



Position of Tax Debt and Labour Right: Legal Review

Sonya Liani Ramadayanti

Master of Health Law, Hang Tuah University, Indonesia

Corresponding Author: Sonya Liani Ramadayanti

Email: wijayantianung1@gmail.com



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Abstract

This study aims to explain the position of tax debt and labour right in bankruptcy. The legal research method used in this research using normative research, the legal rules and legal principles used related to bankruptcy law, tax law and labour law will be a reference in describing the problem of the position of tax debt and labour right in bankruptcy cases. The Taxation Law gives a special treatment and higher position on which the tax debt is first to be paid by the debtor and followed by the right borne by the separatist creditor. On the other hand, Law Number 13 of 2003 concerning Employment also regulates that the labour of the wages and other rights of the labour and positioned the labour as preferred creditor on which the privilege is given by the law. However, there are no statements in the Employment Law that stated the position of labour as a preferred creditor is higher than separatist creditor in the matter of bankrupt as what the Taxation Law expressed creditor is higher than the separatist creditor within the matter of tax payment. That distinction seems positioned the preferred creditor status of labour is lower than the position of separatist creditor on the matter of right fulfillment in bankruptcy. It is certainty that the statement which stated that the collection of tax debts have the right to precede than other debts does not fit in this matter. Eventually, there is a decision of Constitutional Court Number 67/PUU-XI/2013 that provides a change within the position labour's right on the matter of bankruptcy.

Introduction

Bankruptcy is a situation where the debtor is declared bankrupt because he cannot pay his debt, then there is also the term insolvent debtor, namely the debtor cannot pay the debt. Bankrupt is a situation where the debtor is unable to make payments on the debts of the creditors. The state of being unable to pay is usually caused by financial distress from the debtor's business that has suffered a setback (Sullivan, 1999; Lawless et al., 2008). Whereas bankruptcy is a court verdict which results in general confiscation of the entire assets of bankrupt debtors, both the existing and the future ones. Bankruptcy can generally be caused by the borrower's inability to repay the loan and loan interest (Rea, 1984; Skiba & Tobacman, 2019).

The management and settlement of bankruptcy are carried out by the curator under the supervision of a supervisory judge with the main purpose of using the proceeds from the sale of assets to pay all debts of the bankrupt debtor proportionally (*prorate parte*) and in accordance with the creditor structure (Takalao, 2017; Siburian et al 2017). This bankruptcy principle is a further implementation of the provision of Article 1131 and 1132 of the Civil Code, namely the material of the debtor is a joint guarantee for all creditors divided proportionally (*pari passu prorata parte*).

In Law Number 37 of 2004 Concerning Bankruptcy and Deferment of Debt Payment Obligation (hereinafter referred to as UUK-PKPU), it is stated that Bankruptcy is in the form of general confiscation of all bankruptcy debtors' assets. UUK-PKPU Article 1-6 regulates that a debtor is declared bankrupt is a debtor who has two or more creditors and does not pay off at least one debt that is due and can be billed, is declared bankrupt by a court verdict, both at his/her own plea or at the plea of one or more creditors. Furthermore, the plea is submitted to the Chair of the Court, decided by the Court whose jurisdiction covers the area where the legal position of the debtor/firm.

Based on the provisions of the article above, the juridical requirements for a company to be declared bankrupt are as follows: There is debt, At least one of the debts is due, At least one of the debt can be billed, The existence of debtor, The existence of creditor, More than one creditor, Statement of bankruptcy is carried out by a special court called as "Commercial Court", Plea for bankruptcy statements are submitted by the authorized parties, Other juridical requirements specified in the Bankruptcy Law (Rochmawanto, 2015; Priscilla, 2020).

UUK-PKPU Article 2 section (1) regulates that creditors include concurrent creditors, creditors with special rights, and creditors with material guarantees. In this case: Concurrent creditor; Preferred Creditor, creditor with special rights according to Article 1139 and Article 1149 of the Civil Code (without losing the right granted to them to withhold material belonging to the debtor granted by law); Separatist creditor, creditor with material guarantees, in the form of pawning, mortgages, rights to harvest, mortgage rights, and fiduciary guarantees (without losing the right to sell and obtain repayment in advance from the debtor's material assets, which are materially guaranteed and sold).

