

An Analysis of Tax Court Decisions in Branch Profit Tax (BPT) Disputes in the Oil and Gas Sector Related to Production Sharing Contracts (PSCs) Toward Legal Certainty in Indonesia

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ABSTRACT

Several Tax Court decisions regarding Branch Profit Tax disputes involving Oil and Gas Contractors demonstrate inconsistent rulings for identical BPT disputes concerning the relationship between national tax provisions and the Production Sharing Contract regime. This inconsistency in rulings for similar disputes can be viewed as an indication of legal uncertainty in terms of law enforcement within the Tax Court. This study aims to analyze the legal considerations underlying Tax Court decisions in BPT disputes related to PSCs in the oil and gas sector and to evaluate how these decisions reflect and contribute to the realization of legal certainty in Indonesia's taxation system. This research employs normative legal methods through statutory, conceptual, and case approaches by analyzing several Tax Court decisions related to Oil and Gas BPT disputes. The research results indicate that there are fundamental differences in the application of legal interpretation methods by the panels of judges. Furthermore, some panels of judges emphasize the principle of legality and formal legal certainty, while others prioritize substantive interpretation that considers contractual justice within the PSC. These differing legal approaches result in inconsistent rulings, thereby creating ambiguity in the application of BPT and undermining legal certainty. To achieve equitable legal certainty, it is necessary to harmonize regulations between the Income Tax Law and PSC provisions, establish jurisprudential guidelines, and enact amendments to ensure clearer drafting of PSCs.

Keywords: *Legal Certainty, Branch Profit Tax Dispute, Tax Court Decision*

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INTRODUCTION

The State of Indonesia is a State of Law, as expressly stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which declares that "The State of Indonesia is a state of law." This formulation reflects the fulfillment of the rule of law concept in Indonesia, encompassing: the recognition of the principles of the rule of law and the constitution, the adherence to the principle of separation and limitation of powers, the existence of guarantees of human rights, and the existence of a free and impartial judiciary that guarantees the equality of citizens before the law and ensures justice for everyone, including against the abuse of authority by those in power (Malik et al. 2024; Primanda et al. 2024; Thontowi et al. 2024).

The conception of the state of law (*rechtsstaat*) requires guarantees of legal certainty, justice, and protection of citizens' rights in various spheres of life, including political, social, and economic (Mecke 2019; Strauss 2015). Legal certainty in this context is the main pillar ensuring that the law is not only applied fairly, but also predictably and reliably in the practice of government administration and law enforcement (Fajar et al. 2025; Siddiq et al. 2025). Thus, the law fulfills the aspect of justice while simultaneously fulfilling the aspect of legal certainty. Within the framework of the state of law, legal certainty is one of the primary values of the law, alongside justice and utility. According to Gustav Radbruch, legal certainty (*Rechtssicherheit*) is one of the three essential elements of good law, along with the aim of justice (*Gerechtigkeit*) and the social purpose of law (*Zweckmäßigkeit*) (Hildebrandt 2015;

Wijaya et al. 2025). Therefore, in the Indonesian legal system grounded in the constitution, the principle of legal certainty is an essential element and goal that cannot be disregarded. As the State Constitution, the 1945 Constitution explicitly guarantees legal certainty in Article 28D paragraph (1), stipulating that the State is obliged to create laws that are not only formally just, but also certain in substance. Legal certainty as a basic principle of the state of law guarantees that the law applies in a fair, consistent, and predictable manner (Desiana et al. 2026; Van Meerbeeck 2016). According to Jan M. Otto, legal certainty can be achieved if the substance of the law is in accordance with the needs of the community and is enforced consistently (Amirulloh et al. 2019; Prihatmaka 2025).

High legal certainty is especially needed in areas of national and state life that require high legal stability, such as investment in the business world from both foreign and domestic sources, public administration, and regulatory drafting. One of the industrial sectors that requires high legal stability is investment in the oil and gas sector. One of the defining characteristics of this sector is its long-term nature (Orazalin et al. 2019; Salygin et al. 2021). Oil and gas projects have a very long life cycle, spanning from the exploration stage through development to production, which can take decades. The investment decisions made today will have a direct impact on the country's energy supply and future revenues. Investment in the oil and gas sector plays a crucial role in the Indonesian economy, as this sector significantly contributes to Gross Domestic Product (hereinafter referred to as GDP) and state revenue. Based on data from the Central Statistics Agency (*Badan Pusat Statistik*, hereinafter referred to as BPS), in 2022, this subsector contributed IDR 587,597.30 billion to Indonesia's GDP, which totaled IDR 19,588,459.90 billion. The oil and gas sector is also one of the main sources of Indonesia's state revenue, both through Oil and Gas Income Tax (*Pajak Penghasilan Minyak dan Gas Bumi*, hereinafter referred to as PPh Migas) and Non-Tax State Revenue (*Penerimaan Negara Bukan Pajak*, hereinafter referred to as PNBP). In 2023, the realization of PNBP from natural resources reached IDR 254.20 trillion, or 113.83% of the state budget target.

Several factors are identified as obstacles to upstream oil and gas investment in Indonesia, including regulatory aspects and legal uncertainty such as delays in the revision of oil and gas laws and frequent changes in tax laws and regulations (Permadi et al. 2025; Simanjuntak et al. 2015). The problem of legal uncertainty in upstream oil and gas investment in Indonesia is one of the main obstacles to attracting investment, both from within and outside the country. This uncertainty can arise from various aspects, including regulations, Production Sharing Contracts (PSCs), taxation, and law enforcement practices (Jibril et al. 2023; Julianto et al. 2025; Medeiros et al. 2019; Ola et al. 2021). Legal certainty in PSCs is fundamental, as a PSC operates as law for the parties bound by it. A PSC can also be a source of tax disputes between the parties due to a lack of clarity regarding certain rights and/or obligations or provisions, whether by reference to the PSC itself, specific instruments such as the Double Taxation Avoidance Agreement (*Perjanjian Penghindaran Pajak Berganda*, hereinafter referred to as P3B), or general taxation provisions. PSCs hold a special legal status (*Lex Specialis*) in governing the relationship between the state and the contractor. In accordance with the Principle of Freedom of Contract and the Principle of *Pacta Sunt Servanda*, the parties the Government and oil and gas companies are free to make, determine the content, form, and conditions of an agreement, as long as it does not conflict with the law, public order, and morality.

Previous studies have examined taxation disputes in the oil and gas sector from various perspectives. Prasetyo and Hasan (2017) found that the absence of explicit Branch Profit Tax (BPT) regulation in PSCs encourages foreign contractors to apply P3B rates, but did not analyze Tax Court decisions. Muliarta (2020) identified disharmony between national tax regulations and PSC provisions as a major factor in tax disputes, yet did not address the Tax Court's role in providing legal certainty. Handayani (2017) concluded that there is a hierarchical conflict between international tax treaties and domestic sectoral regulations, but did not examine how this conflict is resolved in judicial practice. None of these studies specifically analyzed the inconsistency of Tax Court rulings in BPT disputes or conducted a comparative analysis of contradictory decisions in similar cases.

Based on the review of previous studies, several research gaps can be identified: no previous studies have specifically analyzed the inconsistency of Tax Court decisions in BPT disputes and their impact on legal certainty; existing research has not conducted a comparative analysis of different Tax Court decisions in similar BPT disputes to identify patterns of judicial interpretation; there is a lack of studies comprehensively examining the interaction between national tax law, PSC contractual law, and international tax treaties in Tax Court adjudication; and previous research has not provided concrete recommendations for regulatory harmonization based on actual court decisions. This study offers unique contributions by conducting an in-depth comparative analysis of two recent Tax Court decisions with contradictory conclusions on substantially similar BPT disputes, employing comprehensive normative legal analysis integrating contract law theory, principles of legal interpretation, and legal certainty theory, examining how panels of judges position the relationship between P3B and PSCs, and providing practical recommendations for regulatory harmonization and jurisprudential guidelines based on identified normative conflicts in actual court decisions.

Unclear arrangements for rights and obligations in PSCs, disharmony in national tax regulations, and differences in the interpretation of tax treaties are the main factors contributing to Branch Profit Tax (BPT) disputes, as also demonstrated in the research of Galih Prasetyo and Dahliana Hasan, which shows that the absence of explicit regulation of BPT rates in PSCs encourages foreign contractors to apply tariffs based on P3B, such that legal certainty in the field of taxation becomes an important foundation for the investment climate; without a stable, clear, and predictable legal framework, investors face significant financial risks, while the inconsistency of Tax Court rulings in BPT disputes further compounds uncertainty and confusion in the application of the law.

