



Economic and Legal Implications of Tax Debt Preference on Tax Obligations in Indonesia

Rianmahardhika Sahid Budiharseno ^{1,*} and Yeheskiel Minggu Tiranda ²

¹ Faculty of Law, Dong-A University, Busan, South Korea

² Direktorat Jenderal Pajak, Kementerian Keuangan Republik Indonesia

* Corresponding author: rsbudiharseno.donga@gmail.com

Abstract. This study aims to investigate the economic and legal implications of tax debt on tax obligations in Indonesia. The research was conducted by taking two legal sources relevant to this matter: Law on General Provisions and Tax Procedures (*Undang-Undang Ketentuan Umum dan Tata Cara Perpajakan/KUP*) and Tax Collection with Forced Letter (*Penagihan Pajak Dengan Surat Paksa/PPSP*). The basic considerations are that there are many legal institutions in these rules which are characterized by the character of the principle of preference as a legal principle. The research was conducted quantitatively by using a normative and juridical approach. The data was analyzed by using a descriptive approach. Based on Article 21 of the KUP Law confirms that the right to advance only concerns the law of execution of tax debts through the auction of the property of the tax guarantor. Based on the KUP Law, which categorizes preemptive rights in the part of the execution of tax debts, the resulting legal implications involve the legal force of prior rights over other rights in the execution (auction) of the property of the tax guarantor. The KUP Law and the PPSP Law implicitly adhere to a broader understanding of prior rights than just the law for the execution of tax debts, resulting in the state's position of preference beginning when the tax is declared payable by law.

Keywords: Tax Debt Preference, Tax Obligations, Law on General Provisions of Taxation (UU KUP), Law on Collection of Taxes by Forced Letters (PPSP Law)



Abstrak. Penelitian ini bertujuan untuk menyelidiki implikasi ekonomi dan hukum dari utang pajak terhadap kewajiban perpajakan di Indonesia. Penelitian dilakukan dengan mengambil dua sumber hukum yang relevan dengan hal tersebut, yaitu Undang-Undang Ketentuan Umum dan Tata Cara Perpajakan (UU KUP) dan Penagihan Pajak dengan Surat Paksa/PPSP). Dasar pertimbangannya adalah banyak pranata hukum dalam aturan-aturan tersebut yang dicirikan oleh sifat asas preferensi sebagai asas hukum. Penelitian dilakukan secara kuantitatif dengan menggunakan pendekatan normatif dan yuridis. Data dianalisis dengan menggunakan pendekatan deskriptif. Berdasarkan Pasal 21 UU KUP yang menegaskan bahwa hak uang muka hanya menyangkut hukum pelunasan utang pajak melalui pelelangan harta benda penanggung pajak. Berdasarkan UU KUP yang mengkategorikan hak mendabului dalam bagian dari pelaksanaan utang pajak, maka implikasi hukum yang ditimbulkannya menyangkut kekuatan hukum hak mendabului atas hak lainnya dalam pelaksanaan (pelelangan) harta benda penanggung pajak. UU KUP dan UU PPSP secara implisit menganut pengertian yang lebih luas tentang hak-hak yang didabulkan dari pada sekedar undang-undang pelaksanaan utang pajak, sehingga mengakibatkan negara berada pada posisi preferensi sejak pajak dinyatakan terutang oleh undang-undang.

Kata kunci: Preferensi Utang Pajak, Kewajiban Perpajakan, Undang-Undang Ketentuan Umum Perpajakan (UU KUP), Undang-Undang Penagihan Pajak dengan Surat Paksa (UU PPSP)

1. Introduction

Over time, government programs in national development have increased yearly. National development is an activity that is carried out continuously and continuously in order to improve people's welfare.¹ The development of national development requires a large amount of money. With this increase, the funds needed will also increase. Cooperation between the government and the community is needed to realize this national development. The state is required to provide the best service so that the community plays an active role in carrying out tax activities. Taxes are the highest income for the state. Increasing public awareness of taxpayers will have a positive impact on national development. If the awareness of the taxpayer is still low, then the state's income will decrease and can make the state borrow some funds (indebted) to carry out national development.² The state is also obliged to meet the needs of taxpayers by carrying out development using tax funds that taxpayers have paid.

