Syiah Kuala Law Journal
FAKULTAS HUKUM UNIVERSITAS SYIAH KUALA
Vol. 5(3) Desember 2021, pp.329-344
ISSN : 2580-9059 (online)
2549-1741 (cetak)

THE STANDINGS OF TAX RECEIVABLES IN BANKRUPTCY CASES: A STUDY ON MANAGING AND SETTLING ASSETS

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Article Info
Received : 10/11/2021
Approved: 28/12/2021
DOI: 10.24815/sklj.v5i3.23347

Keywords:
Government;
Privilege;
Tax;
Creditors;
Bankruptcy.

Abstrak
The state's privilege right to tax receivables in bankruptcy cases is regulated differently under various laws and court decisions in Indonesia. In general, tax receivables in bankruptcy have privilege position over other creditors, including secured creditors such as banks, mortgage holders, fiduciary guarantees and finance companies, preferential creditors and concurrent creditors. The creditor's tax debt to the state should be paid first before any payment to other creditors. However, the Director General of Tax under the Ministry of Finance of the Republic of Indonesia often faces problems in claiming the payment as the Ministry claims for the payment are always rejected by the Court. Each of the existing legal rules and decisions provides different answers to this problem, resulting in legal uncertainties. This research is conducted using the normative juridical approach and supported by the empirical analysis. The data collection is conducted by document studies and supported by court decisions. This research aims to inquire and analyse the position of tax receivables in the distribution of bankruptcy estate of debtors among other creditors, the role of the curators, both state and private curators, in the bankruptcy estate distribution in order to find a legal solution to the aforementioned issue according to the normative legal provisions that apply.

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I. INTRODUCTION

The term "bankruptcy" originates from the Latin words *bancus* and *ruptus,* which means "bench or table" and "broken" respectively. This is said to arise from the inability of a banker, who in the beginning transacted his business in the marketplace on a workbench, to meet his contractual obligations. Symbolically, his bench is considered broken. The term is also believed to have roots in *banco rotto,* from medieval Italy, roughly translated to mean "broken bank." Similar speculation on the original word is ascribed to the French expression *banque route,* a metaphorical practice of leaving a sign at the site of an abandoned banker's table. Under the Islamic tradition, the Quran provides an opportunity for the debtor to be given time to offset his debts. The second chapter, Sura Al-Baqara, verse 281 provides that:

> "And if someone is in hardship, then let there be postponement until a time of ease. But if you give from your right as charity, then it is better for you, if you only knew".

Indeed, al-Maqrizi as cited by Rosenthal, in the documentation of bankruptcy in East Asia mandated the death penalty for anyone who became bankrupt 3 times. (Adegbemi Babatunde Onayoka and Ayooluwa Eunice Olotu, 2017; 706). Bankrupt by definition is the state or condition of a person (individual, partnership, corporation, municipality) who is unable to pay its debts as they are, or became due. The term includes a person against whom an involuntary petition has been filed, or who has filed a voluntary petition, or who has been adjudged as bankrupt. Bankruptcy by definition is a statutory procedure by which a debtor obtains financial relief and undergoes a judicially supervised reorganization or liquidation of the debtor's assets for the benefit of creditors. (Bryan A. Garner, 2009; 166).

Bankruptcy is an entitlement distribution system involving the distribution of a given asset, which is inadequate to meet and satisfy all the creditors' demands. Indeed, claims recovery may not be achieved by all creditors when a company becomes bankrupt because the assets are insufficient to satisfy all the demands. (Gary Sullivan, 2018; 708).

Bankruptcy, at first glance, may be thought of as a procedure geared principally toward relieving an overburdened debtor from "oppressive" debt. (Thomas H. Jackson, 1982; 857). However, bankruptcy has broadly failed to deliver "fresh starts" to debtors. Too often, debtors return to the states of financial distress following the bankruptcy. Although bankruptcy delivers a clean slate through the discharge of debts, the efficacy of a fresh start depends on a second factor: property exemptions. While discharge frees a debtor from his existing debts, property exemptions determine what property the debtor retains upon exiting bankruptcy. For many debtors, insufficient and suboptimal property exemption laws undermine fresh starts. (Gary Sullivan, 2018; 335).