Data from the Supreme Audit Agency (*Badan Pemeriksa Keuangan*, hereinafter referred to as BPK) shows that the Directorate General of Taxes frequently loses in juridical disputes related to the implementation of P3B in PSC contracts, particularly in 2021–2022, with 32 disputes worth US\$239.95 million, of which 77.44% were won by taxpayers, indicating persistent weaknesses in the consistency of tax law application and norm interpretation as between domestic provisions and international tax treaties. In these disputes, the contractor adheres to the P3B rate based on the principle of contract sanctity (*Pacta Sunt Servanda*), while the tax authorities maintain the domestic tariff in force at the time the contract was signed, rendering disputes and litigation inevitable.

In the settlement of such disputes, reference is made to various legal sources, including provisions in the PSC, tax laws and regulations, the Principle of Freedom of Contract, the

principle of *Pacta Sunt Servanda*, and methods of legal discovery and interpretation. However, the dynamics of the shift from the "nail down" principle to the prevailing law regime in new-generation PSC contracts pose distinct challenges for legal certainty. Accordingly, this research is limited to BPT disputes based on Article 26 paragraph (4) of the Income Tax Law and Tax Court decisions as the object of study, with the aim of analyzing the judges' legal considerations and the role of these decisions in realizing legal certainty, as well as providing recommendations for academics, practitioners, government agencies, oil and gas business actors, and investors in improving the legal framework for taxation in the upstream oil and gas sector in Indonesia.

This research offers both theoretical and practical benefits. Theoretically, it contributes to the development of tax law, investment law, and contract law by providing a comprehensive analysis of the interaction between different legal regimes and the role of judicial decisions in shaping legal certainty, while enriching the literature on legal interpretation methods in complex tax disputes involving multiple legal sources. Practically, this research provides valuable insights for academics, legal practitioners, government institutions particularly the Directorate General of Taxes and the Ministry of Energy and Mineral Resources oil and gas business actors, and investors in understanding BPT dispute dynamics and the importance of regulatory clarity. The findings and recommendations can serve as a reference for policymakers in harmonizing regulations and for the judiciary in developing consistent jurisprudence.

METHOD

This study used a normative juridical method by examining literature materials or secondary data in the form of laws and regulations, legal principles, and legal doctrine to answer legal issues that are studied prescriptively, without relying on empirical data, with a statute approach to analyze the hierarchy and potential conflicts of norms in tax regulations, especially related to Branch Profit Tax (BPT) and PSC contracts. and case approach through an in-depth study of the Tax Court's decision to understand the application of norms, judges' interpretation patterns, and precedents in BPT tariff disputes between domestic provisions and tax treaties.

1. Research Material Source

- a. **Primary Research Materials:** This study uses primary data sources in the form of laws and regulations related to the problems that are the object of the thesis research. This research also uses other primary data, namely in the form of several Tax Court decisions related to BPT tax disputes along with supporting documents. Tax Court Decisions are obtained by downloading from the official website of the Tax Court.
- b. **Secondary Research Materials:** Secondary research materials are also used as sources that explain, interpret, or analyze primary materials, such as textbooks, scientific journals, research reports, theses/dissertations.
- c. **Tertiary Research Materials:** In addition, tertiary legal materials are also used, to provide instructions and further explanations of secondary legal materials, including encyclopedias, dictionaries, cumulative indexes, and so on.

2. Research Materials Collection and Processing Techniques

In this type of normative legal research, the data used as the object of research is primary data, using literature studies as a data collection technique. In this study, the collection of research materials in the form of Tax Court decisions was carried out by downloading or downloading from the official website of the Tax Court. Processing techniques for legal materials or research materials that have been collected are carried out in stages; inventory, identification, classification and systematization. The legal materials that have been collected and grouped are then examined using conceptual approaches, legislative approaches, and other approaches to obtain an overview or answer to the problems that are the focus of the study in the research.

3. Research Material Analysis Techniques

The analysis used in this study uses a qualitative analysis method, namely by interpreting the legal materials that have been processed. The use of this interpretation method aims to interpret the law, whether the legal material, especially the primary legal material, has a void of legal norms, antinomies of legal norms and vague legal norms. The nature of normative research analysis is prescriptive, namely to provide arguments for the results of the research conducted. Argumentation is carried out to give a prescription or give an assessment of right or wrong or what should or should be according to the law, (legal norms, legal principles and principles, legal doctrine or theory of the facts or legal events being studied.

RESULTS AND DISCUSSION

Analysis of Legal Considerations in Tax Court Decisions related to BPT Disputes.

The Branch Profit Tax (BPT) dispute between the Directorate General of Taxes and the Production Sharing Contract (PSC) Contractor in the upstream oil and gas sector is a form of legal conflict that brings together three different but interrelated legal regimes, namely: (1) national tax law as *lex generalis*, (2) PSC contractual law as *Lex Specialis* administrative, and (3) international agreement on double tax avoidance (P3B) or Tax Treaty as *Lex Specialis* at the level international law. Disharmony between the three legal regimes often gives rise to differences in interpretation regarding the tariff and the basis for imposing BPT, especially whether the applicable tariff is 20% based on Article 26 paragraph (4) of the Income Tax Law, or 10% according to the provisions of P3B.

The following is an analysis of legal considerations in tax court decisions related to BPT disputes that are sampled in the study as follows:

- a. DECISION No. PUT-001650.36/2022/PP/M.XA Year 2024 (Decision 1);
- b. DECISION No. PUT-012527.36/2022/PP/M.VB of 2024 (Decision 2);
1. Analysis of Decision PUT-001650.36/2022/PP/M.XA Year 2024 (Decision 1)

In essence, the dispute in Decision 1 between BUT MI Berau B.V. and the Appellant boils down to the contradiction in the interpretation of BPT tariffs between the provisions in the Production Sharing Contract (PSC) and the Indonesia-Netherlands Double Tax Avoidance Agreement (P3B). The Panel of Judges considered that the PSC is not just an ordinary private contract, but a state policy instrument that contains elements of public interest and is subject to national law. Doctrinally, legal certainty in this context is interpreted as a state legal apparatus that is able to guarantee the rights and obligations of every citizen or subject of law.

In its legal considerations, the Panel includes considerations related to the elements of the agreement as in the Law of the Treaty. The essential element is an absolute requirement that must exist for an agreement to be valid, which in this PSC is in the form of an agreement on the distribution of oil and gas production. In his argument, the Appellant postulated that the net profit sharing portion of 85:15 is essentially a contract that locks the BPT rate at 20%. However, the Panel found that the portion was not stated textually and clearly in the Articles of the Berau Block PSC, but only the gross portion. Conditions are based on the opinion that an agreement must have definite legal applicability so that without clear essential elements and based on the written agreement of the parties, an agreement does not have definite legal applicability.

The Panel of Judges viewed the provisions of the Indonesia-Netherlands P3B as a natural element that is automatically attached to the PSC even though it is not explicitly mentioned. This is because the PSC refers to Indonesian tax law which integrative recognizes the applicability of the Tax Treaty. The provisions of the Indonesia-Netherlands P3B are legally binding on both the DGT and the PSC Oil and Gas Contractor. Thus, the enactment of the Tax Treaty as a natural element and an element that according to law is considered attached to the agreement, so that the application of the 10% tariff based on P3B is a fulfillment of the judiciary right against arbitrary actions of the authorities.

The taxation clause in Section V.1.2 (s) of the PSC is categorized as an incidental element, which is an additional provision agreed upon by the parties to provide fiscal certainty during the contract period. The appellant interpreted this clause as nail-down with a rate of 20% based on the tax regime when the contract was born. However, the doctrine of treaty law explains that the element of incidentally is facultative for the parties. The freedom to determine this additional element must still be limited by law so as not to cause injustice.

The assembly's legal considerations also include aspects of treaty law. The Principle of Freedom of Contract provides flexibility for the parties to determine the content of the agreement, including in the Berau Block PSC which is subject to Indonesian law. The Panel of Judges is of the opinion that this freedom is not absolute because it is limited by Article 1337 of the Civil Code regarding halal causes and does not contradict the law. Legal certainty comes from binding and general laws and regulations, so that private agreements in the PSC must not override the special norm (*Lex Specialis*) of P3B whose position is guaranteed by Article 32A of the Income Tax Law.

The birth of the PSC and its amendments in 2005 were based on the principle of commensalism, where the agreement is binding since the agreement was reached (*consensus ad idem*). The Panel of Judges considered that the consensus of the parties to comply with the "Indonesian tax law" as in the PSC contract covers all dynamics of national law, including the ratification of the P3B. Based on Article 1320 paragraph (1) of the Civil Code, agreement is the main legal requirement, and one of the legal principles that must be fulfilled is the conformity between regulations (*consensus*) and daily implementation. The principle of the *Sunt Servanda Pacta* requires the parties to obey the content of the agreement as they obey the law. The Panel of Judges applied this principle systematically by stating that implementing the 10% tariff is a form of compliance with the PSC which refers to the applicable tax law. The law must provide certainty for the contracting party, where this principle is a concrete embodiment of legal certainty that guarantees that the agreed rights will be respected.