For countries in the world, especially Indonesia, taxes are an important element in supporting the state revenue budget.³ Therefore, the Indonesian government pays great attention to the tax sector. In Article 1 Paragraph 1 of Law Number 28 of 2007, it is stated that taxes are mandatory contributions to the state owed by individuals or entities that are coercive by law by not receiving direct compensation and used for the benefit of the state for the greatest possible prosperity. Income from the tax sector is a sign of success for the implementation of national development. In addition, taxes also greatly affect the operational activities of the state both domestically and abroad.⁴ As already stated, based on Article 21 of Law on General Provisions and Tax Procedures (*Undang-Undang Ketentuan Umum dan*

¹ Rosita Desiati. "Pemberdayaan masyarakat melalui pengelolaan program desa wisata." *Diklus* 17, no. 1 (2013).

² Ovi Itsnaini Ulynnuha, and Erma Setiawati. *Analisis Faktor-Faktor yang Mempengaruhi Kepatuhan Wajib Pajak dalam Memenuhi Kewajibannya (Studi Empiris Pada Wajib Pajak Orang Pribadi di KPP Pratama Surakarta)*. Undergraduate thesis., Universitas Muhammadiyah Surakarta, 2018.

³ Agus Iwan Kusuma. "Pengampunan pajak (tax amnesty) sebagai upaya optimalisasi fungsi pajak." *Inovasi* 12, no. 2 (2016): 270-280.

⁴ Dewi Kusuma Wardani, and Erma Wati. "Pengaruh sosialisasi perpajakan terhadap kepatuhan wajib pajak dengan pengetahuan perpajakan sebagai variabel intervening (Studi pada wajib pajak orang pribadi di KPP Pratama Kebumen)." *Nominal: Barometer Riset Akuntansi Dan Manajemen* 7, no. 1 (2018): 33-54.

Tata Cara Perpajakan/KUP Law), which emphasizes that prior rights only concern the law of executing tax debts through auctions of the assets of the tax bearer, the legal implications for giving such meaning will be explained. However, considering that based on legal regulations regarding procedures for fulfilling taxpayer tax obligations contained in the KUP Law and Tax Collection with Forced Letter (*Penagihan Pajak Dengan Surat Paksa*/PPSP Law) where many legal institutions in these regulations are characterized by the principle of preference as a legal principle, the implications of preferences will also be explained apart from the implications in the field of execution of tax debts. Based on these two meanings, the systematic implications of preemptive rights will include their legal strength and scope.⁵ Furthermore, tax debts arise specifically considering that the state as a creditor cannot choose freely who will be the debtor as in civil law. It is due to the emergence of the tax debt due to the law. The Forced Letter is a means to enforce the state's preferential rights over tax debts. The model for regulating state preference rights over tax debt in Indonesia raises legal implications that, if examined closely, can minimize the emergence of delinquent taxpayers. Preferences also affect the material tax law, so with such a broad scope of meaning, character as a preferred creditor does not occur only when active collection begins. With the PPSP procedure, the tax rights and obligations are declared attached until the end of the tax rights and obligations. Such interpretation also raises the problem that the application of state preference rights based on tax provisions in Indonesia can cause legal disputes because these tax provisions will conflict with legal rules other than tax provisions.

2. Discussion

2.1. Implications on the Power of Preemptive Right Law

Based on the provisions in the UU KUP which classify preemptive rights in the execution of tax debts, the legal implications that arise relate to the legal force of preemptive rights over other rights in the implementation of the execution (auction) of the assets of the tax bearer. Regarding this matter, the affirmation in Article 21 of the KUP Law quite clearly emphasizes the position of the state's

⁵ The legal implications of such an arrangement are also explained by Rochmat Soemitro. *Asas dan Dasar Perpajakan 2*, Refika Aditama, Bandung, 1998, p. 111-113.

preference in the execution of the assets of the taxpayer, namely that the prior rights possessed by the state exceed all other prior rights. This assertion parallels a conclusion that preferences arising from legal relations between the state as a creditor and taxpayers as debtors take precedence over preferences born from legal relations between taxpayers as debtors and their transaction partners as creditors. The legal issue surrounding this is whether the bond between the state and the taxpayer binds parties outside the engagement. Or vice versa, is the state bound by the guarantee agreement made by the taxpayer with his creditors in debts? If the binding force of an engagement is returned to the principles of *pacta sunt servanda* and *pacta tertiis nec nocent nec prosunt* then placing one of these legal relationships under the subordination of other legal relationships is not wise. Moreover, the two legal relations referred to move from the same point, namely Article 1233 BW.