A central notion in bankruptcy theory is the distinction between economic and financial distress. Economically and financially distressed firms alike face unsustainable debts, but the significance of their debts differs. A company in economic distress lacks a viable business model. The demand for its products or services is insufficient to cover costs at anything like the current scale. (Vincent S.J. Buccola, 2019; 838).

Tax is part of public law in which the State has a coercive authority. All citizens who are qualified taxpayers must fulfil the obligation to pay taxes. (Sri Pudyatmoko, 2009; 65). This obligation is no different for those who are experiencing legal problems such as bankruptcy. Unpaid taxes are debt that must be paid. In bankruptcy proceedings, however, the amount of outstanding unpaid taxes can complicate the settlement of debt payments. The bankruptcy estate might be insufficient to repay all debt claims, including tax bills. In theory, if a taxpayer is declared bankrupt, dispersed, or liquidated, then the curator or liquidator, person or body corporate assigned for the settlement, is prohibited from distributing the taxpayer's assets in bankruptcy or liquidation to creditors and shareholders before paying the tax debt owed to the State. (Billy Ivan Tansuria, 2010; 303).

In many cases, the portion of tax debt may exceed the liquidated bankrupt estate. If the payment of tax debt takes precedence, it may not be favourable to other creditors because they might not get a share to cover the receivables out of the liquidated estate. This is not in line with the philosophy of the bankruptcy law and the resolution of debts.

Tax debt is a bill that arises based on the General Taxation Law. This law gives tax officials special authority to carry out direct executions of tax debts without going through Court proceedings. Tax collection in Indonesia is carried out by the Directorate General of Tax through the Tax Service Office (*Kantor Pelayanan Pajak* or hereinafter referred to as "KPP").

In practice, a lot of unequal understanding of Commercial Court decision is found in this regard. Another problem related to the implementation of separation rights when it is attributed to tax collection rights, where there is often legal uncertainty in its application where there is disparity between amount to be paid between the tax debt and the wage of workers. This happens because of the inconsistencies in the Tax Law and the Law on Manpower. (Rahayu Hartini, 2018; 75).

KPP often faces problems in claiming the payment of tax receivables in bankruptcy proceedings. The Ministry of Finance claims for tax payment are often rejected by the Court. This is because of the existing legal rules and court decisions which provides different answers to this problem, resulting in legal uncertainty. Such legal uncertainty results in a dilemma for curators on the creditors that must be prioritized among other preferred creditors who also have a legal claim for bankruptcy payments.

This research will look at how bankruptcy itself is understood, who holds the rights within the company's assets, how it is managed in Indonesia, what is the government standing against a bankruptcy case, and the effect of Indonesia Commercial Court decision.

II. RESEARCH METHOD

According to the perspective of legal theory, the science of law is divided into normative law and empirical law. The positivist view creates empirical law, while the normative view creates normative law. Thus, the study of law can be conducted normatively and can also be conducted empirically, each of which has different characteristics and methods. A research method is a procedure and technique to answer the research problems. Therefore, the use of the research method is always adapted to research needs. (Asmuni, Kurniawan and Eduardus Bayo, 2019; 255).

This research uses the normative juridical approach supported by the empirical juridical approach. Based on the strength that binds it, legal material can be qualified as primary, secondary, and tertiary legal resources.

The primary legal resource is binding legal material obtained from the inventory of laws in Medan commercial court rulings on bankruptcy, which are gathered by document studies, the purpose of which is to gather the secondary data.

The secondary legal resource is a legal material that explains primary legal resources such as books, research findings, scientific journals, and articles. Secondary legal resources in the form of books, scientific journals, and other articles were identified throughout the research both online and offline.