Problems arise when a company's bankruptcy occurs, and all tax obligations and labour rights have not been fulfilled, or in other words the company has a tax debt and a fulfillment debt of labour rights (Jackson, 2001; Araujo et al., 2005). The provisions of Article 21 of Law Number 16 of 2000 concerning General Provisions and Tax Procedures as amended by Law Number 28 of 2007 (hereinafter referred to as the KUP Law) are in line with Article 1137 of the Civil Code regulates that county rights take precedence. Referring to these provisions, the state right to pay tax debt is placed as the first position, followed by separatist creditors. Tax debt is a special rule, because the Country through the Directorate General of Taxes has "advance rights" to carry out confiscation of taxpayer goods that make their assets or assets as guarantee for their debts. Related to the problem of fulfilling the labour rights, it has been regulated in Law Number 13 of 2003 concerning Manpower (hereinafter referred to as the Manpower Law). Article 95 section (4) of the Manpower Law states that: "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/labours are debts prioritized to payment". In other words the Manpower Law places wages and other labour rights as preferred creditors because they have the special rights granted by law. However, provisions which state that labour rights are higher than separatist creditors are not contained in the Manpower Law. That is, the position of labour rights under separatist creditors, so this is certainly contrary to the Law which also states that the collection of tax debt has the right to override other debts.

Verdict of the Constitutional Court of the Republic of Indonesia Number 67 / PUU-XI / 2013 in the verdict states that article 95 section (4) of the Manpower Law must be interpreted by: "payment of wages of workers/labours who are in debt take precedence over all types of creditors, including bills of separatist creditors, bill of rights the country, auction offices and public agencies established by the Government, while labour rights take precedence over all bills including bills of state rights, auction offices and public agencies established by the

government except bill of separatist creditors". The Constitutional Court gives different position on wages and other labour rights, wages are placed in a position that is more prominent than 'other labour rights'. This brought a change in the position of tax debt and labour rights as creditors with special right in bankruptcy cases. Based on the explanation above, the author is interested in conducting legal research to get explanation about the position of tax debt and labour right in bankruptcy.

Methods

The legal research method used in this research using normative research, the legal rules and legal principles used related to bankruptcy law, tax law and labour law will be a reference in describing the problem of the position of tax debt and labour right in bankruptcy cases. This research the problem approach used was the statute approach, the case approach and the conceptual approach.

The writer used 2 types of legal materials, namely primary and secondary legal materials. Primary legal material is legal material that is binding in the form of applicable laws and regulations and has to do with the title as well as problem of the study that to be discussed. In addition to primary legal materials there are also secondary legal materials, where secondary legal materials consist of the opinions of scholars in the literature books on law, particularly bankruptcy law, tax law and labour law, lecture notes, scientific works, articles from print media and internet whose substance is related to the problems that will be discussed in this thesis.

Results and Discussion

The provisions in Articles 1131 and 1132 of the Civil Code raise problems if the creditor does not have the same position but must be equalized. Subhan (2008) states as an example that if a creditor holding a material guarantee is equated with a creditor who does not hold a material guarantee, then that is an injustice. Since the existence of a guarantee agency is intended to provide legal protection for the guarantee holder. If in the end the legal position between the creditors of the guarantee holder is equated with the creditor who does not have a material guarantee, then the existence of a legal guarantee agency is no longer meaningful. So that injustice like this is given a way out with the principle of Structured Creditors.

In bankruptcy law, the definition of a creditor is regulated in Article 1 number 2 UUK-PKPU, namely a person who has a debt due to an agreement or Law that can be billed in court. In the formulation of Article 2 section (1) UUK-PKPU namely "Debtor who has two or more creditors" only mentioning one of the requirements for filing plea for bankruptcy is that there are two or more creditors, not mentioning the type of creditor. But in the explanation of Article 2 section (1) UUK-PKPU regulates that what is meant by creditors is either concurrent creditors, preferred creditors or separatist creditors. This means that bankruptcy classifies creditors into concurrent creditors, preferred creditors and separatist creditors, in contrast to the division of creditors in civil law.

In bankruptcy referred to as preferred creditors are creditors who, according to the Law, payment must take precedence to their receivables, such as privilege right holders, retention right holders, and so forth. While creditors who have material guarantee (guarantee right), such as holders of mortgage rights, mortgages, liens, fiduciary, etc., in bankruptcy law, are classified as separatist creditors. In the case of executing a debt guarantee, the separatist creditor can sell and take the proceeds of the sale of the debt guarantee as if bankruptcy did not occur. Even if it is estimated that the proceeds from the sale of the debt guarantee are insufficient for each of

his/her debts, the separatist creditor can request that the shortfall be calculated as a concurrent creditor.