The condition of dealing with two legal relations like that is very vulnerable to causing disputes over rights between the state as the ruler and the people as business actors. This situation is not unnoticed by the legislators because in the event that such a situation arises, according to the will of the KUP Lawmakers, the right to preempt the state is only defeated by: court fees which are only caused by a sentence to auction off movable and/or immovable property, costs which have been issued to save the said item and/or court costs which are only caused by the auction and settlement of an inheritance.⁶

Even though the provisions in the above legal rules are clear enough to regulate which issues take precedence, the conditions in which ruler figures face people figures will continue to color the business world along with the dynamics of legal interaction among community members. In such conditions, it becomes a question whether every legal institution that presents a ruling figure must always be more dominant than the figure of the people. Regarding the position of each legal relationship, it should refer to the legal rules that underlie the birth of the legal relationship. Referring to Article 1233 BW, the basis for the emergence of a legal relationship is an engagement. The engagement can arise because of the law or because of an agreement or agreement. The legal relationship that represents the figure of the people is present through an agreement made by the parties, and according to Article 1338 BW such a legal relationship is a law between them. Thus,

⁶ Article 21 paragraph (3) Law No. 28 of 2007 concerning General Provisions and Tax Procedures

legal relations based on laws and those based on agreements have the same position.

What is the character of the relationship between state law and the people from the point of view of tax law based on state preferences as mentioned above? The statement of the KUP Law that the state has prior rights over all other prior rights shows that the tax authorities claim state rights are different from other privileges even though the qualifications of both rights are that they both have preferences. This claim is due to the presence of a power figure in the state in tax collection. For this reason, it is necessary to explain the character of the ruler in the legal relationship between the state and the people as taxpayers. In this regard, it is important to state the meaning of the word 'law' itself which is inherent in this legal relationship, which according to Apeldoorn⁷ is the power that regulates and compels. From here, two legal meanings are put forward, namely, firstly as an objective rule or law because it applies to the general public and secondly, to state the relationship regulated by objective law based on which one has rights and the other has obligations, so it is also commonly called subjective law because it is associated with a certain person. .

The legal relationship between the state and the people in paying taxes is a relationship based on the law so that the law as law will include the two legal meanings above. The presence of the state in the above legal relationship which is based on the law places the state bound by the rights and obligations that must be carried out. It's just that the state is not free to determine with whom he will give rise to these rights and obligations unless required by law, so that also means that these rights and obligations can be passed on by the state to anyone as long as they meet the requirements to be taxed. The latter is a feature of the state as a tax officer.

The power of the state as the tax authority as explained in Chapter II in the context of Indonesia is part of the power of the state government, so in that sense the power of the state to collect taxes is exercised by the government⁸. So here the government is the executor of state functions. The nature of the state legal

⁷ L. J. Van Apeldoorn. *Pengantar Ilmu Hukum*. Oetarid Sadino, trans Jakarta: Pradnya Paramita, 1993., p. 6

⁸ Although the government is the executor of state functions, so its use is often interchanged, but etymologically the two are not the same. The same thing was also revealed by Yohanes Sogar Simamora, *Prinsip Hukum Kontrak dalam Pengadaan Barang dan Jasa oleh Pemerintah*, PhD diss., Universitas Airlangga, 2005., p. 60

relationship carried out by the government and the taxpayer is then determined by the qualifications of the government when carrying out legal actions to collect taxes. Philipus M. Hadjon, et al⁹ emphasized that in acting there are 2 possible roles of the government, namely: as actors of public law (public actor) or as perpetrators of civil law (civil actor). As a public actor, the government has special rights and powers to use and exercise public power (public authority, *openbaar gezag*).

Based on this authority, the government unilaterally stipulates various regulations and decisions that bind citizens and lay down certain rights and obligations, and therefore cause legal consequences for citizens. On the other hand, as a civil actor, the government carries out various civil legal actions (*privaatrechtelijke handeling*) in its quality as a legal entity such as buying and selling agreements, leasing and others. From these two explanations, in relation to state law and taxpayers, the state represented by the government is present in qualification as a public actor. Thus, the affirmation of the meaning of pre-emptive rights in the KUP Law has implications for the affirmation of the position of the legal relationship between the state and the people which is more than the legal relationship made by the taxpayer with other parties.

However, the implementation of the role of the state as a public actor is based on the law in order to create a harmonious legal relationship between the state and taxpayers and all citizens. The arbitrariness that arises as an implication of state preferences will only lead to inconsistency in which the people can take legal remedies through available legal channels, even though there is an opinion that the state cannot be sued for the exercise of its power. This opinion is still ongoing in line with the issue of competence between the authorities of the private and public courts.