The tertiary legal resource is a legal material that can provide guidance and explanation of primary and secondary legal resources such as legal dictionaries, encyclopaedias, and the Black's Law Dictionary, etc.

The empirical data gathering is used to receive primary data which was gathered directly from the respondent by conducting questionnaires and interviews.

After legal resources have been collected, they are then processed through: structuring, describing, systematizing and analysing the legal resources like the common legal research; i.e. through legal reasoning processes that are logical, systemic and coherent by abstracting the laws and regulations relating to the regulation of bankruptcy and tax receivables. The method of analysing legal resources in this research is a normative method in prescriptive optics with deductive-inductive reasoning to produce propositions or concepts in response to the problems or research results or findings.

III. RESULTS AND DISCUSSION

3.1. Bankruptcy and the Legal Implication

Bankruptcy is a device provided by law to settle debts between debtors and their creditors. (Jerry Hoff, 2001; 230). It has become a central feature in society. Bankruptcy law is deliberately designed to distribute assets-and losses-when a business cannot meet its outstanding obligations. (Elizabeth Warren, 1992; 467).

A bankruptcy system has the ability to capture the going-concern value of a business; for many analysts, the function of bankruptcy and the measure of its viability begins and ends here. This feature is undoubtedly a significant part of the bankruptcy scheme, but the opportunity to preserve the full value of the business has broader implications than simply capture of going-concern rather than liquidation valuations. (Elizabeth Warren, 1993; 350).

Good corporate management will have an impact on the progress of the company and its ability to meet its obligation timely. However, when a company experiences a setback, it can result in delay in returning the loan so that the creditor can file a bankruptcy application. For instance in Indonesia, the bankruptcy petition against the company can be granted by the Judge of the Commercial Court with requirements as stipulated in Article 2 Paragraph (1) of Law Number 37 of 2004 on the Bankruptcy and Delay of Debt Payments (Bankruptcy Law) which has two debts (creditors) and one of the debts is due to be billed. The decision of the company's bankruptcy statement resulted in all the assets of the bankrupt company entering into the general confiscation to pay off the debts of the

creditors who were under the authority of the curator, and the bankrupt debtor was in bankruptcy. The company is one of the economic actors whose business activities are regulated by law. Business activities of the company can run continuously if supported by capital adequacy. Initial capital of the company can be obtained from the entrepreneur or other interested parties. If the company is unable to get its capital requirements, the company may request a loan from bank or non-bank financial institutions with a guarantee. The provision of loans from financial institutions is based on trust in guarantees that can be given by the company to repay the loan on time. (Rilda Murniati and Desma Cahya Selvya, 2019; 232).

Bankruptcy law has been in existence, although intermittently, for almost as long as credit. Its origins can be traced back to Roman Era where its name is derived from statutes of Italian city- states, where it was called *banca rupta* after a medieval custom of breaking the bench of a banker or tradesman who absconded with the property of his creditors. (Treiman, 2010; 232).

In the course of its development, the Bankruptcy Law has become necessary in the business world for selecting businesses that are not effective, as companies that are not efficient can potentially affect the national economy and pose a burden on the economic system itself. It leads to an on-going process of business for social benefits and the existence of business continuity. (Treiman, 2010; 189).

Once a company is in financial distress, individual creditors have an incentive to rush to enforce their claims against the company's assets to be paid out before further distribution. If this happens, the company will be broken up piecemeal. This prevents two things from happening. First, it prevents the creditors from agreeing to restructuring or a new deal amongst them, so that the company can continue to trade. (Sarah Paterson, 2015; 697). Secondly, where restructuring is not in prospect, it prevents the business from being sold as a whole or as a going concern, notwithstanding that this would be likely to attract a higher price than a piecemeal realization of the individual assets. (Michelle M. Harner, 2015; 510).

In general, bankruptcy laws aim to secure equitable division of the insolvent debtor's property among all his creditors and to prevent the insolvent debtor from malicious dealing with the asset in detriment to in detriment to the interest of his creditors. (Louis E Levinthal,2015;510). Many still consider bankruptcy as something that must be avoided. On the contrary, it can release debtors from most debts, provide relief, and allow them to make a fresh start. In other words, bankruptcy provides a solution.

