

UNSYNCHRONIZED IMPACT OF LEGAL REGULATION ON THE LOSS OF STATE'S STANDING FOR THE PREFERENCE RIGHT OF TAX DEBT IN BANKRUPTCY

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ABSTRACT

*The state has a preference right (priority) to collect tax debts on goods which belong to the taxpayer (debtor), meaning that the state's position as a preferred creditor is declared to have advance rights to the taxpayer's property to be auctioned in public. Preference rights by the State for paying off tax debts are in fact not as easy as imagined, there are disharmony in several laws and regulations, namely between the Taxation, Bankruptcy and Labor Laws and the Constitutional Court Verdict No.67/PUU-IX /2013 and other problems that affect the State's pre-emptive rights over paying tax debts. The objective of this study is to determine the impact of disharmony of Legal Regulations relating to Debt Repayment in Bankruptcy Against the State's Standing on Preferential Rights of Tax Debt. Based on research, the position of laborers' wages in Constitutional Court Decision No. 67/PUU-XI /2013 contrary to the provisions of the KPKPU Code which regulates labor wages as a bill of general preferred creditors and based on the principle of *lex posteriori derogat legi priori*, the position of laborers' wages in bankruptcy is based on the provisions of the KPKPU Code which overrides the provisions of Code No. 13 of 2013. Second, the consideration of the Constitutional Court on Verdict No. 67/PUU-XI/2013, is not in same direction with the provisions of the KPKPU Code which regulates that the wages of workers owed both before and after the bankruptcy was declared is a bankruptcy debt.*

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Introduction

Bankruptcy is a situation where the debtor is unable to make payments on debts owed by their creditors. The situation of being unable to pay is usually caused by financial distress from the debtor business is a suffered setback.¹

¹ M. Hadi Shubhan, Hukum Kepailitan: Prinsip, norma, dan Praktik di Peradilan, Kencana, Jakarta, 2009, P. 1.

Whereas bankruptcy is a decision issued by the Court which results in general confiscation of all assets owned and assets that will be owned by the debtor in the future. When a company is declared bankrupt by a commercial court decision, the company is still a legal entity.² One of the objectives of bankruptcy is to protect creditors and debtors, namely to make a distribution between creditors on the debtor's wealth by the curator.³

The management and filing of bankruptcy are carried out by the curator under the supervision of a supervisory judge, the two officials who are appointed directly at the time the bankruptcy decision is read out.⁴ Bankruptcy based on the provisions of Article 1 no. 1 of Code No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations, hereinafter abbreviated as KPKPU Code, is a general confiscation of all the assets of a Bankrupt Debtor whose management and / or issuance is carried out by a Curator under the supervision of the Supervising Judge.⁵ The purpose of bankruptcy is that all creditors receive payments according to the balance of the size of their respective receivables in a fair and orderly manner not fighting over.⁶ Debtors who have two or more creditors and do not pay off at least one debt that is past due and collectible, are declared bankrupt by a court decision, both at their own request and at the request of one or more of their creditors (*concursum creditorum*).⁷

The state has a preference right to tax debt on goods belong to the Tax Insurer. This means that the state's standing as a preferred creditor who is declared to have preference rights to the property of the Taxpayer to be auctioned in public. The state has the right to obtain early repayment of debts held by taxpayers, taking precedence over various kinds of debts held against other creditors. Payments to other creditors are settled after the tax debt is paid.

The KPKPU Code states that there are rights that are preferred, but in practice these rights may be null and void. This can cause a tendency for tax arrears to avoid paying tax debt. The KPKPU Code explains that in the event of a bankrupt company or postponement of debt repayment obligations,

² Galuh Pratiwi, Analisis Terhadap Putusan Mahkamah Konstitusi Nomor 67/PUU-XI/2013 atas Kedudukan Pekerja dalam Kepailitan, Magister Ilmu Hukum, Universitas Islam Indonesia, 2017.

³ Riyanda Kiransyah, Analisi Yuridis Kedudukan Kreditor Separatis Terkait Upah Pekerja dari Debitur Pailit (Studi Kasus Putusan Mahkamah Konstitusi Nomor 67/PUU-XI/2013), Jurnal Ilmu Hukum, p. 1.

⁴ Dedy Tri Hartono, Perlindungan Hukum Kreditor Berdasarkan Undang-Undang Kepailitan, Jurnal Ilmu Hukum Legal Opinion Edisi I, Volume 4, Tahun 2016, p..1.