Based on Article 1338 paragraph (3) of the Civil Code, agreements must be implemented in good faith in accordance with the norms of propriety. In its deliberations, the Panel of Judges rejected the Appellant's argument alleging that the Appellant was not in good faith because it undermined the profit-sharing projection. Theoretically, good faith serves as a corrective principle against a clause that is formally valid, but substantially creates an injustice to the Appellant, so that claiming a right based on a valid P3B is an act of legal good faith.

The personality principle states that the agreement is only binding on the parties who make it, but the Tribunal sees a legal relationship (*innerlijke samenhang*) between the PSC (G-to-B) and P3B (G-to-G). P3B is seen as having a reduced PSC reach due to the state's position as the subject of both agreements. Legal certainty is a guarantee that the law is enforced in a definite and not arbitrary manner, which requires the state to respect the rights of third parties protected by international commitments.

In deciding this case, the Panel prioritized P3B as a *Lex Specialis* rather than domestic tax provisions and general clauses in the PSC. This is supported by Article 32A of the Income Tax Law which provides a superior position for the Tax Treaty. In addition, the consideration of the assembly is also in accordance with the principle or legal principle that conflicts of legal specialization are resolved by prioritizing more specific norms, and special norms override general norms when both are in the same hierarchy.

Regarding the consistency of the decision, the Panel of Judges referred to the existence of 22 Supreme Court decisions that consistently apply a rate of 10% BPT for oil and gas contractors. This consistency is seen as a source of material legal certainty for investors. Legal certainty comes from jurisprudence that reflects the consistency of the application of the law by the courts, and real legal certainty occurs when judges apply the rules consistently when resolving disputes.

The Assembly conducts hierarchical synchronization between various overlapping regulations in oil and gas management. The ratified P3B provisions have a stronger legal degree than the interpretation of administrative circulars between Government Officials. Law is a system of norms arranged in stages in which lower norms must be based on higher norms (*Stufenbau des Rechts*), and violations of this hierarchy would undermine the integrity of the legal system.

The panel's legal considerations in BPT disputes are based on legal principles and principles. The application of the principle of *Lex Specialis Derogat Legi Generali* is the main pillar in the consideration of the Panel of Judges to decide the BPT dispute. Based on Article 32A of the Income Tax Law, P3B is recognized as a special legal instrument that regulates taxation rights to avoid the imposition of double taxes so that special norms override general norms, so that the 10% rate in the Indonesia-Netherlands P3B overrides the 20% rate in the domestic income tax law.

The Panel of Judges also applies the principle of *Lex Superiori Derogat Legi Inferiori* in evaluating the binding power of P3B on other legal instruments. P3B is an international agreement that has been ratified based on Law Number 24 of 2000 and the 1969 Vienna Convention, so it has a higher legal status than implementing regulations such as the Decree of the Minister of Finance (KMK) or other administrative documents. In a system of norms arranged in stages (*Stufenbau des Rechts*), the lower norm must not conflict with the higher norm.

In the aspect of contract interpretation, the Panel uses a Grammatical Interpretation of the clause of Section V.1.2 (s) of the PSC which states that the contractor is obliged to pay taxes in accordance with the applicable Indonesian tax laws. The Appellant (DGT) tried to use Article 1343 of the Civil Code to investigate the original intention of the parties regarding the 85:15 profit sharing portion, but the Assembly remained on the principle of Article 1342 of the Civil Code. The parties' original intent regarding the profit-sharing portion 85:15 is not clearly regulated in the PSC and if the wording of the agreement is clear, it is not permissible to deviate from it by any other way of interpreting that is assumptuous.

The Assembly also conducts Systematic Interpretation by understanding tax norms in the context of the overall national and international legal system. The panel linked the tax obligation in the PSC with the existence of Article 32A of the Income Tax Law which provides a way for the enactment of P3B. This systematic interpretation allows the Assembly to see that the PSC *mutatis mutandis* adopts the P3B provisions because the PSC itself submits itself to Indonesian tax laws that recognize the supremacy of P3B.

The Teleological Interpretation Method is also used to understand the purpose of the establishment of the Indonesia-Netherlands P3B, which is to encourage cross-border investment through the fair distribution of tax rights. The application of the 10% rate is seen as consistent with that objective, while the imposition of a 20% rate by the Appellant is considered to hinder taxation efficiency for foreign investors. Positive law must be harmonious so as not to cause confusion in application by law enforcement officials. Against the impropriety of legal norms related to BPT rates, the Panel of Judges conducted a Legal Discovery (*Rechtsvinding*) to bridge the conflict between the state's fiscal interests in the PSC (G-to-B) and the international commitment in the P3B (G-to-G). The Panel formulated that P3B reduces domestic provisions in the PSC in order to achieve an equilibrium of rights and obligations. Thus, the Assembly has made legal discoveries through legal construction of existing regulations to fill the ambiguity of norms.

2. Analysis of Decision PUT-012527.36/2022/PP/M.VB of 2024 (Decision 2);

The dispute as in decision 2 centers on the clash of BPT tariffs of 20% based on domestic provisions adopted in the Production Sharing Contract (PSC) with a rate of 10% in the Indonesia-UK Double Tax Avoidance Agreement (P3B). The Panel of Judges in its decision gave preference to contractual stability and specific agreements in the PSC as the law that most dominates the relationship between the parties.

From the legal perspective of the agreement, the Berau Block PSC contains essential elements that are the spirit of the alliance, namely the agreement on the distribution of oil and gas production proceeds. The Panel of Judges identified that the proportion of net profit after tax of 85% for the Government and 15% for the Contractor is the core of the contract economy that has become the standard in the upstream oil and gas industry in Indonesia. Without an understanding of this proportion of net profit sharing, the essence of the PSC as a profit-sharing contract will not be achieved because every component of taxation, including BPT, is a determinant of the revenue sharing received by the state.

The Panel of Judges also examined the existence of natural elements in contracts, which are provisions that are automatically considered inherent by law. Although P3B is generally seen as a natural element that reduces domestic tax rates, in this dispute the Panel is of the opinion that the characteristics of PSC as a special contract have modified the application of

the natural element. The tax provisions in the PSC are seen as an independent regime that has been agreed upon from the beginning to override the general reference to international agreements in order to maintain the consistency of the revenue sharing that has been established. The element of *naturalia* is inherent according to the law, but systematic interpretation is necessary to understand the norm in the context of the entire legal system.

The Assembly's legal considerations also touch on the element of *aksidentalita*, namely additional provisions added by the parties to provide specifications in the agreement. The principle of nail down or fiscal stability in the Berau PSC is the embodiment of the accidental element that aims to protect the contract economy from future regulatory changes. The Tribunal considered that the agreement to use the tax regime at the time the contract was signed was a conscious choice of the parties to lock in their rights and obligations in the long term, so that the 20% rate in force at that time became a permanent law for them.

The application of the Principle of Freedom of Contract as stipulated in Article 1338 paragraph (1) of the Civil Code is the foundation for the Assembly to recognize the validity of contract amendments. BP Berau Ltd. knowingly exercised its freedom to sign the Berau Extended PSC and amendments dated November 9, 2022. In the amendment, the Contractor explicitly agrees to be subject to the final tax of Article 26 paragraph (4) of the Income Tax Law and declares that it is not protected by P3B in the context of the calculation of profit sharing. This freedom is a manifestation of the free will of the individual which binds the parties according to the law. This is in line with the principle of freedom of contract which is still limited by law, which in this case was translated by the Assembly through the limitation of oil and gas exploitation in Article 33 paragraph (3) of the 1945 Constitution.

The principle of *consensualism* plays an important role in assessing the birth of an agreement on tax rates. The Panel of Judges emphasized that the agreement (*consensus ad idem*) between the Government and the Contractor regarding the 85:15 net profit sharing has been reached from the beginning and continues to be confirmed through concrete actions of the parties. This consensus includes the use of the gross-up method to translate the net 15% portion into the gross portion stated in the contract text, where the 20% BPT rate is an absolutely necessary calculation component to achieve the gross figure.

The principle of *Pacta Sunt Servanda* is applied by the Panel to affirm the obligation of the parties to comply with the content of the contract. The Panel argued that since the PSC refers to the tax laws in force at the time of signing, the parties are obliged to abide by the 20% rate as their private law. Unilaterally changing the rate to 10% based on P3B is considered to violate the binding force of the agreement, as it would alter the state's revenue sharing portion that has been agreed upon as law for the parties. This is grounded in the principle of *Pacta Sunt Servanda*, namely that the law must provide a guarantee that the agreed rights and obligations will be respected.

In respect of the Principle of Personality (*Privity of Contract*), the Panel of Judges expressly distinguishes between the legal subjects in the PSC and in the P3B. The PSC is characterized as a Government-to-Business (G-to-B) agreement governed by domestic law, while the P3B is a Government-to-Government (G-to-G) agreement belonging to the domain of international law. The Panel considers that the rights conferred by the P3B cannot necessarily nullify the specific obligations voluntarily assumed by the legal subject under the

PSC's private contract, particularly where that subject has waived P3B protection through contract amendment.