For instance, the fresh start philosophy of US bankruptcy law, which embraced a more forgiving attitude, focusing on the reintegration of the insolvent debtor into society, substantially free of debt, after he has filed for bankruptcy and surrendered his non-exempt property for distribution among his creditors. (Jacob Ziegel, 2006; 299). The Bankruptcy Code was intended to give good and honest debtors a fresh financial start. This concept recognizes two important factors: 1. that debt default is not malicious and typically occurs without the fault of the debtor often in conjunction with

unanticipated medical issues, unemployment, and divorce; and 2. that a large population of debtors saddled with overwhelming non-dischargeable debt not only financially paralyzes them, but ultimately harms the national economy by denying these individuals the ability to contribute to the economy as responsible consumers. (Justin H. Dion and Barbara Curatolo, 2018; 198).

The nature of the general bankruptcy confiscation is to stop the action against the seizure of bankrupt estate by creditors and to stop the traffic of transactions involving bankrupt estate by debtors that might harm creditors' repayment. (Hadi Subhan, 2009;164). Immediately after the bankruptcy decision is read, the bankrupt debtor is no longer authorized to administer any kind of legal actions regarding his assets included in the bankruptcy. Under the law, the authority or capacity to manage the assets is transferred to the curator assigned by the court. (J. Andy Harianto, 2015; 74). On some occasions controversy rather focuses on the extent to which, and the way in which, corporate bankruptcy law should concern itself with how value is distributed or how the pie is shared. (Elizabeth Warren, 1987; 775).

Investors losing their money, creditors not being given their money in full, suppliers brought into bankruptcy, the government not being able to receive due tax revenue, and employees losing their jobs are some of the results of a bankruptcy. As a consequence, if a company becomes insolvent, several questions arise on whether the main goal of insolvency rules should be protecting creditors only or creating a balance between the interests of creditors as well as non-creditors such as employees and other third parties affected by the insolvency of the company. (Saleh Albarashdi, Horace Yeung, 2018; 25).

Thus the purpose of all corporate bankruptcy law is to impose a stay or a moratorium to prevent creditors from taking individual enforcement action to 'grab' assets so that the business can either be restructured or (and) its assets sold. (Thomas H. Jackson, 1990; 857). The basis of those avoiding powers is to protect the advantages of bankruptcy's collective proceeding. It is important to consider the trustee's power to assert the rights of a "hypothetical" lien creditor the so-called "strong-arm" power. The creditors' bargain rationale for bankruptcy's collective and compulsory proceeding clearly explains the basic role of that power. (Thomas H. Jackson, 1984; 732).

In bankruptcy, the law acknowledges 3 types of creditors; separatist or secured creditors, preferred creditors, and concurrent creditors. (Imran Nating, 2005; 43). Separatist creditors are creditors who hold material security rights, which can act on their own without being affected by the debtor's bankruptcy. The execution rights of the separatist creditor can still be exercised as if there is no debtor bankruptcy. Separatist creditors can sell their own. The debtor takes the proceeds of the sale as much as his receivables and deposits the remaining into the bankruptcy estate. A creditor whose interests are secure by any rem right is usually entitled to cause the foreclosure of the collateral, without judgment, to satisfy his claim from the proceeds with priority over the other creditors. The

right to foreclosure without judgment is called the right of immediate enforcement. (Jerry Hoff, 1999; 96).