⁵ Pasal 1 angka 1 Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang

⁶ Abdul R. Saliman, Hukum Bisnis Untuk Perusahaan Teori dan Contoh Kasus, Cet.5, Jakarta: Kencana, 2010, p.133.

⁷ Jono, Hukum Kepailitan, Jakarta: Sinar Grafika, 2013, p.3.

creditors who have a higher position must take precedence over payments. One of the provisions in the KPKPU Code that alludes to is article 41 paragraph (3) that "exempt from the provisions in paragraph (1) is a debtor's legal act which must be done based on an agreement and / or due to the Law." The explanation is an act that must be done because of the Law, for example, the position to pay taxes. However, the KPKPU Code only focuses on trade aspects and does not explicitly (explicitly) mention taxes but the right to advance in general.

The right to override (preferential) by the State for paying off tax debts is in fact not as easy as imagined, there are several separate problems. The first problem, if what is meant by "state position as creditor" in both tax laws above is the same as what is meant by "creditor" as regulated in civil law, then it can be assumed that the state is the party that provides debt / credit to taxpayers. The fact is, of course not. Second, if what is meant by "preference" in the two taxation laws above is the same as what is meant by "special privileges" in Article 1134 of the Civil Code, then the "prior right" cannot be prioritized. The Civil Code regulates certain collateral holders (ie mortgages and mortgages) for paying off debts, still having a higher position than Based on the background above, the formulation of the issues can be drawn, namely: How does the impact of the disharmony of the legal regulation related to the repayment of debts in bankruptcy against the State's standing on the right of Preference of Tax Debt?an privileges. Doesn't the tax office not hold any collateral from the taxpayer?

Result and Discussion

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 taxation laws and regulations.⁸ General Provisions and Tax Procedures, as amended several times, the latest by Code No. 28 of 2007 provides the understanding that tax payable is tax that must be paid at any time during the tax period, in the tax year or in part of the tax year in accordance with the provisions of the regulations tax legislation. In essence, the term tax debt does not differ from the tax payable as an obligation that must be paid in full by the taxpayer within the prescribed period. The nature of the repayment tax debt can be forced directly in ways protected by tax law. For example, confiscation followed by selling the goods in public.⁹

The tax debt position is a privilege, so that the State is a preferred creditor who has the privilege of the goods owned by the Taxpayer to be auctioned in

⁸ Muhammad Djafar Saidi, *Pembaharuan Hukum Pajak*, Jakarta: Rajawali Pers, 2014, p.. 165

⁹ Santoso Brotodihardjo, *Pengantar Ilmu Hukum Pajak*, Bandung, Eresco, 1995, p. 109

public.¹⁰ Article 1134 paragraph (2) of the Civil Code also regulates the existence of special privileges that have a higher level than other debtors because of the laws and regulations. The state as the preferred creditor causes the state to have advance rights over the goods belonging to the Tax Insurer and has a higher position than the separatist creditor or concurrent creditor in the bankruptcy law.¹¹ The right to advance the State referred to here is if the Taxpayer / Taxpayer at the same time in addition to having personal debts (civil), also has a debt to the State (tax authorities), where the assets of the Taxpayer / Taxpayer are insufficient for pay off all its debts, then the state has the right to override the tax bill for the payment of tax debts by taxpayers declared bankrupt. Basically, tax debt arises not only because of an agreement, but can also arise due to the law.¹²

In the event of bankruptcy, the provisions regarding preferential rights are regulated in Article 1134 of the Civil Code, which is *lex generalis*. On the other hand, the Civil Code continues to provide opportunities for other provisions that are *lex specialis*, namely taxation and bankruptcy laws, to further regulate .. If you pay attention, taxation laws, the part governing the right to advance the state for payment of tax debt, was last amended in 2007, whereas the KPKPU regulation was last amended in 2004. This means that the taxation law is a law that is newer than the bankruptcy law. However, that does not mean that taxation laws can override bankruptcy law.¹³

Harmonization of the law (the law) becomes important to be discussed as part of the legal protection of the subject or object of the law governed by a regulations.¹⁴ Article 21 paragraph (1) and paragraph (3) of the Taxation Code governs preference rights as follows:

1. The state has a prior right to tax debt on goods belonging to the tax bearer.
2. The advance right to tax debt exceeds all other preceding rights, except for: case costs that are only caused by a penalty for auctioning a movable and / or immovable property, costs incurred to save the said

¹⁰ Pasal 19 ayat (6) UU PPSP Jo. Pasal 21 (1) UU KUP Jo. Pasal 1134 KUH Perdata Jo. Pasal 60 ayat (2) UU Kepailitan

¹¹ Ishak, Upaya Hukum Debitor Terhadap Putusan Pailit, Kanun Jurnal Ilmu Hukum No. 65, Th. XVII (April, 2015), pp. 189-215.