Therefore, in relation to the guaranteed assets, the position of the separatist creditor is very high, higher than other privileged creditors (Articles 1139 and 1149 of the Civil Code). In other words, that the position of separatist creditor is the highest compared to other creditors, unless the law determines otherwise, based on Article 1134 section (2) of the Civil Code. There are laws that determine otherwise, namely laws that determine that there are creditors whose position is higher than the creditors of guarantee right holder are as follows: (1) Article 1149 section (1) of the Civil Code, regulates that case fees are solely due to the customer and settlement of an inheritance; (2) Law Number 16 of 2000 concerning General Provisions and Tax Procedures as amended by Law Number 28 of 2007, regulate that state right take precedence; (3) Law Number 13 of 2003 concerning Manpower regulates that bills which are the rights of workers are higher than ordinary bills including bills guaranteed by debt guarantees. The Civil Code in Article 1149 section (4) categorizes the work bill as a General Statutory Priority, so that it is placed under a separatist creditor.

Wages play an important role and the characteristic of a relationship called an employment relationship, it can even be said that wages are the main goal of a worker doing work for another person or legal agencies. On that basis, the government participates in handling this wage problem through various policies as outlined in the legislation. Republic of Indonesia Government Regulation Number 78 of 2015 concerning Wages states that wages are: Workers'/labours' right are received and expressed in form of money in return from entrepreneur or employers to workers/labours who are determined and paid according to a work agreement, engagement, or legislation, including benefits for workers/labours and their families for a job and/or services that have been or will be performed.

While Article 1 item 30 of the Manpower Law states that wages are "Workers'/labours' right received or expressed in the form of work money in return from entrepreneurs or employers for workers/labours who are determined or paid according to a work agreement, engagement or legislation, including benefits for workers/labours and their families for a job and/or service that has been or will be performed". The 1945 Constitution states that wages must meet a decent living for human. Thus the fulfillment of a decent wage for livelihoods and humanity is a concept of remuneration that is valid in Indonesia in a constitutional manner. Therefore the Manpower Law defines wages as the basic right of workers that must be fulfilled by employers.

The benefit/income received by workers is not always referred to as wages, because these benefit may not be included as a wage component. Article 5 Government Regulation of the Republic of Indonesia Number 78 of 2015 concerning Wages regulates that the wage component includes: (1) Wages without allowance; (2) Basic wages; is the basic benefit paid to workers according to the level or type of work, the amount of which is determined based on the agreement; (3) Fixed allowance; a regular payment relating to work that is given regularly to workers and their families paid together with basic wages such as child allowance, medical allowance, housing allowance, pregnancy allowance. Food allowance, transportation allowance can be included in the basic allowance as long as it is not related to the presence of workers, in other words these allowances are given without regard to the presence of workers and are given together with the payment of the basic wage; (4) Temporary allowance; a payment that is directly or indirectly related to the worker and is given indirectly to the worker and his family and is paid not at the same time as payment of the basic wage.

While those are not included in the wage component are: (1) Facilities; enjoyment in tangible/in-kind form due to special matters or to improve the welfare of workers, such as

shuttle vehicle facilities, free feeding, worship facilities, day care centers, cooperatives, canteens and the like; (2) Bonus; payments received by workers from the profits of the company or because workers have achieved more than normal production targets or because of increased productivity; (3) Religious Holiday allowance (THR), and other benefit sharing.

As benefit from the employer to the worker, the wages given in cash must be set in an agreement or legislation, and paid on the basis of an employment agreement between the employer and the worker, including allowance, both for the worker or his/her family. In addition to providing allowance referred to payment of wages or salaries every day or every month, the company also has a social security program, both mandatory and voluntary or based on the agreement of workers/labours and employers. Mandatory allowance, such as the social security program (Jamsostek) and the pension program. Non-mandatory allowance, such as the provision of health facilities, family welfare program, bonuses, vacation leave and others. The next labour right is severance pay. Severance pay according to the Manpower Law is a supporting instrument of workers when workers are terminated employment relationship (PHK). The Law regulates that the PHK occurred the employer is required to pay severance pay and/or long service award and compensation payment that should be received. Severance pay will be used by workers and their families to survive when workers no longer receive wages due to PHK. Components of wages and long of service are used as a basis for calculating severance pay.