Preferred creditors are creditors whose receivables have a special position and have the privilege right to obtain repayment from the sale of the bankruptcy estate. Preferred creditors, unlike separatist creditors, who have a preference issue is only relevant if there is more than one creditors and if the assets of the debtor are not sufficient to pay off all the creditors i.e., there is a *concursus creditorum*. Preferred creditors are required to present their claims to the receiver for verification and are thereby charged a pro-rata share of costs of the bankruptcy. There are several categories of preferred creditors: (Jerry Hoff, 1999; 96)

1. Creditors who have statutory priority;
2. Creditors who have non-statutory priority;
3. Estate creditors.

Concurrent or competitive creditors are entitled to obtain proceeds from the sale of debtor's assets, both existing and future, after deducting the obligation to pay receivables to separatist and preferred creditors. Unsecured creditors are required to present their claims for verification to their receiver and they are charged a pro-rata part of costs of the bankruptcy. (Jerry Hoff, 1999; 96). One of the issues highlighted in this paper is whether the State falls within one of these categories of creditors based on debtor's outstanding tax debt owed to the State.

The Indonesian Law on Bankruptcy and Suspension of Obligation for Payment of Debts system adheres to the debt collective principle that is a general seizure of debtor's property as a guarantee for the payment of their debts through the bankruptcy institution. The principle of debt collective emphasizes that the debt shall be paid immediately from property owned by the debtor to avoid the possibility of the debtor's bad faith by hiding and distorting its property as collateral for the repayment of debts to the creditors. (Sonyendah Retnaningsih and Isis Ikhwansyah, 2017; 80).

Payment of outstanding employee wages takes precedence over all types of creditors including separatist creditor bills, bankruptcy fees, curator fees and claims against the state. Whereas the payment of other workers' rights takes precedence over all types of bills including bankruptcy fees, curator fees and claims against the state except for bills of separatist creditors. (Rilda Murniati and Desma Cahya Selvya, 2019; 237).

Based on the principle of debt collective, bankruptcy serves as a means of coercion to materialize the rights of creditors through liquidation of the debtor's assets. The principle of debt collection in the modern era is manifested in the form of liquidation of assets. The modern era is manifested in the form of liquidation of assets. (Rilda Murniati and Desma Cahya Selvya, 2019; 237).

If capital is withdrawn from businesses that are failing and redeployed in businesses that are succeeding, it is expected that other benefits in terms of jobs and prosperity will accrue to the economy. On the other hand, the concern is that if corporate bankruptcy law pursues the protection of

jobs as an independent objective, capital may continue to be deployed in less-efficient producers in the economy. (Thomas H. Jackson and David A. Skeel Jr, 2013; 29).

Bankruptcy law, moreover, because it affects all areas of the legal landscape, adjust rights among creditors and other owners. Similarly, it interface with labour law, environmental law, and tax law to secure creditors and other property claimants. (Thomas H. Jackson, 1986; 2).

3.2. Taxpayers' Obligation to Pay Taxes

Taxes can be interpreted as a source of funds for a country to overcome problems such as social issues, welfare improvement and national prosperity. It is a social contract between the government and its citizens. (Asrinanda and Yossi Diantimala, 2018; 540).

To understand the fact that taxes from the state binds its nationals to pay their taxes, the 1945 Constitution of the Republic of Indonesia stated "...then the Indonesian Independence was formulated in an Indonesian State Constitution...", which implies that Indonesia is a legal state. In the explanation of the 1945 Constitution, it is stated that Indonesia is based on law *(rechtsstaat)*, not based on mere power *(machtsstaat)*. The results of the amendment eliminated the explanation of the 1945 Constitution and included it in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia stipulating that Indonesia is a state of law. Article 22A of the 1945 Constitution of the Republic of Indonesia stipulated that further provisions concerning the procedure for the establishment of laws are regulated by law, i.e., Law Number 12 of 2011 concerning the Establishment of Legislation. Considering this, in order to realize Indonesia as a legal state, the state is obliged to carry out national law development in a planned, integrated and sustainable manner. It should be carried out in the national legal system that guarantees the protection of the rights and obligations of all Indonesian people based on the 1945 Constitution of the Republic of Indonesia.(Agus Suharsono, 2019; 225).

