

## Original Research Article

# Legal Analysis of Re-Determination of Suspects Based on Tax Law (Case Study of Value Added Tax in the Cigarette Industry of Blitar, East Java, Indonesia)

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**Abstract:** Taxes are mandatory contributions that individuals and entities must fulfill to support state activities. One significant tax component is the Value-Added Tax (VAT), which substantially contributes to state revenue, including from the tobacco industry sector. However, violations of tax obligations, such as using fictitious tax invoices, often result in state financial losses. One critical case is the re-determination of suspects in a VAT matter involving the tobacco industry in Blitar during 2015-2016, which sparked debates over the legality of the legal procedures. This study employs a normative juridical method with a statutory and case approach to analyze legal procedures related to the re-determination of suspects. The findings indicate that the re-determination of suspects in this case failed to adhere to the principles of justice and applicable legal procedures. The re-determination was carried out without adequate evidence, utilizing previously processed evidence in court without an **Eintracht** verdict, making it premature and violating the *ne bis in idem* principle. This highlights that the applied legal procedures did not reflect proper legal practices. This study recommends enhancing the capacity of law enforcement officers to understand tax law and ensure objective judicial processes with valid evidence. Imitating the *ultimum remedium* principle and applying fair legal principles in tax cases are essential steps to create a better tax system and prevent future violations.

**Keywords:** Value-Added Tax, re-determination of Suspects, Tobacco Industry, Tax Law, *Ne Bis in Idem*.

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## 1. INTRODUCTION

Tax is an obligation that individuals and institutions must fulfill to the state, by-laws, and regulations to support the implementation of state activities in achieving national goals (Agasie & Zubaedah, 2022). In its implementation, taxpayers are responsible for calculating their tax obligations by applicable provisions. This calculation sometimes results in an overpayment condition, so taxpayers have the right to apply for a tax refund (Aliyah & Umaimah, 2025). The same thing also happens in Value Added Tax (VAT), where a refund is submitted if the Input Tax exceeds the Output Tax (Amelia, 2025).

However, the tax burden often encourages several parties to commit violations of the law, such as using fictitious tax invoices to obtain restitution (Budiman, 2025). This action causes losses to state finances because the misused restitution funds come

from the state treasury. One of the significant sectors contributing to state revenue is the cigarette and tobacco product industry, in addition to alcoholic beverages and ethyl alcohol. Excise taxes on tobacco products have greatly contributed to state revenue, often exceeding the annual target.

According to Law Number 11 of 1995 concerning Excise, amended by Law Number 39 of 2007, tobacco products include cigars, cigarettes, sliced tobacco, and other products. In its development, Law Number 7 of 2021 concerning Harmonization of Tax Regulations updates several provisions, including tax procedures, Income Tax rates, and VAT regulations, to improve taxpayer compliance. One important regulation in the cigarette industry is the basis for imposing VAT on tobacco products, calculated based on other values such as Retail Selling Price (HJE).

VAT is one of the main sources of state revenue that support economic development. In this case, the cigarette industry is one of the sectors that contributes significantly to VAT revenue (Darussalam *et al.*, 2018). Therefore, the government needs to increase public awareness of paying taxes. The tax reform 1984 changed the tax collection system from an official assessment system to a self-assessment system (Farina *et al.*, 2021).

Tax crimes continue to increase, as data from PPATK in 2023 recorded 4,230 cases, up 15.21% compared to the previous year. One of the cases that attracted attention was the case of the re-determination of a suspect in the owner of a cigarette company in Blitar, East Java, Indonesia, in 2015-2016. In this case, EP, the owner of the cigarette factory, is suspected of committing a tax crime together with CA with a state loss of IDR 2.1 billion. Both parties are suspected of not reporting their business activities to be confirmed as Taxable Entrepreneurs (PKP). This article examines and analyzes the factors influencing the re-determining suspects, assesses the legal procedures applied, and provides recommendations for regulatory improvements.