The principle of Good Faith as stipulated in Article 1338 paragraph (3) of the Civil Code is applied by the Panel to evaluate the performance of the contract. The Panel takes the view that the Appellant's fulfillment of tax obligations at a rate of 20% over many years constitutes evidence of contract performance in good faith consistent with the agreed economic value. By contrast, the attempt to apply a 10% rate in the middle of the contract period is seen as undermining the sense of fairness and the profit-sharing equilibrium that has been the cornerstone of cooperation since the contract's inception.

Regarding the applicable legal principles, the Panel of Judges also applies the principle of *Lex Specialis Derogat Legi Generali* to resolve the conflict of norms between Article 32A (P3B) and Article 33A paragraph (4) of the Income Tax Law (PSC). The Panel concluded that although both are special provisions, the PSC has a more dominant character in the taxation of oil and gas, particularly because it specifically regulates the exploitation of strategic natural resources. The principle of *lex consumens derogat legi consumptae* was applied by the Panel to assert that the tax regime in the PSC consumes or prevails over the general tax regime in P3B for this specific case.

The Panel also refers to jurisprudence as part of the formation of law through the consistency of court decisions. The Panel expressly follows the Supreme Court's Cassation Review Decision Number 3338/B/PK/Pjk/2019, which shifted the previous legal opinion regarding oil and gas BPT rates. This demonstrates that even though Indonesia adheres to the civil law system, consistent patterns of decisions from the highest court are still used as a primary reference in deciding complex contract disputes. Sound jurisprudence provides assurance by creating a predictable pattern for the parties in conducting legal relations.

The Panel of Judges also applied the principle of *Lex Superior Derogat Legi Inferiori* by linking the PSC to the constitutional mandate in Article 33 paragraph (3) of the 1945 Constitution. The Panel considers that the exploitation of oil and gas as a strategic natural resource aims to provide the greatest possible benefit to the welfare of the people, which constitutes the highest norm in the Indonesian legal system. Thus, the obligation to submit to the PSC's contractual tax regime is seen as the implementation of a constitutionally-mandated legal directive, thereby prevailing over the general reference to international agreements in the administrative context of taxation. Lower norms must be sourced from and grounded in higher norms within the *Stufenbau des Rechts*, which in this case is realized through the supremacy of the constitutional mandate and the special law on oil and gas exploitation over general tax rules.

In the aspect of legal interpretation, the Panel applies the Historical Interpretation Method by examining the history of the development of PSCs in Indonesia, particularly the Pertamina financial crisis of 1976, which triggered a revision of the profit-sharing formula to 85:15. The Panel traced the original intent of the parties through the correspondence of the Minister of Finance, Letter Number S-443a/MK-012/1982 dated May 6, 1982. Through this interpretation, it was found that the 20% BPT rate and 35% Income Tax then in force were deliberately used as components of the gross-up calculation to ensure a fixed net profit share of 15% for the contractor. The Teleological or Sociological Interpretation Method is also applied to understand the purpose underlying the determination of the profit-sharing proportion. The

Panel argued that the primary objective of the 85:15 profit-sharing formula was to achieve a balance between state revenues and incentives for foreign investors. If the 10% BPT rate under the P3B were applied unilaterally, this is seen as undermining the original objective of contractual economic balance, as the state's revenue sharing portion would be reduced while the contractor's portion would increase beyond the agreed net 15%.

The Panel of Judges conducted a Grammatical Interpretation of the clauses in the Berau Extended PSC and the amendments dated November 9, 2022. Textually, the amendment states that the approval of the profit-sharing percentage is determined on the assumption that the Contractor is subject to the final tax under Article 26 paragraph (4) of the Income Tax Law (20%) and expressly declares that it is "not protected by P3B." The Panel considers the literal interpretation of the clear wording of this amendment to admit of no other interpretation, in accordance with the principle that the words of a contract are the law for the parties.

In the process of Legal Discovery (*Rechtsvinding*), the Panel of Judges practiced the principle of judicial activism by drawing on evidence beyond the written norms of the law, such as the Plan of Development (POD) document and various incentive packages from the Minister of Mines and Energy. This legal discovery was carried out to fill in an understanding of the economic structure of the PSC, which is not always explicitly stated in a single provision, but is distributed across various official correspondence of state authorities that form an integral part of the agreement.

The Panel also applies the Systematic Interpretation Method by examining the relationship between the Oil and Gas Law, the Income Tax Law, and the PSC as a single legal system for natural resource management. The Panel considers that Article 33A paragraph (4) of the Income Tax Law explicitly requires that taxes for oil and gas contractors be calculated based on the provisions in the contract until the end of the contract period. This systematic interpretation reinforces the position that the PSC constitutes an independent legal regime that overrides the general reference to P3B by virtue of the authorization of domestic law.

The principles of propriety and good faith are implicitly present in the Panel's consideration of the Appellant's conduct in having consistently paid Income Tax at 20% in previous years in accordance with the Final FQR Quarter IV. The Panel considers that this history of voluntary compliance reflects a mutual understanding between the parties regarding their obligations. These legal findings strengthen the Panel's conviction that the sudden application of a 10% rate in the middle of the contract period is inconsistent with the consistent performance of the contract that has been conducted in good faith up to that point.

The Panel of Judges also considered jurisprudence as one of the sources of legal discovery in the tax justice system. The Panel expressly referred to the Supreme Court's Cassation Review Decision Number 3338/B/PK/Pjk/2019, which stated that for the dispute involving the BPT of the Permanent Establishment (*Bentuk Usaha Tetap*, hereinafter referred to as BUT) of BP Berau Ltd., a rate of 20% applies pursuant to the Income Tax Law and not the P3B rate. The use of this jurisprudence demonstrates the Panel's efforts to synchronize with the legal opinions of higher courts in order to ensure consistency in the application of norms to the same legal subjects. The consistency of the application of law through jurisprudence creates a predictable pattern, which serves as the reference for the Panel in following the Supreme Court's decision.

The Uniformity Concept is also a basis for the Panel's consideration in emphasizing that the income tax rate is fixed for the duration of the PSC period and remains valid notwithstanding subsequent changes in tax laws. This principle is part of the contractual element agreed upon as a guarantee of investment stability through the fiscal stability clause. The Panel is of the opinion that this uniformity of rates is the foundation for the predictability of state revenues and contractor expenditures, which should not be altered without the written consent of both parties.

The Panel also examined the Principle of *Consensualism* in the context of the 2022 contract amendment, in which the Appellant had given written consent to waive the right to P3B protection. The Panel is of the opinion that since the agreement was born of consent, the parties are bound by its content. The legal findings arising from this amendment evidence foreclose the possibility for the Appellant to claim rights that it had previously voluntarily relinquished through the contractual negotiation process.

In resolving the conflict of norms, the Panel prioritizes the principle of effectiveness of the purpose of oil and gas public contracts and considers that the enforcement of the 20% rate is a measure to secure the distribution of oil and gas revenues in accordance with the principle of profit sharing regulated in Law Number 8 of 1971. This constitutes a form of protection for the broader national interest rather than a merely technical interpretation of international tax withholding rates. The analysis of the Panel's considerations also reveals the use of the Legal Construction Method to fill the normative gaps in the PSC regarding the explicit definition of BPT rates. Since the original PSC often contained only a general reference to the applicable law, the Panel constructed the rate through a gross-up formula of 15% net profit sharing, which could mathematically only be achieved with a 20% BPT rate and a 35% Income Tax. This legal construction is seen as necessary to preserve the economic equilibrium upon which the contract is based. Legal discovery through systematic and historical interpretation is necessary to understand norms in the context of the entire legal system in order to avoid misinterpretation.

Based on the analysis of the two decisions, it was found that there are similarities in the legal considerations of the panels of judges in deciding the BPT disputes. Doctrinally, both rulings identify the PSC as a contract containing *essentialia*, namely an agreement on the distribution of oil and gas production as the core of the contractual engagement. The panels in both cases examined whether the net after-tax proportion forms part of the essence of the contract that implicitly locks in certain tax rates. Although the final outcomes differ, there is a methodological similarity in that both Panels evaluate the elements of *naturalia* automatically inherent legal provisions and *aksidentalialia* additional provisions such as fiscal stability clauses to determine whether the 20% BPT rate is a legal norm that the parties have agreed shall override the general rule.

The application of the Principle of Freedom of Contract in accordance with Article 1338 paragraph (1) *jo*. Article 1337 of the Civil Code is the basis for the similarity of analysis in the two decisions. The Panel considers that the parties have the freedom to submit to Indonesian tax law, but that this freedom is limited by the requirement of a "lawful cause" and must not be contrary to the law. In both disputes, the Panel examined whether private agreements in the PSC could deviate from the public provisions in the P3B, taking into account the limits of state sovereignty in contracting as opposed to ratified international commitments.