Tax has a very important role in the implementation of state or government functions which include allocation, distribution, stabilization, and regulation. (Haula Rosdiana and Rasin Tarigan, 2005; 39). Tax Debt is accrued tax including administrative sanctions in the form of interest, fines, or increases stated in tax assessment letters or similar letters based on the provisions of tax legislation.

The Indonesian Bankruptcy Law prescribes debt as a liability arising out of contractual relationships established under the law. In taxation, there is no binding agreement or contractual relationship between the State and a taxpayer. The obligation to pay tax arises from public law that provides coercive authority to the State to collect the tax. Rights and obligations between the State and taxpayer are not the same as contracting parties. Therefore, incurred tax which remain unpaid becomes tax debt. (Sumyar, 2014; 88).

Tax collection is based on Article 23 of the 1945 Constitution of the Republic of Indonesia which specifies that tax imposition and collection for the State purposes may only occur based on the

Law. In the elucidation, it is stated that all actions that place a burden on the people, such as taxes and others must be determined by law i.e., with the approval of the parliament.

3.3. Tax Debt in Bankruptcy Proceedings

Prominent theories of bankruptcy support the claim that state governmental entities should not be treated as private parties in bankruptcy. If bankruptcy law should generally respect the property rights and entitlements created under non-bankruptcy laws, states will inevitably enjoy a broad power to define their entitlements in bankruptcy. (Adam Feibelman, 2003; 185).

State's privilege right for the payment of tax receivables in bankruptcy is also applied in the United States of America, specifically on tax debt and income tax. For example, priority is given to a variety of tax claims, including income tax. In the case of the US, the priority is further bolstered by both statutory liens in favour of tax claims and the denial of release, upon discharge from bankruptcy, for liability for such claims. (John Duns and John Glover, 2005; 171).

In Indonesia, the position of a tax debt is different from other debts. Tax liability arises from the Act and does not arise as a result of legal relations among citizens. Tax liability can be imposed because it involves the obligation of citizens to the state. However, the wider understanding of citizens is that including all foreign individuals who live in the territory of Indonesia for more than 183 days and earn income from business entrenched in Indonesia is essential. The position of tax debt in the Civil Code has placed the tax debt to take precedence over other creditors as regulated in Articles 1134 and 1137 Civil Code. Based on Article 1134 and 1137 Civil Code, the position of tax debt as a holder of privileges with proceeding right refers to the regulation in a special law, i.e., the Law of KUP. Judging from the broad sense of debt in UUK-PKPU, debt is a liability that can arise from agreements or from contracts that are born under the law. Debts or tax bills must be settled by the taxpayer or the taxpayer. Taxpayers in exercising their rights and obligations in accordance with the tax laws and regulations may be represented among others by the Board. For bodies that have been declared bankrupt, the curator is tasked to make arrangements and order debtor bankruptcy property. The state has a prior right to the tax debt on all debtors' possessions. The preceding rights are stipulated in Article 21 paragraph 1 of the KUP Law, which reads: "The state has the preceding right to tax debt on the goods of the Taxpayer". The preceding right in Article 21 Paragraph 1 of this KUP Law also stipulates that the state as the preferred creditor is deemed to have prior rights over the property of the taxpayer to be auctioned publicly. Payments to other creditors are settled after the tax debt is paid. Provisions on prior rights include tax principal, administrative sanctions in the form of interest, penalties, increases, and tax collection fees. The provisions of Article 21 of the KUP Law are in line with Article 1137 Civil Code which regulates the State Rights as follows: "The right of the state treasury, auction office, and other public bodies established by the government, to take

precedence, orderly exercise of such rights, is regulated in various special laws regarding it ". (Rahayu Hartini, 2018; 76).

Article 21 of the General Taxation Law states that the state has a privileged right to goods belonging to the taxpayer based on a tax debt. The elucidation of the article explains the position of the State as preferred creditors which are declared to have privilege rights to the goods owned by the taxpayer to be auctioned in public. Payments to other creditors are settled after the tax debt is paid. The privilege rights, which cover the principal tax, interest, administrative penalties, increases, and billing fees, exceed all kinds of preferential rights. The law further stipulates that in the event of taxpayer's bankruptcy, dissolution or liquidation, the curator, liquidator, or person or body assigned to do the settlement is prohibited from distributing the taxpayer's assets in bankruptcy, dissolution or liquidating to shareholders or other creditors before using the asset to pay the tax debt. The same arrangements are also stipulated in the Law on Tax Collection by Force Letter.