## 2. RESEARCH METHODS

This research adopts a normative legal methodology, focusing on legal provisions related to the re-determination of suspects within the tax law framework, particularly concerning Value Added Tax (VAT) compliance in the Blitar cigarette industry. The study utilizes a Legislation Approach (Statute Approach) to analyze relevant VAT laws and regulations, ensuring an in-depth understanding of the legal framework. Additionally, a Case Approach examines specific cases of VAT violations within the cigarette industry, highlighting practical applications and legal implications. This dual approach aims to comprehensively analyze how the re-determination of suspects is addressed under tax law while aligning with established methodologies in normative legal research (Marzuki, 2017). By integrating these approaches, the study seeks to strengthen legal enforcement mechanisms in the tax sector.

## 3. RESULT AND DISCUSSION

### Procedures and Legal Principles for Re-Determining Suspects

The pretrial practice for determining suspects first emerged in Decision Number 38/Pid.Prap/2012/PN.Jkt.Sel. This decision linked the validity of suspect determination to the act of detention as a coercive measure and interpreted the term “sufficient evidence” based on Article 21 paragraph (1) and Article 184 paragraph (1) of the Criminal Procedure Code. As a result, the determination of suspects became an object that could be submitted for pretrial. The legal procedure for re-determination of suspects follows several stages to ensure justice and protect human rights.

First, in investigating and determining suspects, the process must be based on sufficient initial evidence that indicates a suspected criminal act, adhering to applicable legal standards. Investigators are required to systematically collect sufficient evidence before determining someone as a suspect. Second, regarding the investigator's authority, investigators can name someone as a suspect based on initial evidence. However, judicial institutions must closely supervise this authority to prevent abuse. Third, pretrial and human rights protection provide mechanisms for individuals to challenge the determination of a suspect if it is deemed invalid or unfounded, serving as a safeguard against arbitrary actions by investigators. Judicial supervision is essential throughout the process since determining a suspect can involve risks of human rights violations, such as the deprivation of personal freedom.

Next, the re-determination procedure is conducted when the initial determination is deemed invalid or unfounded. This process requires stronger evidence and must be carried out by authorized investigators, with the possibility of re-examination by judicial institutions to ensure compliance with the law. Lastly, coordination with judicial institutions is critical during the re-determination of suspects to ensure that the legal process aligns with applicable laws and principles of justice. These stages collectively aim to uphold the rule of law and protect individual rights during criminal investigations.

The Constitutional Court (MK) Decision Number 21/PUU-XII/2014 confirms that a suspect's determination is a pretrial object. This decision is the foundation for evaluating the validity of criminal acts, such as arrest and detention. It asserts that Article 77 Letter A of the Criminal Procedure Code must encompass suspect determination, searches, and seizures. The Constitutional Court emphasized the importance of protecting individuals from arbitrary actions by investigators. In alignment with this, Article 8 of Law 39/1999 on Human Rights states that the government is responsible for protecting, upholding, and fulfilling human rights. This decision strengthens the constitutional guarantee of legal protection and certainty, requiring investigators to adhere to proper legal procedures.

Pretrial motions related to suspect determination exhibit specific characteristics. First, the determination of a suspect is deemed invalid if actions such as witness examination, expert testimony, or searches are conducted after the suspect has been determined. Second, a subsequent pretrial motion does not violate the principle of *ne bis in idem* if it does not address the substance of the main case. Third, suspect determinations based on developments in another suspect's case, where case files are handled separately, are considered invalid.

Several legal principles guide the re-determination of suspects. First, definition and purpose: Re-determination ensures a fair legal process and safeguards human rights. Second, investigators must be able to follow legal procedures without infringing on human rights. Third, the principle of justice guarantees suspects' rights under the law, including the right to humane treatment. Fourth, the pretrial mechanism ensures a fair legal process, particularly when procedural or human rights violations occur. Fifth, while the Criminal Procedure Code may not be perfect, it upholds key principles of justice that must be maintained. Lastly, the Miranda Rule principle, reflected in Articles 54, 55, and 114 of the Criminal Procedure Code, ensures suspects have the right to remain silent, access legal counsel, and contact state representatives. These rights protect suspects from coercion and ensure they can seek legal consultation before examinations, safeguarding them from being forced to confess.