In the realm of theory, the debate about whether the state can be sued or not (in front of a private court), Kranenburg¹⁰, as expressed by Philipus M. Hadjon¹¹ describes seven concepts: First, that the state was born as a decision of the will that was realized by power so that there was no state accountability; Second, the concept that distinguishes the state as a ruler and as a tax officer. As a ruler,

⁹ Hadjon M. Philipus., dkk. *Pengantar Hukum Administrasi Indonesia*. Yogyakarta: Gajah Mada University Press, 2002., p. 166

¹⁰ Kranenburg's view is expressed in a situation where the settlement of cases of legal protection for the people in the Netherlands is resolved through private courts or public courts

¹¹ Hadjon M. Philipus, *op.cit.*, p. 102-103

according to the first concept, the state cannot be sued on the contrary as a state tax officer can be sued. On this basis Oppenheim expresses the criteria whether in a legal relationship, the parties are general powers or legal relations based on the equality of the parties. Third, the concept addresses the criteria for the nature of rights, namely whether a right is protected by public or private law. Fourth, the concept that addresses the legal interests that have been violated. This concept exemplifies a person who bathes in a municipal swimming pool and ends up breaking a bone. The hypothesis put forward is that with respect to losses, the lawsuit is based not because it does not fulfill the obligations imposed by the ruler but because the action does not take into account the caution required; Fifth, the concept based on unlawful acts (*onrechtmatigedaad*) as the basis for suing the state. So it doesn't matter whether public or civil law has been violated; Sixth, the concept emphasizes the function and the implementation of the function. The function cannot be sued, but its implementation, which results in losses, can be sued and seventh, a concept that presents a basic assumption that the state and its instruments, both from the aspect of civil and public law, are obliged in their actions to pay attention to normal human behavior. Justice seekers can demand from the state and its tools that they behave normally. Any behavior that changes normal behavior and causes harm can be sued.

In line with the developments experienced by the concept of legal protection in the Netherlands and Indonesia, this concept is no longer relevant. According to Philipus M. Hadjon, as confirmed by Gunarto Suhardi,¹² the rule of law principle currently adopted has the following consequences:

1. Any power in the state must be based on law;
2. Availability and implementation of legal protection against the use of authority;
3. The principle of accountability for every use of authority

Based on that, it can be concluded that the exercise of the state's preferential rights over tax debt is a form of state authority as a tax authority which in Kranenburg's understanding as well as in the context of the *rechtstaat* and the rule of law, can be sued, even if it has the powers described above.

¹² Gunarto Suhardi. *Kedudukan dan Wewenang Lembaga Pengurusan Piutang Negara dalam Perspektif Hukum Administrasi*. Doctoral Disertation, Graduate program, Universitas Airlangga, Surabaya (2000)., p. 97

2.2. Implications on the Scope of Prior Rights

Whereas the KUP Law and PPSP Law implicitly adhere to a broader understanding of prior rights than just the law of execution of tax debts, there is a consequence that the state's position of preference begins when the tax is declared payable by the law. Thus, the pre-emptive right is broader in scope than just the tax debt arising from the stipulation (see the meaning of debt in PPSP). Such an understanding should be in parallel with the editorial of the new KUP Law (UU KUP Year 2007) which changed the editorial of the old version of the KUP Law from pre-emptive rights on tax bills to pre-emptive rights on tax debts.

However, it turns out that the meaning of tax debt and tax bill is synonymous, that is, it still refers to the scope of prior rights only over tax debt that arises as a result of the stipulation process. Nevertheless, the search was carried out on the legal norms contained in the KUP and PPSP Laws, there were several legal institutions that showed the character of the state's preference other than the auction legal institutions for the assets of the tax bearer. This is possible considering that in the tax preference principle the character of power is more dominated (as taxes are contributions that can be forced). It should be with this character, efforts to collect taxes through legal processes and good collection administration as early as possible can prevent executions that lead to the application of preemptive rights that are not effective.

Regarding this matter, Leon Yudkin¹³ stated the importance of presenting a legal structure to collect tax effectively. There are two effective actions that can be taken in tax collection, namely the application of the upfront payment model with various variations and law enforcement in tax collection through what he calls two approaches to the process of collection, the administrative and the judicial. For the administrative approach, it is revealed that administrative collection enforcement encompasses the range of actions which the tax administration can take without any prior judicial authorization in order to effect the collection of any out standing tax liability¹⁴. The benefits of this approach are:

The powers given the tax administration are the broadest possible (subject to the protection of taxpayers' right), and they are complete, so that at no point need this organization operate with or through agencies outside its

¹³ Leon Yudkin. *A Legal Structure For Effective Income Tax Administration*. International Tax Program, Harvard Law School, 1971., p. 32-59

¹⁴ Ibid., p. 42

organizational structure. By using this powers, the administration can develop efficient means for accomplishing its voluminous and often difficult collection duties¹⁵.