The principle of *Pacta Sunt Servanda* is applied consistently in both decisions to affirm that a valid agreement operates as law for the parties. The similarity of legal considerations lies in the interpretation of the phrase "applicable as law" in Article 1338 paragraph (1) of the Civil Code, and the Panel in both cases assesses whether compliance with the PSC means adhering to its written text literally or adhering to the legal system to which the contract refers. The Panel in both rulings was confronted with the question of whether changing the BPT rate from 20% to 10% constitutes a violation of the principle of *Pacta Sunt Servanda* that undermines the integrity of the profit-sharing agreement.

In addition, there is a similarity in the application of the Principle of Personality (*Privity of Contract*) based on Article 1315 of the Civil Code, whereby the Panel distinguishes between the legal subjects in the PSC (G-to-B) and the P3B (G-to-G). In both analyses, the Panel considered the legal relationship (*innerlijke samenhang*) between the two instruments to determine whether the rights of private legal subjects under the PSC could be affected by public agreements between states. The Panel in both cases examined the position of the state in its dual role, such that the P3B is seen as an instrument that has the potential to reduce domestic provisions in the PSC for the purpose of balancing taxation rights.

In resolving norm conflicts, both Panels systematically applied the principle of legal preference. The principle of *Lex Specialis Derogat Legi Generali* is used to weigh Article 32A of the Income Tax Law (P3B) against Article 33A paragraph (4) of the Income Tax Law (PSC). Both Panels employ the same method of conducting a specialization assessment, examining whether the P3B is more specific because it regulates the taxation rights of residents of partner states, or whether the PSC is more specialized because it governs the strategic oil and gas sector. In addition, the principle of *Lex Superior Derogat Legi Inferiori* is applied to assess the hierarchical status of the P3B as a ratified international treaty as opposed to implementing regulations or administrative interpretations by the tax authorities.

The Grammatical and Systematic Interpretation Methods were applied simultaneously by the Panel in both decisions to understand Sections V and VI of the PSC. The Panel interpreted the contractual reference to the phrase "applicable Indonesian tax law" by linking it to Article 32A of the Income Tax Law, which recognizes the supremacy of P3B. This similarity of approach reflects the judges' efforts to engage in legal discovery through Teleological Interpretation, namely to find the original purpose of the oil and gas revenue-sharing proportion whether it aimed to rigidly secure state revenue or to provide protection against double taxation for PSC Contractor investors.

The application of the Historical Interpretation Method is also prominent in both decisions, where the Panel traces the original intent of the parties through pre-contractual documents such as the 1982 Letter of the Minister of Finance and the petroleum incentive package. The Panel used the developmental history of the second-generation PSCs to construct the rationale behind the 85:15 profit-sharing formula. This methodological similarity is crucial in determining whether the 20% BPT rate is a gross-up component deliberately agreed upon to guarantee the contractor's net profit share of 15%, which then becomes the basis for determining the applicable tax rate.

The Panel of Judges in both cases conducted Legal Discovery (*Rechtsvinding*) to fill the gaps or unclear norms in the PSC concerning the specific reference to BPT rates. The judges did not merely apply written law (*ius scriptum*) but also constructed a logical bridge between

the facts of the case and the principles of the common law. Both rulings reflect the role of the judge as a law-finder who considers industry practices (*notoir feiten*) and official correspondence of state authorities as an integral part of contractual interpretation in order to achieve substantive justice for both parties.

However, the analysis of the two decisions also reveals fundamental differences in the legal considerations of the panels in deciding the BPT disputes. The two rulings demonstrate a fundamental divergence in how each Panel interprets the relationship between the *PSC Migas* contractual regime and the international tax regime (P3B). The most striking difference lies in how each Panel positions the Production Sharing Contract (PSC) in relation to the Double Taxation Avoidance Agreement (P3B). The Panel in Decision 1 tends to accord supremacy to the international legal instrument (P3B), while the Panel in Decision 2 prioritizes contractual economic stability (PSC) as the dominant legal regime.

In resolving norm conflicts through the principle of *Lex Specialis Derogat Legi Generali*, the two Panels proceed from different starting points. The Panel in Decision 1 views the P3B as a special legal instrument (*Lex Specialis*) that governs the taxation rights of residents of partner states, such that the 10% rate overrides the general 20% rate in the Income Tax Law. The Panel in Decision 2, on the other hand, formulates the PSC as a more dominant *Lex Specialis (lex consumens derogat legi consumptae)* because it specifically governs the exploitation of strategic natural resources, with the result that the tax provisions in the PSC prevail over the P3B regime in this case.

A review of the principle of *Lex Superior Derogat Legi Inferiori* also reveals hierarchical differences. The Panel in Decision 1 emphasized that the P3B, as a ratified international treaty, holds a position that must be respected and is capable of reducing domestic provisions in the PSC. The Panel in Decision 2, however, derived the norm of superiority from Article 33 paragraph (3) of the 1945 Constitution regarding state sovereignty over strategic natural resources, which mandates the greatest benefit for the people through the security of the 85% state revenue sharing in the PSC.

From the perspective of contractual elements, there is a difference in the identification of *essentialia* and *naturalia*. The Panel in Decision 1 placed the P3B as an element of *naturalia* that is automatically attached (*mutatis mutandis*) to the PSC because the contract refers to Indonesian tax law, which recognizes the P3B. The Panel in Decision 2, on the other hand, identified the 85:15 net profit-sharing proportion as the *essentialia* — the essential spirit — of the PSC that should not be disturbed by changes in the tax rate, with the 20% BPT rate serving as a calculation component to achieve the net figure.

The difference in the element of *aksidentalita* is clearly apparent through the existence of the PSC amendment. In Decision 1, the Panel did not find a comparable restriction clause, such that the parties' freedom of contract is seen as remaining within the general legal framework that permits application of the P3B rate. In Decision 2, the Panel highlighted the existence of the Berau Extended PSC and the 2022 amendment, in which the Contractor explicitly agreed to be subject to the 20% rate and declared itself not protected by P3B.

The Grammatical and Systematic Interpretation Methods are applied differently in understanding Section V of the PSC. The Panel in Decision 1 interpreted the reference to "applicable Indonesian tax law" systematically in conjunction with Article 32A of the Income Tax Law, which provides for the application of P3B. The Panel in Decision 2, however, applied

a grammatical approach to the wording of the latest contract amendment, which explicitly stripped away P3B protection, thereby locking the tax liability at 20%.

In terms of the Historical Interpretation Method, the Panel in Decision 1 placed greater reliance on the established jurisprudence of the Supreme Court as a source of legal discovery, referring to the 22 prior decisions in which the 10% rate was upheld. The Panel in Decision 2, by contrast, conducted an in-depth inquiry into the original intent of the parties through the Minister of Finance's 1982 correspondence regarding the gross-up formula. On this basis, the Panel in Decision 2 concluded that the 20% rate reflected the original intent of the parties to guarantee a fixed net contractor profit share of 15%.

The Legal Discovery Method (*Rechtsvinding*) also takes on a different character in each decision: the Panel in Decision 1 engaged in legal discovery through Teleological Interpretation, viewing the purpose of the P3B namely, the avoidance of double taxation as a norm to be prioritized for the benefit of foreign tax subjects. The Panel in Decision 2, meanwhile, practiced judicial activism by considering economic facts beyond the text, such as the POD documents and incentive packages, in order to protect state revenues.

The application of the principles of Good Faith and *Pacta Sunt Servanda* also reflects a dualistic approach. The Panel in Decision 1 is of the opinion that performing the PSC contract in accordance with the legal system that incorporates the P3B constitutes genuine compliance with the international agreements binding upon the state (positive good faith). The Panel in Decision 2, by contrast, considered that claiming a 10% rate based on P3B after having agreed to a 15% net profit share could be viewed as an act that disrupts the contractual equilibrium (negative good faith).

As a matter of doctrinal reinforcement, legal discovery is necessary to fill normative gaps, but must be conducted through systematic interpretation so as to avoid misinterpretation. The law must provide protection through the principle of *Pacta Sunt Servanda*, but freedom of contract is limited by the requirement of a lawful cause. Jurisprudence serves as a source of law that creates a pattern of predictability, and special norms (*Lex Specialis*) always prevail over general norms in cases of specialization conflict.

