax or after deducting the compensated tax, which is deducted from the tax due".

The VAT Object is in accordance with Article 4 of the VAT Law, "Value Added Tax is imposed on: a. the supply of Taxable Goods within the Customs Area which is carried out by the entrepreneur; b. import of taxable goods; c. delivery of Taxable Services within the Customs Area carried out by the entrepreneur; d. utilization of Intangible Taxable Goods from outside the Customs Area within the Customs Area; e. utilization of Taxable Services from outside the Customs Area within the Customs Area; f. export of Tangible Taxable Goods by a Taxable Entrepreneur; g. export of Intangible Taxable Goods by a Taxable Entrepreneur; and h. export of Taxable Services by Taxable Entrepreneurs".

VAT Rate. The VAT rate for domestic delivery is 10% of the tax base and the export rate is 0%. The Value Added Tax payable is calculated by multiplying the tariff as referred to in Article 7 of VAT Law with the Tax Imposition Base which includes the Selling Price, Replacement, Import Value, Export Value, or other value.[7]

The calculation of VAT is performed by adding up all output taxes less the input tax. Output Tax in accordance with Article 1 paragraph (25) of the VAT Law, "Output Tax is the Value Added Tax that is obliged to be collected by Taxable Entrepreneurs who deliver Taxable Goods, deliver Taxable Services, export of Tangible Taxable Goods, export Taxable Goods Intangible, and/or export Taxable Services". Input Tax in accordance with article 1 paragraph (24) of the VAT Law, "Input Tax is Value Added Tax that should have been paid by a Taxable Entrepreneur due to the

acquisition of Taxable Goods and/or the acquisition of Taxable Services and/or utilization of Intangible Taxable Goods from outside the Customs Area and/or utilization of Taxable Services from outside the Customs Area and/or import of Taxable Goods". Input Tax is a VAT tax credit and the crediting mechanism for input tax is regulated in article 9 of the VAT Law, "(1) Revoked. (2) Input Tax in a Tax Period is credited with an Output Tax in the same Tax Period. (2a) For Taxable Entrepreneurs who have not yet produced so as not to hand over their tax payable, the Input Tax on the acquisition and/or import of capital goods can be credited. (2b) Input Taxes credited must use a Tax Invoice that meets the requirements referred to in Article 13 paragraph (5) and paragraph (9). (3) If during a Tax Period, the Output Tax is greater than the Input Tax, the difference is the Value Added Tax that must be paid by the Taxable Entrepreneur. (4) If during a Tax Period, Input Tax that can be credited is greater than the Output Tax, the difference is the excess tax which is compensated to the next Tax Period. etc." The difference is the VAT that must be deposited to the State and reported in the VAT Period SPT.

In connection with the calculation of VAT that must be deposited and reported in the VAT Period SPT, there are provisions that not all input taxes can be credited in accordance with article 9 paragraph (8) of the VAT Law, "*Crediting the Input Tax as referred to in paragraph (2) cannot be applied for expenses for:*

- a. *Obtaining Taxable Goods or Taxable Services before the Entrepreneur is confirmed as a Taxable Entrepreneur;*
- b. *Obtaining Taxable Goods or Taxable Services that do not have a direct relationship with business activities;*
- c. *Acquisition and maintenance of motorized vehicles in the form of sedans and station wagons, unless they are merchandise or leased;*
- d. *Utilization of Intangible Taxable Goods or utilization of Taxable Services from outside the Customs Area before the Entrepreneur is confirmed as a Taxable Entrepreneur;*
- e. *removed;*
- f. *acquisition of Taxable Goods or Taxable Services with a Tax Invoice that does not meet the requirements referred to in Article 13 paragraph (5) or paragraph (9) or does not include the name, address, and Taxpayer Identification Number of the buyer of Taxable Goods or the recipient of Taxable Services;*
- g. *utilization of Intangible Taxable Goods or utilization of Taxable Services from outside the Customs Area whose Tax Invoice does not meet the provisions referred to in Article 13 paragraph (6);*

- h. *the acquisition of Taxable Goods or Taxable Services for which Input Tax is invoiced by issuing tax returns;*
- i. *the acquisition of Taxable Goods or Taxable Services for which the input tax is not reported in the Value Added Tax Return, which is discovered at the time of the examination;*
- j. *acquisition of Taxable Goods other than capital goods or Taxable Services before a Taxable Entrepreneur produces as referred to in paragraph (2a). "*

It is worth acknowledging that the VAT Return in accordance with the explanation of Article 3 paragraph 6 of the General Provisions and Tax Procedures Law at least contains the basic Tax Imposition, the amount of Output Tax, the amount of Input Tax that can be credited, and the amount of tax deficit or excess. For VAT Entrepreneurs, the function of the VAT Return in accordance with Article 3 paragraph 1 of the General Provisions and Tax Procedures Law is as a means to report and account for the calculation of the amount of Value Added Tax and Sales Tax on Luxury Goods that are actually owed and to report on: (a) crediting the Input Tax on Output Taxes; and (b) tax payment or repayment that has been carried out by the VAT Entrepreneur for VAT purposes and/or through another party within a Tax Period, in accordance with the provisions of tax legislation.