¹² Suherman Nasution, Tanggung Jawab Direktorat Jenderal Pajak atas Kelalaian mengajaukan Tagihan yang mengakibatkan hilangnya hak mendahului Negara Dalam Kepailitan, USU Law Jurnal, Vol. 6 No. 06, Desember 2018

¹³ Ratih Candrakirana, Hak Mendahului Negara Atas Utang Pajak Dalam Putusan Pengadilan Niaga, Fakultas Hukum Universitas Brawijaya

¹⁴ Ryan Kurniawan, Harmonisasi Hukum sebagai Perlindungan Hukum bagi Pekerja pada Perusahaan Pailit ditinjau dari Prespektif Pancasila Sila Ke Lima, Jurnal Wawasan Hukum, Universitas Katolik Parahyangan, Vol. 28, No. 01 Februari 2013.

object; and / or case costs, which are only caused by the auction and settlement of an inheritance¹⁵

The provisions in this article place the state as the preferred creditor who has advance rights to the goods belonging to the Tax Insurer. Payments to other creditors are settled after the tax debt is paid. This taxation law also gives a special position for tax debt exceeds the position of all creditors in bankruptcy, including guarantee rights and also precedes labor costs and bankruptcy costs and concurrent creditors. The provisions of Article 21 of the Taxation Law are in line with Article 1137 of the Civil Code governing state rights as follows: "Rights from the state treasury, auction offices, and other public bodies established by the Government, to take precedence, the orderly exercise of that right, and the period of time. the implementation of this right shall be regulated in various specific laws regarding these matters. While in the Labor Act also regulates the preceding rights, namely in Article 95 paragraph (4) as follows: "In the case of a company being declared bankrupt or liquidated based on the applicable laws and regulations, the wages and other rights of workers / laborers are debts that are the payment is prioritized. "In the explanation of this article the understanding is given that what is meant by prior payment is that the wages of workers / laborers must be paid in advance of other debts. In Article 1134 the Civil Code explains the privilege as follows: "A privilege is a right granted by law to a creditor that causes him to have a higher position than others, solely based on the nature of the receivables. Mortgages and mortgages are higher than privileges, except in cases where the law expressly determines the opposite ". In Article 1149 paragraph (4) of the Civil Code it is further explained about the privilege of workers' wages during the past year and wages that have been paid in the current year, along with the money that must be paid by the employer both to the worker and to the family of the worker.

Article 95 paragraph (4) of the Labor Code places laborers' wages in the position of preferred creditors, because they have the privileges granted by law. From the provisions of Article 1134 of the Civil Code it is explained that creditors who hold liens and mortgages have a higher level than creditor holders of privileges, unless the law expressly regulates otherwise. Thus, if the Labor Law is to exclude that the position of privilege is higher than mortgages and mortgages (separatist creditors), the Labor Act must specify specifically that the rate is higher than mortgages and mortgages. Provisions which state that wages for workers are higher than separatist creditors are not found in the Labor Act. This results in the wages of workers / laborers under the separatist creditor. The provision of Article 95 paragraph (4) of the Labor Act does require that bankrupt companies must prioritize the fulfillment of workers' rights such as

¹⁵ Code of the Republic of Indonesia Number 6 of 1983 on General Provisions and Tax Procedures

sex and other rights. As a result, in practice, the notion of "prioritizing payment" is placed after payment of the rights of the state and separatist creditors.¹⁶

This problem often arises from debates in the event of bankruptcy. Along with the anxiety arising from these problems, then nine employees of PT. Pertamina, which is affiliated with the All Indonesia Pertamina Workers Union (SPPSI), has submitted an application for testing Article 95 Paragraph 4 of the Labor Code to the Constitutional Court. The Petitioners submit an application with an application letter dated June 17, 2013 received by the Registrar of the Constitutional Court on June 17, 2013 based on the Deed of Receiving Application File Number 305 / PAN.MK / 2013 and has been recorded in the Registration Book Constitutional Case on June 27, 2013 with Number 67 / PUU-XI / 2013 which has been amended application received at the Registrar's Office of the Court on July 29, 2013.