This is in line with Article 1134 paragraph (2) of the Civil Code that regulates the privilege right based on the law that provides the holder a higher level and privilege right over other creditors. Articles 1139 and 1149 regulate the exceptions to this privilege right, including court fees and execution costs. The exception is logical because the incurring legal costs are necessary for the first act to save the debtor or taxpayer's assets. (Titik Tejaningsih, 2016; 128).

Although the law has established the State's position as a preferred creditor in connection with tax debt, in practice there is still legal uncertainties. In some cases, KPP had to file Judicial Review to the Supreme Court in connection with the debtor's tax debt not fully paid by the bankruptcy curator.

For example, Supreme Court Decision No. 015 K/N/1999 ruled that KPP was not considered as a creditor in the bankruptcy proceedings. This is due to the fact that: (Susanti Adi Nugroho, 2018; 198)

1. The Law No. 9 of 1994 mentioned that KPP shall enjoy the authority of executing the tax debt directly without any intervention from the Court.
2. The tax debt has to be executed outside the bankruptcy proceedings; this is because according to the court decision, the KPP enjoys a special right in executing tax debt.

Conversely, Supreme Court Decision No. 017 K/N/2005 ruled that tax debt must be paid in advance compared to other debts. The Court referred to the Law on Tax Collection by Force Letter.

According to both cases above, this research draws both similarities and dissimilarities towards the position of KPP in executing tax debts. It can be concluded that both agreed that we enjoy special right to execute tax debts, the special right being that the KPP holds the right to execute the tax debts outside the bankruptcy proceedings. However, it is mentioned in the Supreme Court Decision No. 017 K/N/2005 that the tax debt must be paid in advance, whereas the Supreme Court Decision No. 015 K/N/1999 did not mentioned specifically when a tax debt should be paid.

In another case, for instance Decision No. 09 K/N/2009, the Court held that there was no basis to treat laws on taxation as extraordinary rules and, hence, the Bankruptcy Law was applied exclusively, and the State's privilege right is not applicable. Therefore, when a debtor is declared bankrupt, the State has no other choice but to face competing interests of other preferred creditors, including employees and this resulted in further issues. This brought the term *res judicata pro veritate habetur* to the mix. It has to be considered that this principle implies means anything that relates to identifying and making any court decisions, the judge's decision is considered to be correct and immediate regardless of the decision made. It can only be annulled upon the appearance of a decision that cancels that decision. (Aries Saputro, 2020; 231). This shows that Indonesian bankruptcy decisions are chaotic, so there has to be a single set of rules to be followed by the law makers and enforcers to avoid a disintegrated decision mentioned above.

In addition, article 1149 of the Civil Code stipulates that workers have special rights. Article 95 of the current Indonesian Law on Manpower stipulates that if a company is declared bankrupt or is liquidated based on the applicable laws and regulations, the wages and other rights of workers are debts that precede other payments. Constitutional Court Decision No. 67/PUU-XI/2013 determines that:

1. Workers' wages take precedence over any payments of all types of bills and other creditors, including separatist creditors and the State's tax receivables.
2. Other workers' rights are paid in advance of all claims from other creditors, except if the debtor has a separatist creditor.