Dalam hal pendekatan administratif tersebut tidak terlaksana dengan efektif maka dilakukan pendekatan yudisial. Pendekatan yudisial merujuk pada penyelesaian hukum melalui proses peradilan. Hal ini disimpulkan dari penegasan bahwa : even if administrative collection procedures are provided wherever they are reasonably possible, ceratain areas will still be left in which the intervention of the courts will be necessary¹⁶. The judicial approach is a settlement concerning preference rights disputes related to other creditors.

The solution model proposed above shows a broad escalation of the character of the power attached to the state's preference for the tax debt. As a legal principle that supports legal norms in various tax regulations, the implications of the principle of preference are very broad, and specifically in relation to the implications for the procedures for fulfilling tax obligations will be discussed below.

2.2.1. Implications Related to the Principles of Law as the Basis for the Incursion of Tax Debt

Promises are debts. This is a phrase that we often hear in our daily life. The scope of the debt is so wide that even the promise is already in debt. In the legal context, especially civil law, debt implies an obligation for one party to perform an achievement or not to do something which reduces or violates the rights of the other party. With this meaning, civil law adheres to the notion of debt in a broad sense and in a narrow sense. In a broad sense, debt is everything that must be done by the obligated as a consequence of the engagement, for example, delivering goods, paying the price of goods, doing certain jobs, and so on. In a narrow sense, debt is an obligation that arises as a result of a special engagement, namely accounts

¹⁵ *Ibid.*, p. 43

¹⁶ *Ibid.*, p 50

payable (*bijzondere overeenkomst, benoemde overeenkomst*). In this agreement the debtor is obliged to repay the amount of money he borrowed from the creditor.¹⁷

In the framework of the concept of debt and receivables as mentioned above, tax debt is analogous to debt in a narrow sense which requires taxpayers as debtors to pay a certain amount of money to the state treasury as creditors. Likewise, the tax debt arises specifically considering that the state as a creditor cannot choose freely who will be the debtor as stipulated in civil law. This is due to the emergence of tax debt due to law. This is where the difference between the concept of tax debt and civil debt begins. He is different because when debt arises, which presents a state figure, tax debt has a preference. Some of the unique characteristics of tax debt that appear as a consequence of the nature of tax debt preferences can be identified in several stages of fulfilling tax obligations, namely: when rights and obligations arise, determining who owes taxes and how to fulfill rights and obligations. With these characteristics, the tax payable is different from other accounts payable.

2.2.2. Implications for Collection of Taxes by Forced Letters

The main function of the tax system is the collection of state revenues in sufficient, stable, elastic and sustainable amounts as stated by Sylvia A. Madeo et al.¹⁸ anything will always rely on taxpayer compliance.

As a country that adheres to a self-assessment taxation system as reflected in its tax provisions, the problem of taxpayer compliance is also experienced in Indonesia, given that the self-assessment system requires high voluntary compliance.

In general, developing countries such as Indonesia experience compliance problems which are motivated by the same factor, namely the sharp difference between rich and poor layers of society. The poor do not deserve to be taxed, while the rich are not easy to tax because apart from being politically influential, there is also no system that can make it easier to localize tax subjects and check the correctness of the completeness of tax objects, which is constrained by the absence

¹⁷ Endang S Ramadhanny. *Doktrin Exceptio Non Adimpleti Contractus Sebagai Pembelaan Debitor Untuk Tidak Dinyatakan Pailit (Studi Kasus Telkomsel)*. Undergraduate thesis., Universitas Islam Indonesia, 2015.

¹⁸ Gunadi, *Problematisasi Peningkatan Tax Ratio*, Harian Bisnis Indonesia, January 7, 2008

of a database and data access.¹⁹ The absence of the system in question is inversely proportional to the fertile informal economy sector with an underground mode and a cash economy which is generally difficult to tax (hard-to-tax society)²⁰.