Based on the analysis of the legal considerations in the Decision, the following conclusions were obtained:

- a. Legal considerations in the Decision show that there is a fundamental divergence in the interpretation of the hierarchy of norms and the integration of international law into domestic contracts. This dispute brings together three intersecting legal regimes, namely national tax law as *lex generalis*, PSC contractual law as *Lex Specialis* administrative, and Double Tax Avoidance Agreement (P3B) as international *Lex Specialis*. The difference in the verdicts in these two similar cases is rooted in the way or method of the Panel of Judges positioning P3B's position on the taxation clause in the PSC, which ultimately resulted in a contradictory final conclusion between the 10% and 20% tariffs.
- b. Legal considerations in the Decision show that there is an unclarity of tax norms and the current position of the PSC which is still trapped in a conflict of norm specialization that results in uncertainty for investors or known as a conflict of norms. This ambiguity is due to several key factors:
 - 1) The interpretation of the PSC Contract Phrase, namely the phrase "subject to the applicable Indonesian tax laws" is interpreted differently, on the one hand it considers it to include

P3B so that a 10% rate applies, and on the other hand it refers to the tariff when the contract is signed (nail-down) to guarantee the state's revenue sharing portion, so that a 20% rate applies.

- 2) There is a Dualism of Contract Characteristics, namely on the one hand, the PSC must comply with international commitments such as P3B and on the other hand the PSC is considered as a standalone regime that is special and must be in accordance with the economic stability of the contract.
 - 3) Inconsistency in the Interpretation of the PSC Clause, namely whether the tax clause in the PSC is a natural element (automatically attached to international law according to P3B) or an essential element (the spirit of a contract with a certain tax rate of 20% for profit sharing 85:15).
 - 4) The conflict of jurisprudence, namely the existence of two different patterns of Supreme Court decisions, namely the existence of 22 decisions with a rate of 10%, and there is also a Review Decision Number 3338/B/PK/Pjk/2019 with a rate of 20%.
 - 5) Hierarchical Conflict, namely the clash between legal norms between the principles of *Lex Specialis* (P3B versus PSC) and *Lex Superior* (1945 Constitution/Constitution versus International Agreements).
- c. Based on the analysis of the decision, it can be concluded that the aspect of legal certainty for the PSC Migas contractor has not been fully realized ideally in the legal consideration of the Panel of Judges in the Decision. Legal certainty requires predictability and consistency in the application of legal rules by judicial institutions. The existence of two different rulings for almost the same substance of the dispute creates legal uncertainty as to which tax regime will be won by the judge in the trial, whether it is the stability of the contract or the supremacy of international agreements.
 - d. The difference in the verdicts for the substance of the dispute is almost the same, reflecting that the legal findings (*rechtsvinding*) made by the judge in the Tax Court Decision have not reached the balance between the state's fiscal interests and international commitments. As a result, investors have no guarantee that the rights that have been agreed upon or guaranteed by the Tax Treaty will be consistently respected by the courts, as they do not reflect the existence of complete certainty, which in turn can hamper the investment climate in the upstream oil and gas sector.
 - e. Essential legal certainty for PSC Oil and Gas contractors can only be achieved through textual affirmation in the contract clauses clearly and in writing in the PSC articles so that there is no unfounded assumption of interpretation in the future and harmonization of regulations and unity of legal opinion (*communis opinio doctorum*). The need for synchronization between the Tax Law, the Oil and Gas Law, and P3B is very urgent so that there are no misinterpretations in judicial practice.

Analysis of How BPT Tax Dispute Decisions in Realizing Legal Certainty

The following is an analysis of how BPT tax dispute decisions in realizing legal certainty are as follows:

1. Analysis of Decision PUT-001650.36/2022/PP/M.XA of 2024 (Decision 1).

Legal considerations in the decision show an effort to realize aspects of legal certainty through its various elements. Based on the aspect of legal certainty, the Panel of Judges realizes legal certainty by emphasizing the implementation of the law according to the written text. The

Panel conducted a substantive examination of the Berau Production Sharing Contract (PSC) document and found that the 85:15 (net after tax) profit-sharing scheme which was postulated as an unwritten customary law by the Appellant was not expressly stated in the contract. By rejecting non-written assumptions and adhering to Article 10.8 of the Indonesia-Netherlands P3B which explicitly limits the tariff to a maximum of 10%, the Assembly upholds the certainty of juridical law.

In the aspect of protection from arbitrary actions for justice seekers (judiciary), the Tribunal re-corrected the tariff to 20% which the Appellant did not have a strong legal basis because it was only based on the oil and gas industry's assumptions. By canceling the correction, the Tribunal protects the Appellant's right to tax determination based on unilateral interpretations that are not contained in the regulations, in accordance with the function of legal certainty as a guarantor of order.

The Assembly also prioritizes clarity in the formulation of facts and norms to avoid misinterpretations. The Tribunal affirmed the fact that this dispute was a tax treaty dispute and confirmed the validity of the Appellant as a Dutch legal entity through a valid Certificate of Domicile or SKD. Legal certainty was realized when the Assembly identified the Indonesia-Netherlands P3B as a *Lex Specialis* supported by Article 32A of the Income Tax Law, thereby providing "predictability" and transparency for foreign investors.

Furthermore, the Panel realizes certainty through the consistency of the application of the law which is characteristic of independent judges by referring to 22 Supreme Court decisions that consistently grant the use of P3B tariffs for PSC contractors. Although Indonesia adheres to the civil law tradition, the Assembly's move to follow this pattern of jurisprudence reasoning strengthens public trust in the judiciary and ensures that the law is applied consistently and unchangeably.

The Assembly also balances formal and material certainty by prioritizing written norms over customary assumptions. Formally, the Assembly follows the text of the P3B, while materially, the Assembly respects the principle of *Pacta Sunt Servanda* in accordance with the mandate of the 1945 Constitution which views P3B as a binding international agreement. The Panel concluded that international law (P3B) reduces the provisions of the Government-to-Business PSC in order to balance taxation rights between countries, thereby achieving substantive justice.

Based on the law of the agreement, the Panel of Judges views the Berau Production Sharing Contract (PSC) as a legal act that is the main basis of the legal relationship between the state and the contractor. This agreement is made with the aim of causing legal consequences desired by the parties who are bound by each other. The assembly realizes legal certainty by identifying the "will" through the written text in the PSC which explicitly requires the payment of taxes in accordance with the Income Tax Law (Income Tax Law) and its implementing regulations, so that tax obligations are not based on assumptions but on positive law.

The application of the *Pacta Sunt Servanda* Principle became a crucial foundation for the Assembly to ensure that the agreed rights and obligations would be respected, and the Assembly realized legal certainty by rejecting the Appellant's argument regarding "industry customs" or the 85:15 profit-sharing scheme because it was not explicitly expressed in the PSC document. Respecting what is actually written, the Panel ensures that Article 32A of the

Income Tax Law which recognizes the special rate in P3B (10%) remains valid as *Lex Specialis* in the contract.

Regarding the implementation of the contract, the Panel uses the principle of good faith which functions to complement and limit the relationship between the parties. The Panel interpreted that the good faith of the Appellant was actually realized through respect for international commitments that had been ratified by the state. The Panel affirmed that P3B as a Government-to-Government (G-to-G) agreement has the standing to be reduced or adopted by the PSC in order to achieve equilibrium, thereby preventing governments from acting arbitrarily in ignoring binding international agreements.

The panel positions the PSC as a public contract that contains elements of public interest, so that the principle of freedom of contract in it is limited by higher public law. The Tribunal determined that this dispute is a tax treaty dispute, where the Indonesia-Netherlands P3B is a higher public norm than the commercial assumptions in the contract. This creates predictability for foreign investors that their contractual relationship with the state remains protected by a legally valid and domestically recognized international legal framework. In conclusion, the Assembly realizes legal certainty by affirming that binding law is a written text, not customary assumptions, and ensures state consistency between international commitments and domestic contracts. The tax clause in the PSC automatically adopts P3B as part of the national legal system in order to avoid uncertainty for legal subjects.

Through legal principles, principles, and methods, the Panel of Judges realizes legal certainty through Grammatical Interpretation that adheres to the text of Section V.1.2 (s) of the Berau PSC. Legal certainty is basically the implementation of the law according to the sound of the written text (*ius scriptum*). The Tribunal affirmed that the contract explicitly instructs the contractor to pay taxes in accordance with the applicable Indonesian tax laws, so that the use of tariffs based on the written rules avoids the parties from distorted interpretations and provides strong juridical certainty.

Through Systematic Interpretation, the Panel links the provisions of PSC contracts with the entire national legal system, including Article 32A of the Income Tax Law and Article 55 of PP 74/2011. This step is in line with the criteria regarding the importance of the availability of consistent and interrelated legal rules. Teleologically, the Assembly considers that the main objective of the P3B (Tax Treaty) is to avoid double taxation and to provide certainty for cross-border investments, which is an integral part of efforts to achieve fiscal justice.

The Panel applies the principle of *Lex Specialis Derogat Legi Generali* by determining that this dispute constitutes a dispute over the application of P3B (a tax treaty dispute), whereby P3B is positioned as the special law (*Lex Specialis*) in relation to domestic law. In addition, through the principle of *Lex Superior Derogat Legi Inferiori* grounded in Hans Kelsen's Norm Hierarchy Theory, the Panel emphasized that P3B, as a ratified international agreement, has the authority to reduce the provisions in the PSC which is a government-to-Business (G-to-B) instrument in order to maintain a balance of international tax rights.