Further, taxpayers of their own volition can correct the tax return that has been submitted by submitting a written statement, with the condition that the Director General of Taxation has not taken an inspection action in accordance with article 8 paragraph 2 of the General Provisions and Tax Procedures Law. If taxpayers realizes that there is a mistake in the tax return that has been submitted to the Tax Office, the taxpayer can submit the corrective tax return to the Tax Office. Although the inspection has been carried out, the Taxpayer can reveal the untruthful acts as regulated in article 8 paragraph (4) and paragraph (3) of the General Provisions and Tax Procedures Law as follows:

- a) Article 8 paragraph (4)

Even though the Director General of Taxes has conducted an audit, with the condition that the Director General of Taxes has not yet issued a tax assessment letter, the Taxpayer with his own awareness can reveal in a separate report the incorrect truth of filing the Notification that has been submitted in accordance with the actual situation, which may result in: (1) taxes that still need to be paid are bigger or smaller; (2) losses based on taxation provisions become smaller or larger; (3) the amount of assets becomes bigger or smaller; or (4) the amount of capital becomes bigger or smaller, and the inspection process continues.

- b) Article 8 (3)

Although an examination has been carried out, an investigation has not yet been carried out regarding any untruth committed by the Taxpayer as referred to in Article 38, for the untruthful acts of the Taxpayer not to be investigated, if the Taxpayer of his own accord discloses the untruthfulness of his conduct accompanied by the payment of the underpaid amount the actual tax payable along with administrative sanctions in the form of a fine of 150% (one hundred and fifty percent) of the total tax that is not paid

In connection with the exclusion of input tax that can be credited, in Government Regulation number 74 year 2011 concerning Procedures for the Implementation of Rights and Fulfillment of Taxation Obligations, hereinafter referred to as Government Regulation number 74 year 2011, that upon the disclosure of improper conduct by Taxpayers under examination as regulated in article 8 paragraph (4) General Provisions and Tax Procedures Law, which is not reported in the tax return, the input tax cannot be credited, as regulated in Article 8 paragraph (7) PP 74/2011 as follows; "In the event that the disclosure of the untruthful filling of the tax return as referred to in paragraph (1) shall be made for Value Added Tax Period, Input Tax on the acquisition of Taxable Goods or Taxable Services that are not reported in the Value Added Tax Period Notification can not be calculated as credit tax as stipulated in Article 9 paragraph (8) letter i of the 1984 Value Added Tax and its amendments. "

- 2. *Input Tax Which Is Not Reported in The VAT Return and Is Discovered at The Time of Examination: Analysis from The Legal Justice Aspect.*

There are several theories relating to the purpose of law, the most well-known theories are the Theory of Justice (Ethical Theory), Theory of Benefit (Theory of Utilities) and Theory of Certainty (formal Juridical/Mixed). The purpose of law according to the Theory of Justice (Ethical Theory) is solely to achieve justice and give it to everyone who is entitled to it. This means that the law provides justice for the community.[8] Aristotle said "justitia est constans et perpetua voluntas ius suum cuique tribuere" means that justice is a permanent will and there is no end to giving everyone what is their right.[9] Aristotle divides justice into two types, firstly distributive justice that is justice that gives to everyone according to their suit (analogous proportions), this justice does not require everyone to get the same amount (not equality) but comparability. The second is commutative justice, that is, justice which gives to everyone equally does not remember individual services.[10]

Hans Kelsen in his general theory of law and state, holds that law as a social order can be declared fair if it can regulate human actions in a satisfactory way so that they can find happiness in them. [11] Hans Kelsen's view is a view that is positive in nature, the values of individual justice can be known by the rules of law that accommodate general values, but still the fulfillment of a sense of justice and happiness is intended for everyone. Two more concepts of justice proposed by Hans Kelsen: first about justice and peace. Justice derived from irrational ideals. Justice is rationalized through the knowledge that can manifest in the interests of an eventual conflict of interest. The settlement of the conflict of interest can be achieved through a record that satisfies one of the interests at the expense of the interests of the other or by trying to reach a compromise towards a peace for all interests.[12] Francoi Geny, with his ethical theory, believes that without justice, law has no meaning. Law should contain justice, but clearly justice is not synonymous with law, because there are legal norms that do not contain the values of justice. Saint Augustine stated, "unjust law is no law at all", meaning that an unjust law is not a law at all.[13]

Hinge on the description of the theories of justice earlier, it can be concluded that the concept of justice is by giving to every person the correct rights. It can be viewed that the values of justice can be seen from the rule of law that gives a sense of justice and happiness to everyone. The tax paid by the taxpayer is one manifestation of compliance with obligations as a good citizen. Taxes that have been paid by taxpayers are advance tax payments and are the right that can be treated as a tax credit when calculating tax obligations that must be deposited and reported in the tax return.