The description of the condition of the tax administration system above should be part of the phenomenon of the growing understanding that arises and develops among the public that taxes are purely an economic problem, so that in this understanding taxes are an element of cost that will reduce the disposable income of taxpayers. Because it reduces disposable income, taxes for business actors must be efficient, and to make taxes efficient the only two choices are avoidance or tax evasion. The problems mentioned above are the core issues that will always be experienced by tax administration. More concretely, compliance issues are identified as compliance gaps²¹, namely the gap between the tax that should be paid and the realization of the tax paid by the public. Successful tax collection is only a result of lowering the compliance gap. This means that the more obedient the people pay taxes, the lower the compliance gap and the more successful the tax collection will be. Representations of non-compliance (and which must be addressed) broadly include the presence of unregistered taxpayers, the existence of taxpayers who do not submit their SPT (Stop Filling Taxpayers), the presence of tax smugglers (tax evaders), and the existence of tax arrears (delinquent taxpayers). Based on the above conditions, Tax Collection with a Letter of Enforcement is a means to enforce the state's preferential rights over tax debts.

¹⁹ *Ibid.*

²⁰ The growth of underground economy activities accompanied by cash transactions among developing communities where the technological systems of developing countries have not been able to anticipate this is one of the factors that causes the still low tax ratio in developing countries. This was stated by Ikhsan and Solomon as stated by Gunadi in the *Problems of Increasing Tax Ratio*. In addition to these factors, other factors that affect the tax ratio are: low income per capita of the community, inadequate availability and functioning of economic facilities and infrastructure in providing services to the community, not yet advanced economy which is characterized by underground activities, centralized and not yet evenly distributed economic activity so that it is less developed potential for taxation, and the pattern of public expenditure which generally focuses on meeting basic needs which cannot be taxed and even must be subsidized.

²¹ Richard Miller Bird, and Milka Casanegra de Jantscher, eds. *Improving tax administration in developing countries*. Vol. 19. Washington: International Monetary Fund, 1992., hal 15

2.2.3. Implications for Immediate and Simultaneous Billing

The various stages of Collecting Taxes with Forced Letters as described above are stages that are carried out under normal circumstances. In the event that an event or situation outside the normal event occurs and to prevent the possibility of something happening that will result in the tax payable being uncollectible, the effort that can be taken is to apply a collection agency immediately and all at once. The reasons for implementing this institution are regulated in Article 20 of the KUP Law in conjunction with Article 6 paragraph (1) of the PPSP Law, namely:

1. The tax bearer will leave Indonesia in perpetuity or intends to do so;
2. The tax bearer transfers the goods owned or controlled in order to stop or reduce the company's activities, or the work he/she does in Indonesia;
3. There are signs that the tax bearer will dissolve his business entity or intend to do so'
4. The business entity will be dissolved by the state; or
5. There is a confiscation of the tax bearer's goods by a third party or there are signs of bankruptcy.

Then in the explanatory memory of Article 6 paragraph (1) of the KUP Law it is explained that the meaning immediately means that the collection action taken is no longer waiting for the payment due date schedule, while at the same time it means that the billing includes all tax debts of all types of taxes, Tax Period and Tax Year.

It is important to examine further about the reason for this instant billing because the implications also involve other legal dimensions. this can be seen in the assertion that due to signs of bankruptcy, the execution can be carried out.

Signs of bankruptcy or other signs that describe changes in the company's economic capacity are more likely to contain meanings of economic content. Therefore, the various reasons for instant billing above are more likely due to economic reasons for the company's condition. There are several signs that characterize the difficulty referred to, namely²²:

1. Economic failure, which means that the company's revenue cannot cover the total cost, including the cost of capital. Businesses experiencing this phase can continue their operations as long as the creditor is willing to provide additional

²² Loaded in M. Hadi Shubhan. "Prinsip Hukum Kepailitan di Indonesia." PhD diss., Universitas Airlangga, 2006., p. 65-66

capital and the owner can receive a rate of return below the market interest rate.

2. Business failures. This term was used by Dun & Bradstreet who pioneered failure statistics, which defines businesses that stop their operations with consequences for creditors. Thus a business can be classified as a failure even though it does not normally go through bankruptcy. Also a business can stop / close its business but not considered as a failure.
3. Technical insolvency. The company is in this stage if it does not meet its maturing obligations. This technical insolvency may indicate a temporary shortage where at one time the company can raise money to fulfill its obligations and stay alive. On the other hand, if technical insolvency is an early symptom of economic failure, then this is a sign of a financial disaster.
4. Insolvency in bankruptcy. A company is in this condition when the book value of total liabilities exceeds the market value of the company's assets. This condition is a more serious condition than technical insolvency, because in general it is a sign of economic failure leading to the liquidation of a business.
5. Legal bankruptcy, the company's bankruptcy condition is based on a bankruptcy decision handed down by the court in accordance with the law because it is experiencing the stages of financial difficulties mentioned above.