#### **Legal Consequences of Re-Determining Suspects in the VAT Case in the Blitar Cigarette Industry Based on Tax Law**

Value Added Tax (VAT) is one of the main sources of state revenue and is important in supporting economic development (Iriyanti & Latif, 2025). In this study, the cigarette industry contributed significantly to VAT revenue (Putri & Rosyati, 2025). Income from taxpayers is one of the sources of state revenue used for development (Ridho, 2021). Therefore, the government must pay attention to increasing public awareness to fulfill its tax obligations (Sirait *et al.*, 2025). Based on Article 1 number 1 of Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures, tax is a mandatory contribution given to the state by individuals or entities by force by the law without receiving direct compensation (Solichah & Utomo, 2025). The tax is used for state needs for the greatest prosperity of the people (Syahrial & Harefa, 2025).

In the case being investigated, defendant Edi Prabowo, owner of the Jati Rasa Cigarette Factory and Choirul Anam, violated tax provisions from August 2015 to December 2016 in Blitar. Both did not register themselves as Taxable Entrepreneurs (PKP), even though their business had met the requirements as PKP according to laws and regulations.

In practice, Choirul Anam owned production equipment and location renter, while defendant Edi Prabowo managed production to distribution. This violation was related to the failure to report their business as PKP, even though the annual turnover had exceeded the threshold of IDR 4.8 billion required, according to Minister of Finance Regulation Number 197/PMK.03/2013. The VAT that should have been deposited when redeeming excise stamps was also not fulfilled. In the legal process, the defendant submitted an

objection that the determination of the suspect was not worthy of being continued to the investigation stage because it was based on a procedure that was considered flawed. In addition, the defendant said there were errors in handling the case by tax investigators, including VAT calculations that did not comply with the *lex specialis* principle, namely special regulations regulated in the PMK regarding tobacco products.

In tax law, the principle of *ultimum remedium* applies, where criminal sanctions should be the last step after administrative efforts have been taken to prevent state losses. Experts in the trial also stated that there were fundamental differences in the calculation of VAT by tax and customs, which should be of concern to investigators so as not to create a disproportionate tax burden (Tjendana & Sulfitri, 2025). In this case, there were allegations of inappropriate legal procedures, including violations of the *ne bis in idem* principle, which prohibits a person from being tried twice for the same act. As a result, the determination of the suspect by the tax investigator was considered legally invalid, and the suspect determination letter should have been canceled.

#### **4. CONCLUSIONS**

Based on the discussion and research results regarding the Legal Analysis of the Re-Determination of Suspects Based on Tax Law in 2015-2016 (Case Study of Value Added Tax in the Blitar Cigarette Industry), it can be concluded as follows: Re-determination of suspects, in this case, does not reflect the good implementation of the law. VAT cases involving the cigarette industry are regulated in PMK Number 62/2002 and PMK Number 174/2015, which are specific because they contain delegations from the law. This PMK is an implementing regulation and a special regulation related to the procedure for paying excise stamps and VAT. Therefore, the determination of suspects in this case should be based on valid and adequate evidence. The re-determination of suspects without sufficient evidence can be considered invalid and canceled. In this case, the suspects were determined based on evidence that had been tried but did not yet have an *inkracht* decision. This shows that the re-determination of suspects is premature because it is not by criminal law procedures or regulations related to VAT.

The re-determination of the suspect seems forced. Although no rules explicitly regulate the mechanism for re-determining a suspect, determining a suspect must still fulfill certain elements. In this case, the suspect status was re-determined for the same problem, not by Article 21 paragraph (1) and Article 184 paragraph (1) of the Criminal Procedure Code and Constitutional Court Decision Number 21/PUU-XII/2014. Because there is insufficient initial evidence, the determination of the suspect is considered to have no legal basis and must be canceled. In addition, this case violates the principle of *ne bis in idem*, which prohibits a person from being tried twice for the same act after a

decision has permanent legal force. Thus, the letter of determination of the suspect is null and void because it did not go through the appropriate investigation and inquiry process.

The advice that can be given is considering that tax law is a special branch of law and not everyone understands its ins and outs, it is expected that all parties involved, such as the police, tax officers, prosecutors, and judges, increase their capacity both individually and institutionally in tax law. Objectivity in the judicial process. Tax officers in the judicial process are expected not to use weak evidence, such as documents that have been tried or testimony from internal tax officials themselves. This is to ensure an objective and fair judicial process.

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