Based on the principle of *Pacta Sunt Servanda*, the Panel conducted an in-depth examination and found that the 85:15 profit-sharing scheme postulated by the Appellant was never explicitly stated in the Berau PSC. A valid agreement applies as law for the parties; accordingly, the Panel states that applying the 10% rate pursuant to P3B which is recognized by the Income Tax Law constitutes genuine compliance with the actual content of the contract.

The Panel applied Legal Construction (*Rechtsaanvulling*) to reject the Appellant's unwritten "habitual assumptions" in order to preserve the stability of the legal relationship.

The Panel also realizes legal certainty by grounding its decision in positive law and clearly established facts. This is evidenced by the verification of the Appellant's domicile status through a valid Certificate of Domicile (CoD) in accordance with Article 78 of the Tax Court Law. By applying the rate under Article 10.8 of the P3B, the Panel provides protection for justice seekers against the arbitrary actions of the tax authorities, which Utrecht characterizes as the essence of the rule of law.

Systematically, the Panel's deliberations create predictability for legal subjects in estimating the legal consequences of their actions, which is the primary function of legal certainty. This ruling succeeded in reconciling formal certainty according to the legal text with material certainty, thereby honoring the state's commitments under international agreements.

2. Analysis of Decision PUT-012527.36/2022/PP/M.VB of 2024 (Decision 2).

Based on the aspect of legal certainty, the Assembly realizes legal certainty through positive law enforcement by referring rigidly to Article 33A paragraph (4) of the Income Tax Law. In this decision, the Panel emphasized that for taxpayers in the oil and gas sector who are bound by the Profit-Sharing Contract (PSC), the tax calculation must be based on the provisions in the contract until the contract period ends. This is in line with the principle of legal certainty, namely the implementation of the law in accordance with the sound of the rules so that the public gets certainty.

The application of the *Pacta Sunt Servanda* Principle is used by the Assembly as a manifestation of contractual certainty that protects the rights and obligations of the state and investors. The Assembly emphasized that the Branch Profit Tax (BPT) rate of 20% is a component that has been agreed in the PSC to maintain the proportion of net profit sharing (net after tax) of 85% for the Government and 15% for Contractors. By rejecting the P3B rate of 10% and maintaining the contract rate of 20%, the Assembly guarantees that investment stability is maintained from unilateral changes that are not agreed upon through written amendments. This confirms that a valid agreement applies as a law for the parties.

In the practical dimension, the Panel realizes legal certainty through consistency in the application of the law, which increases predictability for business actors. The Panel referred to the shift in opinion of the Supreme Court through Cassation Review Decision Number 3338/B/PK/Pjk/2019, which consistently applies a 20% rate for oil and gas Permanent Establishments (*Bentuk Usaha Tetap*, BUT). By following this pattern of jurisprudence, the Panel ensures that judges have consistently applied the rules in resolving disputes. This consistency is important so that investors can estimate the legal consequences of any business actions they take in Indonesia.

The Panel also provides protection against arbitrary action through the use of a clear hierarchy of norms. Applying the *lex consumens derogat legi consumptae* analysis, the Panel resolved the conflict between the two special rules P3B and PSC by ruling that the PSC provisions dominate the taxation of the BUT. This legal construction prevents uncertainty from arising where tax authorities or taxpayers attempt to select rates unilaterally without a strong legal basis. The enforcement of written law, according to Hans Kelsen, is the primary protection for justice seekers against the arbitrary exercise of power.

Finally, the Panel balances formal and material certainty by considering aspects of fiscal justice and the broader benefit to the state. Based on Article 33 paragraph (3) of the 1945 Constitution, oil and gas constitutes a strategic resource that must be managed for the prosperity of the people; accordingly, the application of the 20% rate is considered just in order to preserve the national profit-sharing proportion. Through the *nail down* principle, the Panel guarantees the stability of tax rules from the time of contract signing.

Based on the law of contract, the Panel realizes legal certainty through the principle of *Pacta Sunt Servanda*, whereby a valid agreement applies as law for the parties. In its consideration, the Panel emphasized that the Contractor is bound by the Production Sharing Contract (PSC) a Government-to-Business (G-to-B) instrument under which the 20% BPT rate was agreed upon to ensure a net after-tax share of 85% for the Government and 15% for the Contractor. This reflects the principle of sanctity of contract, which ensures that the content of the agreement remains inviolable and cannot be altered unilaterally, so that the rights and obligations of the parties are protected in accordance with the original agreement.

Based on the nature of the agreement as a legal act, the Panel recognizes the existence of deliberate actions by the parties to produce the desired legal consequences. Legal certainty is further strengthened by reference to the contract amendment (*Amendment to the Berau Extended PSC*) dated November 9, 2022, in which the Contractor explicitly agreed to be subject to the 20% tax and declared that it is not protected by P3B. By respecting the expressed will of the parties in the amendment, the Panel ensures that the essence of the agreement as a legally binding instrument is upheld and not disregarded.

The Panel also guarantees predictability that is, the ability to anticipate the legal consequences of an agreement in order to maintain the economic stability of the contract. Through a simulated calculation, the Panel demonstrated that if the 10% P3B rate were applied, the national revenue-sharing proportion (85:15 for oil or 65:35 for gas) would be reduced and would no longer conform to the agreement. By maintaining the 20% rate, the Panel ensures that the state's revenue remains predictable in accordance with the mandate of Article 33 paragraph (3) of the 1945 Constitution, thereby protecting the state from fiscal revenue uncertainty.

From the perspective of the *Privity of Contract* principle in accordance with Articles 1315 and 1340 of the Civil Code, the Panel emphasized that specific contractual obligations in the PSC cannot be circumvented by general provisions in other agreements such as the P3B. The Panel distinguishes the P3B as an inter-state agreement (G-to-G) from the PSC as an oil and gas operational agreement (G-to-B), whereby the provisions of the PSC are declared more dominant (*lex consumens derogat legi consumptae*). This determination provides certainty that the technical rules for oil and gas revenue sharing will not be overridden by general international treaties.

Finally, the Panel affirmed certainty through the element of *aksidentalita* in the agreement namely, the existence of a fiscal stability clause added as a special provision in long-term investment contracts. Through the *nail down* principle, tax regulations are ensured to remain consistent from the time of contract signing, such that the PSC holds the position of *Lex Specialis* for the parties.

Based on the applicable principles and legal methods, the Panel realizes legal certainty through the resolution of norm conflicts between two special rules (*Lex Specialis*), namely the

P3B under Article 32A of the Income Tax Law and the PSC under Article 33A paragraph (4) of the Income Tax Law. Through the method of systematic interpretation, the Panel does not interpret the rules in isolation, but connects various provisions to conclude that Article 33A paragraph (4) is a special norm that guarantees taxes to be calculated based on the contract until the expiration of the agreement. This is consistent with the principle of legal certainty, namely the implementation of the law in accordance with its plain text so that the public receives a guarantee of the law's application.

The application of *Pacta Sunt Servanda* is the Panel's primary instrument for providing contractual certainty. Based on Article 1338 paragraph (1) of the Civil Code, a valid agreement applies as law for the parties; accordingly, the 20% BPT rate in the PSC must be observed as a component forming the net profit-sharing arrangement. The Panel also applied a grammatical interpretation of the 2022 contract amendment, which explicitly stated that the Contractor is subject to a 20% rate and is not protected by P3B. This step ensures predictability and the ability to anticipate the legal consequences of an agreement.

In the dimension of legal construction, the Panel applies the principle of *lex consumens derogat legi consumptae*, whereby the provisions of the PSC are declared to dominate the taxation of the BUT over the P3B. In addition, the Panel applied the *argumentum a contrario* method to conclude that if the 10% rate were imposed, the 85:15 profit-sharing commitment would be breached; thus, the rate should not be reduced unilaterally in order to preserve the integrity of the contract. This construction provides protection for the agreed legal order against arbitrary actions.

The Panel reinforces material legal certainty through the principle of fiscal stability and the *nail down* concept, which ensures that tax rules remain stable for investors notwithstanding subsequent changes in the law. This is supported by the use of teleological (sociological) interpretation, which holds that maintaining the 20% rate is an effort to achieve the state's economic objectives namely, the prosperity of the people through equitable oil and gas revenue sharing in accordance with Article 33 paragraph (3) of the 1945 Constitution.

Real legal certainty is also realized through the consistency of jurisprudence, whereby the Panel refers to the Supreme Court's Cassation Review Decision Number 3338/B/PK/Pjk/2019. The consistency of judges in applying the rules is a reflection of *de facto* legal certainty and predictability for business actors. By following the established pattern of decisions, the Panel ensures that positive law is not easily displaced. In conclusion, the Panel succeeded in balancing formal certainty grounded in the legal text and material certainty grounded in justice by establishing the PSC as the instrument most binding upon the parties.