The condition of economic difficulties referred to above is a condition that is impossible for a company to avoid because it is part of its life cycle. In M. Hadi Shubhan it is stated that a company also has a corporate life cycle, which means that if a company is seen as an organization that has life (living organism), it is not only a profit maker but at the same time cannot escape from what known as the life cycle phenomenon. As a legal subject, a limited liability company will be analogous to a human legal subject, that is, it will go through a process: birth, growth, maturity and eventually death. With the life cycle as described above, the condition of a business setback which is in its most difficult stage can result in bankruptcy is a condition that should be predictable from the start. Thus the anticipation of such conditions has been prepared in advance through various legal steps, including steps in tax law through the collection agency immediately and at the same time as above.

Now the problem is that the possible signs of bankruptcy required by the law in the PPSP Law are only factual signs or are legal signs required. If the signs of bankruptcy in question are signs of factual bankruptcy, it can be concluded that

the tax law rules actually have sufficient deterrence to avoid the tax debt settlement process through bankruptcy so that the problem of conflicting tax preferences with material rights in bankruptcy does not need to occur. In this case, the legal norms that determine the existence of a tax guarantor in bankruptcy as referred to in Article 1 number 28 of the KUP Law in conjunction with Article 1 number 3 of the PPSP Law become the norm that has no area of application. This will also have an impact on the scope and strength of the right to advance in Article 21 of the UU KUP which states that the right to advance is when the tax payer's property is auctioned, because the auction in question is not an auction as a follow-up to bankruptcy considering that the tax debt execution process has been carried out by the tax authorities through collection. instantaneously and at the same time.

Meanwhile, if the signs of bankruptcy are translated as more than factual signs but include juridical signs of bankruptcy, it is necessary to pay attention to that a bankruptcy legal process brings legal consequences to the binding of the bankruptcy code on all legal actions of creditors, including legal actions that have been and have been taken. will be carried out by the tax authorities, so that the application of this norm has the potential to conflict with the bankruptcy law.

2.2.4. Implications of Preference Rights in International Taxation

The character of the right of precedence is national. With this character, enforcement in fulfilling tax obligations collides with jurisdictional limitations. Implementation of tax jurisdiction in fact is only possible for subjects and objects that are within the limits of Indonesian sovereignty. Beyond that, the implementation of an administrative system which includes tax determination, billing and supervision by the Indonesian national tax authority will be difficult to implement.

Meanwhile, economically, the development of world business transactions is increasingly leading to a situation of the absence of economic boundaries between nations, which opens up opportunities for the possibility of fiscal linkages between countries. The intended fiscal link will have implications for taxation rights which are possible for several reasons, namely²³:

1. Because in the territory of a country there is a source of income for someone (who is domiciled in another country).

²³ R. Santoso Brotodiharjo. *Ilmu Hukum Pajak*. Bandung: Refika Aditama, 2013., p. 227

2. Because in the territory of a country there is a (part of) wealth of a person (who is domiciled in another country).
3. Because the rights to a part of the wealth in a country (owned by someone who is domiciled in another country) can only be used in the country where the wealth is located.
4. Because wealth is consumed (or used otherwise) in a country (where a person resides), that is, the country is domiciled.

In its development, the tax potential reflected in the above fiscal linkage is very closely related to the tax jurisdiction, as previously disclosed. Meanwhile, the tax jurisdiction collides with the principles of international public law as stated by Knechtle²⁴ that the scope of application of administrative law including the tax law of a country is only related to its territory. In relation to this principle, every country that carries out tax collection administration activities outside its territory is made possible through bilateral or multilateral agreements to avoid conflicts. Factually in terms of billing, it is difficult to collect domestic taxes abroad. Such difficulty in itself also concerns the application of preferential rights law, especially if preference rights will be applied to domestic taxpayers affiliated abroad where the affiliates abroad are temporarily in bankruptcy proceedings handled by foreign courts or foreign arbitration. In addition to the above difficulties, the administrative action of confirming and proving tax facts based on national law is very constrained by the national character of tax law rules. From the descriptions of the efforts that can be made by the tax authorities above, it can be concluded that the actual tax provisions are sufficient to anticipate the emergence of tax arrears that may not be collected either due to the condition of the company as a taxpayer or tax guarantor which does not allow him to be held accountable. Besides that, the problem of paying off tax debts will not arise if the principles of pay as you earn and pay as you go in tax collection are carried out consistently. The implementation of tax determination through tax audits, which turned out to be not as simple as thought, both in terms of time and procedures, in fact contributed to the problems surrounding tax collection, because:

1. The existence of a tax assessment that is not in accordance with the circumstances of the taxpayer will clearly increase the amount of tax arrears

²⁴ Gunarto Suhardi., *op.cit*, p. 57

that the taxpayer himself is unable to pay because the tax debt is determined not according to his ability;

2. The dynamics of the business world, which is marked by the increasing number of reorganization activities of the business structure coupled with the rapid succession of company management, has the potential to raise the issue of which tax bearer is responsible if the audit period and the issuance of tax assessments occur in different management.

Based on the explanations above, it can be concluded that the model for regulating state preference rights over tax debt in Indonesia has legal implications which, if examined closely, can actually minimize the emergence of delinquent taxpayers because all of this can be overcome by strengthening the implementation of tax administration law.

3. Conclusion

From the discussion, it can be concluded that legal implications have emerged since the tax debt was declared payable by law. It is evidence of how the principle of preference also affects material tax law so that with such a broad scope of meaning, the character as a preferred creditor does not only occur when active billing begins with the PPSP procedure but since tax rights and obligations are declared attached until the end of tax rights and obligations. Such interpretation also raises the problem that the application of state preference rights based on tax provisions in Indonesia has the potential to cause legal disputes because the application of these tax provisions will conflict with legal rules outside of taxation provisions.

References

- Bird, Richard Miller, and Milka Casanegra de Jantscher, eds. *Improving tax administration in developing countries*. Washington: International Monetary Fund, 1992.
- Brotodiharjo, R. Santoso. *Ilmu Hukum Pajak*. Bandung: Refika Aditama, 2013.
- Desiati, Rosita. "Pemberdayaan masyarakat melalui pengelolaan program desa wisata." *Diklus* 17, no. 1 (2013).
- Gunadi, *Problematisasi Peningkatan Tax Ratio*, Harian Bisnis Indonesia, January 7, 2008.
- Kusuma, Agus Iwan. "Pengampunan pajak (tax amnesty) sebagai upaya optimalisasi fungsi pajak." *Inovasi* 12, no. 2 (2016): 270-280.
- Philipus, Hadjon M., et al. *Pengantar Hukum Administrasi Indonesia*. Yogyakarta: Gajah Mada University Press, 2002.
- Ramadhanny, Endang S. *Doktrin Exceptio Non Adimpleti Contractus Sebagai Pembelaan Debitur Untuk Tidak Dinyatakan Pailit (Studi Kasus Telkomsel)*. Undergraduate thesis., Universitas Islam Indonesia, 2015.
- Shubhan, M. Hadi. *Prinsip Hukum Kepailitan di Indonesia*. PhD diss., Universitas Airlangga, 2006.
- Simamora, Yohanes Sogar. *Prinsip Hukum Kontrak dalam Pengadaan barang dan jasa oleh pemerintah*. PhD diss., Universitas Airlangga, 2005.
- Soemitro, Rochmat. *Asas dan Dasar Perpajakan 2*. Bandung: Refika Aditama, 1998.
- Suhardi, Gunarto. "Kedudukan dan Wewenang Lembaga Pengurusan Piutang Negara dalam Perspektif Hukum Administrasi." Doctoral Dissertation, Graduate program, Universitas Airlangga, Surabaya (2000).
- Ulynnuha, Ovi Itsnaini, and Erma Setiawati. *Analisis Faktor-Faktor yang Mempengaruhi Kepatuhan Wajib Pajak dalam Memenuhi Kewajibannya (Studi Empiris Pada Wajib Pajak Orang Pribadi di KPP Pratama Surakarta)*. Undergraduate thesis., Universitas Muhammadiyah Surakarta, 2018.
- Van Apeldoorn, L. J. *Pengantar Ilmu Hukum*. Oetarid Sadino, trans. Jakarta: Pradnya Paramita, 1993.
- Wardani, Dewi Kusuma, and Erma Wati. "Pengaruh sosialisasi perpajakan terhadap kepatuhan wajib pajak dengan pengetahuan perpajakan sebagai variabel intervening (Studi pada wajib pajak orang pribadi di KPP Pratama Kebumen)." *Nominal: Barometer Riset Akuntansi Dan Manajemen* 7, no. 1 (2018): 33-54.
- Yudkin, Leon. *A Legal Structure for Effective Income Tax Administration*. International Tax Program, Harvard Law School, 1971.