The Petitioner requested the Material Test because the Petitioner felt that the application of the Aquo Article had impaired his constitutional rights based on existing legal facts. Whereas one of the Articles in the Labor Code, Article 95 paragraph (4) states: "In the case of a company being declared bankrupt or liquidated based on the applicable laws and regulations, the wages and other rights of workers / laborers are debts that precedence payments".

Article 95 paragraph (4) of Code No. 13 of 2003 on Labor (State Gazette of the Republic of Indonesia of 2003 Number 39, Supplement to the State Gazette of the Republic of Indonesia Number 4279) contradicts the 1945 Constitution of the Republic of Indonesia of the Republic of Indonesia as long as it is not interpreted: wages of workers / laborers take precedence over all types of creditors including bills of separatist creditors, bills of state rights, auction offices, and public bodies established by the Government, while payment of other workers' rights takes precedence over all bills including bills of state rights, offices auctions, and public bodies formed by the Government, except claims from separatist creditors "; Based on the provisions, of Article 95 paragraph (4), the wages and other rights of workers / laborers are debts that are "prioritized" for payment. However, in implementing bankruptcy decisions the word "precedence" is placed after the settlement of the rights of the State and the separatist creditors who refer to Book Two of Chapter XIX of the Civil Code and Article 21 of the Taxation Code. Here, state rights are placed as first position rights holders, followed by separatist creditors (holders of mortgage, fiduciary, mortgages). The petitioners ask the Constitutional Court to declare

¹⁶ Muhammad Abas, Hak Mendahului Upah Pekerja Dalam Perkara Kepailitan (Analisis Putusan MK No. 18/PUU-VI-2008 Jo. No. 67 PUU-XI/2013), Universitas Buana Perjuangan Karawang, Vol. 3 No.1 November 2018)

Article 95 paragraph 4 of the Labor Code is constitutional with Article 28 D paragraph 1 of the 1945 Constitution and has no binding law insofar as the word "prioritized payment" is interpreted as repayment preceding all types of creditors, both separatist / privileged, preference, right-holders dependents, mortgages and mortgages and competing creditors.¹⁷

Previously, according to Article 21 of the Taxation Law, the state had a prior right to tax debts on goods belonging to the Tax Insurer. The provisions in this article stipulate the position of the State as a preferred creditor who has prior rights to the goods owned by the Taxpayer to be sold except for the cost of the case solely due to a penalty for auctioning a movable and / or immovable property. Payments to other creditors are settled after the tax debt is paid. This is certainly in line with Article 1137 of the Civil Code governing the rights of the state as follows: "The rights of the state treasury, auction offices, and other public bodies established by the Government, to take precedence, the orderly exercise of that right, and the period of the duration of the right mentioned, regulated in various specific Regulation regarding these matters ". However, after the Constitutional Court ruling number 67 of 2013, the wages and other rights of workers / laborers are debts that are paid in advance, including tax debts that were initially always prioritized together with other preferred creditors.

Conclusion

The Constitutional Court in Verdict No. 67 / PUUXI / 2013 ruled that if a company went bankrupt, then the payment of workers 'workers' wages would take precedence over all types of creditors, including separatist creditor bills and state rights bills. The method used in this research is analytical descriptive with normative juridical approach. Based on research, the position of laborers' wages in Constitutional Court Verdict No. 67 / PUU-XI / 2013 contrary to the provisions of the KPKPU Code which regulates labor wages as a bill of general preferred creditors and based on the principle of *lex posteriori derogat legi priori*, the position of laborers' wages in bankruptcy is based on the provisions of the KPKPU Code which overrides the provisions of Code No. 13 of 2013. Second, the consideration of the Constitutional Court Verdict No. 67 / PUU-XI / 2013, is not in line with the provisions of the KPKPU Code which regulates that the wages of workers owed both before and after the bankruptcy declaration is a bankruptcy debt.

¹⁷ <http://www.suaramerdeka.com/v1/index.php/read/cetak/2013/07/17/231256/Ujimateri-UU-Tenaga-Kerja-Disidangkan>, accessed on May 23rd 2019.

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