The tax was not originally a levy, but a voluntary gift by the people to the king in maintaining the interests of the country, such as maintaining country security, providing public roads, paying employee salaries, and others. With the expansion of the tasks of the country, the country naturally requires quite a large cost. In connection with that, the tax payments that were voluntary turned into payments determined unilaterally by the country in the form of laws and can be forced. Law Number 16 of 2000 concerning General Provisions and Tax Procedures as amended by Law Number 28 of 2007 (hereinafter referred to as the KUP Law) Article 1 number 1 provides a definition of tax, namely: "Tax is a mandatory contribution to a country owed by a person or individual or entities that are forceful based on law, with no direct compensation and used for the country's purposes for the greatest prosperity of the people".

The PPSP Law Article 1 number 8 provides the definition that the tax debt is the 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. Prior rights are special rights owned by the country to the auction results of goods belonging to the tax guarantor to repay debts to creditors. Article 19 section (6) of the PPSP Law regulates that the prior right to a tax bill exceeds all other prior right, except for: Case costs are solely due to a penalty for auctioning movable and/or immovable goods, costs incurred to save the goods in question, case costs are solely due to the auction and settlement of an inheritance.

In addition, Article 21 of the KUP Law regulates prior right. Furthermore, in the elucidation of Article 21 section (1) the KUP Law regulates that "the position of the country as a preferred creditor who is declared to have prior right to the goods owned by the Taxpayer to be auctioned in public and payment to other creditors are settled after the tax debt has been paid off". In 2007, there was a change in the KUP Law, particularly Article 21 section (3a) regulates that in the case of Taxpayer is declared bankrupt, disbanded or liquidated, the curator, liquidator, or person or agency assigned to conduct a rebuttal is prohibited from distributing Taxpayer's assets in bankruptcy, disbanded or liquidation to shareholders or other creditors before using the assets to pay the Taxpayer's tax debt. This article emphasizes the prior right of tax debt.

Based on the provision of Article 1134 section (2) of the Civil Code that lien and mortgage in this case separatist creditors are higher than special right or preferred creditors except (in bold from the writer) in cases where the Law determines otherwise so that its position is located on top of separatist creditors. The exception is regulated in Article 39 section (2) UUK-PKPU which states that since the date of the verdict of a bankrupt statement is made, the wages owed before or after the verdict, the statement of bankruptcy is pronounced as debt of bankrupt assets. What are meant by bankruptcy debt are all costs incurred in managing the interest of creditors which must be fulfilled before their interest or other creditors must be fulfilled. Examples of bankruptcy debt include curator fee, employee wage. This means that labour wages are not merely preferred creditors who precede other concurrent creditors, but the payment of labour wages is taken from the bankruptcy debt of the bank which precedes the separatist creditor.

The right of workers/labours in the Manpower Law Article 95 section (4) is divided into 2, namely the right of wages that must be paid in advance of the separatist creditor and other rights arising from the employment relationship and given privileges by the Laws. Thus, the right of workers/labours is not fully included in the preferred creditor because there are those who enter bankruptcy such as the right to a salary equivalent to the cost of the court, as regulated in UUK-PKPU Article 39 section (2). In the next sequence based on laws regulation are bill of State Right, auction offices, and Public Agencies established by the Government, then labour wages. The Constitutional Court considered that the legal basis for the bill rights of each creditor is the same, except for the state bill right. The legal basis for separatist creditors and for workers/labours is the same, that is, agreement made with debtors, while regarding the legal basis of state obligations is a laws regulation. Although between separatist creditors and workers/labours, the legal basis is the same, namely agreements, when viewed from other aspects, namely aspect of legal subject that makes agreements, objects, and risks, there are significant differences between the two.

Still in its consideration, the Constitutional Court argue that in the aspect of legal subjects, pawn agreements, mortgages and fiduciary and other dependency agreements, are agreements made by legal subjects namely entrepreneurs and financiers, who are socially economically the same parties constructed. On the contrary, an employment agreement is an agreement made by different legal subjects, namely employers and workers/labours who are socially economically unequal, but one party, namely employers, are stronger and higher, even though between employers and workers/labours need each other. According to the Court, because workers/labours are socially economically lower and weak, the Law must provide guarantees of protection for the fulfillment of the rights of the workers/labours. With the verdict of the Constitutional Court Number 67 / PUU-XI / 2013, and referring to Article 1134 section (2) of the Civil Code which regulates that preferred creditors are able to defeat separatist creditors, bringing changes to the position of wages and workers/labour right, namely the payment is prioritized for all types of creditors.