Based on the judges' considerations in Decisions 1 and 2, it is evident that there are fundamental similarities in the use of legal theoretical frameworks, but sharp differences in the prioritization of norms applied to realize legal certainty. Both rulings share the view of legal certainty as a guarantee of predictability for legal subjects, with judges acting independently to apply rules consistently. From the perspective of the Theory of Contract, both Panels apply the principle of *Pacta Sunt Servanda* under Article 1338 of the Civil Code to affirm that the Production Sharing Contract (PSC) constitutes "law" binding upon the parties. Methodologically, both decisions apply grammatical interpretation to examine the contract text literally and systematic interpretation to relate the contract to the national tax legal system, including the Income Tax Law and P3B. In addition, both decisions apply the principle of *Lex*

Specialis Derogat Legi Generali to resolve the conflict of norms between domestic rates and treaty rates.

Fundamental differences arise in the interpretation of the tax clauses in the PSC. Decision 1 interprets the clause "subject to Indonesian tax law" dynamically, such that the taxing rights in the PSC are automatically reduced by the P3B as part of national law in order to maintain international equilibrium. Decision 2, by contrast, views the 20% rate as a fundamental contractual element essential to preserving the 85:15 net profit-sharing ratio. Decision 2 specifically refers to the 2022 contract amendment in which the Contractor knowingly waived P3B protection.

In determining the most specific norm (*Lex Specialis*), there is a divergence of opinion. Decision 1 establishes the P3B as *Lex Specialis* in relation to the Income Tax Law, based on Article 32A of the Income Tax Law and the supremacy of international agreements under Article 11 of the 1945 Constitution. Decision 2, however, constructs Article 33A paragraph (4) of the Income Tax Law as a stronger *Lex Specialis*, on the grounds that it requires taxes to be calculated based on the *PSC Migas* until the expiration of the agreement, and applies the principle of *lex consumens derogat legi consumptae*, under which PSC provisions prevail over the P3B.

Methodologically, Decision 1 employs teleological interpretation to support the objectives of double taxation avoidance and cross-border investment protection. The Panel in this decision expressly rejected the "customary assumption" of an 85:15 profit-sharing arrangement because it was not explicitly stated in the contract text. Decision 2, by contrast, applies the *argumentum a contrario* method, concluding that if a 10% rate is applied, the 85:15 profit-sharing commitment in the contract would be breached. Decision 2 also places considerable reliance on the consistency of jurisprudence such as Supreme Court Cassation Review Decision Number 3338/B/PK/Pjk/2019 to create real legal certainty, while Decision 1 is more oriented toward protecting taxpayer rights against unilateral interpretation by the tax authorities. In conclusion, the divergence between these rulings arises because Decision 1 pursues formal legal certainty grounded in the text of the P3B, while Decision 2 pursues material legal certainty grounded in fiscal stability and natural resource sovereignty.

The outcome of Decision 1 (10% rate) differs from that of Decision 2 (20% rate). The cause of this divergence lies in the difference in legal construction as to which norm is considered the most specific (*Lex Specialis*), as well as in the differences in contractual facts present in each respective case. Although both decisions are directed toward achieving legal certainty, the Panel of Judges in each case is confronted with different interpretations of the interaction between state contracts (PSCs), domestic law, and international agreements (P3B).

In Decision 1, the Panel positioned the P3B (tax treaty) as *Lex Specialis* in relation to domestic law. The rationale is that the P3B is a special legal instrument designed to avoid double taxation and to reduce domestic provisions for the purpose of balancing taxation rights between states. In Decision 2, by contrast, the Panel applied the *lex consumens derogat legi consumptae* construction, whereby Article 33A paragraph (4) of the Income Tax Law and the PSC are considered more dominant and specific rules in the oil and gas industry than the P3B.

In Decision 1, the Panel rejected the "customary assumption" of the 85:15 division because it was not explicitly stated in the PSC. The Panel adhered to the grammatical interpretation that the contract refers to "applicable tax laws," which encompasses the P3B. In

Decision 2, by contrast, the 20% rate is regarded as an indispensable component that was agreed upon to maintain fiscal stability and the state's net profit-sharing proportion in accordance with the mandate of Article 33 of the 1945 Constitution. The Panel realizes legal certainty through the principle that a rule enacted subsequent to the contract cannot extinguish obligations that arose under the earlier contract.

Based on the analysis of the Tax Court's decision in realizing legal certainty, the following conclusions were obtained:

- a. Analysis of the Tax Court Decision shows that there is a fundamental divergence in the interpretation of the hierarchy of norms and the determination of the legal material that is considered the most binding in the Branch Profit Tax (BPT) dispute. Although the two rulings have similarities in using legal theoretical frameworks—such as the principle of *Pacta Sunt Servanda*, the principle of *Lex Specialis Derogat Legi Generali*, and grammatical and systematic interpretation methods—they produce contradictory rulings. This difference is rooted in the way the Panel of Judges positioned the position of the Double Tax Avoidance Agreement (P3B) against the taxation clause in the Government-to-Business (G-to-B) PSC contract.
- b. On the one hand, the Panel of Judges realizes legal certainty through a formal-judicial approach that adheres to the written text (*ius scriptum*) in the contract and P3B. The Panel is of the opinion that P3B is a *Lex Specialis* that has a higher position in reducing domestic tax provisions for the sake of balancing taxation rights between countries. Rejecting the assumption of the 85:15 profit-sharing custom that is not explicitly stated in the contract document, the Panel emphasized that legal certainty can only be achieved through the implementation of the rules that are literally expressed, so that the 10% tariff according to the Indonesia-Netherlands P3B is declared to be the applicable law.
- c. On the one hand, the Assembly emphasizes on the certainty of material law oriented towards economic stability, contracts, and sovereignty of natural resources. The panel in this case constructed Article 33A paragraph (4) of the Income Tax Law and PSC contracts as a more dominant norm (*lex consumen derogate legi consumte*) than the general P3B regime. The use of the 20% rate is seen as an essential element to ensure a net after tax proportion of 85% for the state in accordance with the mandate of Article 33 paragraph (3) of the 1945 Constitution, so that investment stability is maintained from unilateral changes.
- d. In terms of the use of jurisprudence, the two decisions show a dualism of reference that hurts the aspect of legal predictability, namely the existence of 22 Supreme Court PK decisions with a rate of 10% for PSC contractors in order to maintain public trust in judicial institutions and the existence of the Review Decision (PK) Number 3338/B/PK/Pjk/2019 with a rate of 20% for oil and gas BUTs, resulting in uncertainty for business actors in estimating the legal consequences of the contracts they signed.
- e. Based on this analysis, it is concluded that the aspect of legal certainty for PSC Oil and Gas contractors has not been ideally realized in the Tax Court Decision. Legal certainty requires consistent, predictable, and unchanging rules. The existence of two contradictory rulings for substantially similar cases creates a situation of legal uncertainty, in which the rights and obligations of the contractor depend on the choice of norms used by the Panel of Judges who examine and decide a case.

- f. The non-realization of this legal certainty in the Decision stems from the failure to synchronize between international law (P3B) and domestic sectoral law (PSC Migas). Although the judges tried to create certainty in the scope of their respective cases, systemically, this divergence resulted in contractors having no guarantee of which tax regime would be won in court in deciding disputes. This has the potential to disrupt the cross-border investment climate because there is a risk of differences in interpretation of fiscal stability clauses and Government-to-Business contracts.
- g. To realize essential legal certainty, it is recommended that there be explicit textual affirmations in the taxation clause in each PSC document to avoid an assumption of interpretation. Synchronization of regulations according to the theory of the hierarchy of norms is urgent so that the position of P3B and Article 33A paragraph (4) of the Income Tax Law no longer clash with each other. In addition, the Supreme Court also needs to establish a fixed line of jurisprudence in a legal policy to provide de facto certainty for all oil and gas contractors in Indonesia.

CONCLUSION

Based on the legal analysis of the Tax Court's decision in the Branch Profit Tax (BPT) dispute related to the Production Sharing Contract (PSC), it was found that there was a difference in the judge's approach in interpreting the conflict of norms between the 20% domestic tariff and the 10% P3B tariff which had an impact on the non-achievement of legal certainty because the decisions were different for cases with similar substances, so that even though the Tax Court acted as an instrument of legal discovery (*rechtsvinding*), its effectiveness has not been optimal due to fundamental divergences in positioning the same legal norms; Therefore, it is necessary to standardize the tax clause in the PSC Migas contract in order to explicitly regulate whether the BPT tariff is nail-down or floating and clarify the position of P3B in the legal system, as well as synchronization of domestic regulations, especially between Article 32A and Article 33A paragraph (4) of the Income Tax Law through more detailed implementing regulations to prevent dualism of interpretation and clash of norms for the realization of legal certainty.

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