Based on the decision of the Constitutional Court, it is clear that if there is bankruptcy, the right to precede the tax debt is not valid if it meets the wages of workers and other workers' rights. This is somewhat different from separatist creditors in that if there is a wage payment for workers then the separatist creditor succumbs but not to the payment of the rights of other workers. The consideration of the Panel of Judges to decide whether this is the wage of workers/labourers constitutionally is based on Article 28 D Paragraph 2 of the 1945 Constitution. Therefore, it is a constitutional right which to obtain fair and decent treatment in the employment relationship. As for the obligations/bills of the state, it is reasonable to be ranked after wages and workers' rights including severance pay, gratuity, compensation pay and among others. This is because countries have other sources of financing whereas wages are the only source of income for workers and their families. So with the decision of the Constitutional Court which places the wages of workers as the priority of payment in the event of bankruptcy, the next priority is the state's right i.e., tax debt.(Rahayu Hartini, 2018; 77).

It can be seen that the Constitutional Court's ruling puts labour wages ahead of other claims. It also defeat State claims for tax debt payment and separatist creditors. Workers' wages that have not been paid by the debtor before bankruptcy are basic rights of workers that must not be removed or reduced. This condition certainly creates a problem especially with regard to State's privilege rights

over tax debts that have not been paid by bankrupt debtors. In practice, the State only receives a small payment for the tax payment from the distribution of bankrupt estate. In the bankruptcy case of PT. Bosaeng Jaya, for example, Director General of Taxes only received a share of Rp. 700 million from Rp. 1,4 billion of tax debt claims. Similarly, in the bankruptcy of PT. Yinchenindo, Director General of Taxes received Rp. 2.91 Billion of the total tax bills of Rp. 90.7 Billion. Unpaid tax debt equals lost state income that cannot be utilized to help improve the people's welfare.

When past its deadline and yet to be paid in full, tax debt collection needs to follow certain measures namely: (Billy Ivan Tansuria, 2010; 294)

1. Warning Letter

   Tax debt collection is carried out firstly by issuing a warning letter by an official. The warning letter will not be issued if the tax bearer has agreed to pay in instalments or delayed its tax payments.

2. Force Letter

   As mentioned above, force letter, issued by an official and notified by a tax bailiff to the tax bearer will be issued if the amount of tax is yet to be paid and it is overdue by 21 days since the warning letter was issued.

3. A warrant for Confiscation (SPMP)

   A warrant for Confiscation is issued by officials if a debt is overdue by 2 x 24 hours since the force letter was issued to the tax bearer and the amount of tax debt was also yet to be paid in full. According to SPMP, the tax bailiff will conduct the seizure of the tax bearer’s property.

4. Auction Announcement

   The auction announcement will be conducted by officials if by the period of 14 days, after the confiscation of property, the tax bearer has yet to pay the tax debt and the tax collection fee in full. The auction announcement for a movable object will be conducted once, while for the immovable object, the auction announcement will be conducted twice.

5. The Sale of Confiscated Property

   The Sale of tax bearer’s Confiscated Property will be conducted by the officials through the state’s auction office if the tax bearer failed to pay the tax debt and the tax collection fees after 14 days since the Auction Announcement was announced.

IV. CONCLUSION

Tax has a very important role in the implementation of State or government functions. Outstanding tax payments are important as a source of state revenue to be used to finance development and efforts to improve people's welfare. Laws and regulations have stipulated that the State has privilege rights for the payment of tax debt from taxpayers. In the case of taxpayers’

bankruptcy, these rights precede all kinds of payment claims from the bankruptcy estate. However, this regulation has not become a strong legal basis as can be seen in the existing decisions. The amount of fund paid and received by the State for the payment of tax debt is by far much less than the actual amount. The ruling of the constitutional court regarding the position of the employee's claim on wages and other unpaid rights further weakens the position of the State as a creditor with privilege rights. This has resulted in legal uncertainties in debt settlement through a bankruptcy mechanism. The government needs to revise and synchronize existing laws to reposition and clarify the status and standings of each party who has the right to claim payment on bankruptcy cases.

Based on the Decision of the Constitutional Court No.67/ PUU-XI/2013, State’s privilege rights over tax debt are not valid when it meets with the wages of workers and other workers' rights. This ruling places the wages of workers as the first privilege of payment in the event of bankruptcy, and further the state's right of tax debt.

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