Related to the issuance of the verdict of Constitutional Court that the procedural law of the Constitutional Court regulated in Law Number 24 of 2003 as amended by Law Number 8 of 2011 concerning the Constitutional Court and Constitutional Court Regulation Number: 06 / PMK / 2005 concerning Guidelines for In The judicial review of the Law regulating the verdict of the Constitutional Court does not apply retroactively (retroactive). This is also related to the legal principle of *Res Judicata Pro Veritate Habetur* which means that the judge's verdict must be considered correct. If a false witness is filed and the judge decides his case based on the false witness, the verdict is not based on true testimony, but must be considered true until obtaining permanent legal force or being decided by a higher court. Then the cases that occurred before the issuance of the verdict of Constitutional Court cannot be changed, and for

cases that occur after the issuance of the Verdict of Constitutional Court Number 67 / PUU-XI / 2013 referring to the verdict.

UUK-PKPU Article 24 section (1) regulates that, when a debtor is declared bankrupt based on a court verdict, since the date of the verdict of the bankrupt statement is declared by the debtor for the sake of law loses his right to control and manage his wealth which is included in bankruptcy assets. To manage and settle the bankruptcy assets, the commercial court appoints a curator in addition to at the same time appoint a supervisory judge, as regulated in Article 15 of the UUK-PKPU. In the process of managing and settling bankrupt assets, there is a meeting stage for verifying accounts receivable (verification). Verifying (verification) of receivables/debts is one of the important activities in the bankruptcy process. Because of the verifying of accounts receivable, later it will be determined consideration and the order of rights of each creditor.

In the case of a rebuttal to the receivables, and the two parties cannot be reconciled, a procedure called Renvooi is carried out. Renvooi is a rebuttal returned to a panel of commercial judges who handed down a bankruptcy verdict, so there is no need to hold a separate lawsuit, where the supervisory judge appoints parties to be present at the Commercial Court meeting.

The Renvooi procedure is regulated in Article 127 section (1) of the UUK-PKPU which regulates that "in the case of a rebuttal while the supervisory judge cannot reconcile the two parties, even though the rebuttal has been submitted to the court, the supervisory judge orders both parties to settle the rebuttal in the court". This article is commonly used in practice to determine who the debtor and creditor are in terms of debts. However, when it is known in the case of debts whose debtors and creditors are, in the bankruptcy verdict, the Article is used to rebuttal the disputed list of receivables that have been determined in the receivables verifying meeting and examined in the Commercial Court which verdicts the bankrupt debtor so that it does not take up time too long. So for workers/labours who have wage and severance rights that have not been paid by the bankrupt debtor, the worker can file for a legal action in the renvooi procedure that can be represented by an advocate. In addition to filing a lawsuit with the Commercial Court, workers/labours can also file an cassation or review the court's verdict on the list of the distribution of bankrupt assets which are deemed not in accordance with the laws and regulation to obtain labour of their rights.

Conclusion

The right of workers/labours in the Manpower Law Article 95 section (4) is divided into 2, namely the right of wages that must be paid in advance of the separatist creditor and other rights arising from the employment relationship and given privileges by the Law. Thus, the right of workers/labours is not fully included in the preferred creditor because there are those who enter bankruptcy such as their right to pay equal to court cost. Wages are workers' right that must be paid after the worker fulfils his obligation to do a job. While severance pay/other rights are privileges right by laws and regulation, so bankrupt debtors through curators must prioritize payment of workers' wages before payment of separatist creditors while severance pay or other rights are paid by bankrupt debtors through the curator by paying off separatist creditors in advance. With the Verdict of the Constitutional Court of the Republic of Indonesia Number 67 / PUU-XI / 2013, brought changes to the position of wages and workers/labourer rights, namely prioritizing payment of all types of creditors. This verdict strengthens the position of labour rights whose payments take precedence over tax debts (state rights) in bankruptcy. Legal remedy that can be submitted by workers/labours is the renvooi procedure as a basis for payment of workers' receivables that are not in accordance with the receivables verifying list that should be paid by the bankrupt debtor.

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