VAT Input Tax that has been paid through a collection carried out by the VAT Entrepreneur is the right for the Taxpayer who has paid it and is a tax credit that can be calculated with the tax obligation that must be paid to the State. Related to the provisions of article 9 paragraph (8) letter I of the VAT Law, which regulates that the input tax that is not reported in the tax return and discovered at the time of examination cannot be credited or calculated with its output tax is contrary to the principle of fairness because the loss of the right to input tax that has been paid, because the state was not substantially harmed only because the taxpayers did not report the input tax in the VAT period. Moreover, failing to report tax input can occur due to factors forgetfulness, negligence or intentional factors, but it does not cause losses to the State because substantially the money has been submitted to the State treasury.

### 3. *Tax Inputs That are Not Reported in The VAT Return and Discovered at The Time of Examination of The Legal Protection Aspect.*

Legal protection of Philipus Hadjon is the protection of dignity, as well as the recognition of human rights possessed by legal subjects based on legal provisions from abuse or as a collection of rules or rules that will be able to protect one thing from another.[14] Following Setiono, legal protection is an act or an effort to protect the community from arbitrary acts by the authorities that are not in accordance with the rule of law, to realize order and peace to enable humans to enjoy their dignity as human beings.[15] As Argued by Philip Hadjon, because of the large likelihood of the potential occurrence of losses on the part of the community (due to governmental duties and functions), it was felt necessary to provide protection to the public in the field of state administrative law.[16]

However, according to Satjipto Raharjo, legal protection is required to provide protection for human rights that are harmed by others and the protection is given to the community so that they can enjoy all the rights granted by law.[17] Maria Theresia Geme defines that legal protection is related to the actions of the state to do something by (enforcing state law exclusively) with the aim of providing certainty of the rights of a person or group of people.[18] Legal protection is an effort or form of service provided by law to legal subjects and matters that are protected objects.[19]

Whereas, form of legal protection according to Philip M. Hadjon is divided into two forms of legal protection, namely: (1) Preventive Legal Protection, a preventative legal protection that is legal subjects are given the opportunity to raise objections or opinions before a government decision gets a definitive form. The aim is to prevent disputes. In this sense this legal protection aims to prevent disputes and preventive legal protection, the government is careful in making decisions; and (2) Repressive Legal Protection aims to resolve if a dispute occurs. The body that partially handles legal protection for the people is the Judiciary within the scope of the General Courts and Government Agencies which constitutes an administrative appeal.[20]

Based on the earlier arguments related to legal protection, it can be concluded that legal protection is an effort to provide protection (protection) to the community's rights to the potential loss from the authorities' arbitrary actions and to guarantee a sense of security and fairness for all citizens who comply with positive law. Taxes that have been paid by taxpayers as citizens who are compliant with positive law are rights that must be protected to be treated as tax credits or advance tax payments.

VAT Input Tax that has been paid through a collection carried out by the VAT Entrepreneur is the right of the Taxpayer who has paid it and is a tax credit that can be calculated with the tax obligation that must be paid to the State. Related to the provisions of article 9 paragraph (8) letter I of the VAT Law, which regulates that the input tax that is not reported in the tax return and found at the time of examination cannot be credited or cannot be calculated with its output tax is contrary to the principle of legal protection because of the loss to the Obligatory Taxes with the loss of input tax rights that have been paid, because in substance the state is not harmed simply because the Taxpayer does not report the input tax in the VAT Period. Not reported tax input by taxpayers can occur due to factors forgetfulness, negligence or intentional factors, but it does not cause losses to the State because substantially the money has been paid to the State treasury.

#### IV. CONCLUSION

Provisions governing the uncreditable VAT input tax which discovered at the time of examination as stipulated in Article 9 paragraph (8) letter i of the VAT Law contradicts the principle of legal justice. In this context, taxpayers should be provided with the right to deduct tax (i.e. Input Tax) which has been substantially paid to the state treasury. Further, the provision also contradicts with the principle of legal protection, namely the losses occurred as the result of additional tax burden in terms of uncreditable VAT Input Tax.

Further, the state should be able to provide a sense of justice and provide protection for the loss of the tax right of VAT input that has been paid by the taxpayer by modifying or removing the provisions of Article 9 paragraph (8) letter i of the VAT Law in the new VAT Law Bill or in the Omnibus Law which is currently under discussion with the House of Representatives.

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