

## The Application of Tax Law to a Corporation's Bankruptcy Restricted in Indonesia

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### Abstract

*While the journey of a legal entity of the Company is limited in Indonesia in terms of carrying out its business in accordance with its purpose, there are occasionally unexpected events such as debts that impede the smooth operation of the company's cash, or even ongoing disputes with creditors that force the company to declare bankruptcy via court orders, even though bankruptcy is not mandatory. Everything comes to an end with the Company. The Limited Liability Company owes the state something, specifically tax. The Directorate General of Taxes of the Republic of Indonesia's Ministry of Finance is responsible for state taxes. If the Company's tax obligations are not met optimally, the company's management, in this case the Directors and Commissioners, is responsible for resolving them. The company owner entrusts the Board of Directors with the responsibility of carrying out the responsibilities imposed by its authority in a limited company and carrying out the task prudently in accordance with the prudential principle. The curator was involved in a party's bankruptcy to manage the assets of parties in bankruptcy and distribute them to creditors in compliance with applicable rules and regulations.*

### Keywords

tax; bankruptcy; limited liability company; curator; directors



### I. Introduction

The taxation system is composed of parts such as tax laws (tax laws), tax policies, and a tax administration system that work together to achieve a common aim, which is to maximize tax revenues. According to Rahayu, S.K. (2020) tax law is the collection of all laws and regulations that govern the relationship between the government as a tax collector and the public as taxpayers. R Santoso Brotodihardjo asserts that tax law is a component of public law. Public law is a body of law that governs the relationship between individuals and countries. Criminal law, constitutional law, state administration law, or state administrative law, and tax law are all examples of public law.

The Indonesian legal system also distinguishes between two sorts of commercial enterprises: those organized as legal entities and those organized as non-legal entities. A limited liability company is one of the efforts in the form of a legal entity (Siburian, R.Y., 2017). PT is not exempt from the rights and obligations arising from its legal relationships with other parties, both external and internal to the Company. The obligations emerging from the operations of the business are debt; if the business continues to incur losses and setbacks to the point that it is unable or unwilling to pay its debts, the debtor is negligent (Asikin, Z. 2001). Simultaneously, entrepreneurs must be encouraged to submit thorough financial statements to the Tax Authority (Arnold, J. 2012).

Financial issues are widespread in businesses and frequently result in the company being unable to pay its bills. Bankruptcy petitions for limited liability firms may be filed if the company is bankrupt and unable to pay its creditors (Irawan, B. 2007).

Shareholders are not necessarily liable for the amount of shares they own or rely on in the event of the Company's loss (Kurniawan, 2014). Bankruptcy corporations that have been declared taxable and have incurred losses and are unable to pay their taxes may have been caused by the shareholders' personal interests and conflicts of interest, and thus must be held personally liable (Simangunsong, 2016).

Personal legal duty is distinct from corporate accountability. Personal responsibility emphasizes that everyone is personally accountable, as humans have the rights and obligations that result from legal relationships. For instance, self-dealing transactions are not inconceivable to occur or to include shareholders.

## II. Research Methods

Therefore, this article will discuss the following questions associated with legal certainty 1. Tax characteristics and limited liability companies in Indonesia 2. Bankruptcy in Limited Liability Companies that have tax debt; 3. characteristics of tax responsible responsibility for tax debt repayment; 4. I have a travel country against directors and commissioners to resolve the tax obligation after the end of bankruptcy; 5. Case Study of Constitutional Court Decision Number 411 / PUU-XVIII / 2020; 6. Conclusion.

## III. Discussion

### 3.1 Indonesian Tax Characteristics and Limited Liability Companies

Taxes are regulated in Article 23A of the 1945 Republic of Indonesia Constitution which reads "Taxes and other forceful levies for state purposes regulated by law." According to expert information from the President at the Constitutional Court trial, Dian Puji N Simatupang stated that tax arrangements in the Act were the formatory regulation form, meaning that the taxation and other forced levies (Huda, M. 2018) must be regulated in their own laws (Huda, M. 2018). Tax, as defined in Article 1 of Law No. 6 of 1983 on General Provisions and Procedures for Taxation, as amended most recently by Law No. 28 of 2007, is a mandatory contribution to the state owed by individuals or agencies that are compelled to pay it by law, without receiving direct compensation, and used for state purposes to maximize the prosperity of the people (Huda, M. 2018).

Taxes are classified as Central Taxes and Regional Taxes. The Central Tax is administered by the central government, namely the Directorate General of Taxes of the Ministry of Finance of the Republic of Indonesia, whereas the Regional Tax is administered by the Regional Government, which includes both the provincial and district governments. The Directorate General of Taxes to Taxpayers collects the central tax (Nursamdi, H. 2019). Article 1 Law Number 28 of 2007 concerning Third Amendment to Law Number 6 of 1983 concerning General Provisions and Procedures for Taxation Taxpayer Definitions are individuals or agencies, including taxpayers, tax cutters and tax collectors who have rights and obligations Taxation in accordance with the provisions of tax laws (Nursamdi, H. 2019).

The tax subject is defined in Article 2 paragraph (1) of Law 17 of 2000 concerning Third Amendment to Law 7 of 1983 concerning Income Tax and includes Personal, Heritage that has not been divided, as well as the body and form of permanent enterprise. Income Tax subject is anything that has the potential to earn income and is subject to income tax (Hendayana, 2021). The body tax is levied on legal entities and corporate entities. Limited Liability Companies, Foundations, Firms, Cooperatives, Civil Guilds, Commander Fellowships, and Fixed Business Forms are all examples of tax-exempt entities. According to Asyhadie and Arief Rahman, the topic of law is anything that potentially have rights and obligations under the law. The intended rights and obligations are that legal subjects have the authority to enter into legal relationships or act in line with the provisions of the law (Asyhadie, H. 2019). According to Hidayatullah there are two legal subjects, namely human (persoon) and legal entity (rectpersoon). Tax is a compulsory levy paid by the people to the state and will be used for the benefit of the government and the general public (Marpaung, 2020). With the Income Tax Constitution, the taxpayer on income is always subject to state levies in the form of tax (Siregar, 2019).

Limited Liability Company (PT) is a capital fellowship formed pursuant to an agreement to carry out activities with basic capital that is totally divided into shares and complies with the conditions set forth in the Law (Law number 40/2007) and its implementation rules (Soedjono, D. 1997). Because PT is a legal entity, the owner's personal property and shareholders are kept separate from the business's operations. According to current legislation, the owner of PT and PT itself are distinct entities (Supriyatin, U, 2020).

Fiction theory applies in the body, namely as a body entity, (Ali, C. 1999) cannot do the law for itself, the body is only a name and container, but the body commits legal actions represented by the company's management. The management of the company is comprised of directors and commissioners who are directly accountable for the operation of the business and its effects. The management operates the business according to the prudential concept of achieving firm goals; under agency theory, the management provides the best performance to please shareholders, increasing the value of shares and dividend distribution (Pujiastuti, T. 2008).

The company's obligations include the payment of taxes in compliance with applicable laws and regulations. Profitability increases the amount of tax paid to the state. Because the state of the business is occasionally uncertain, the company's bankruptcy is determined by court rulings (Lumowa, 2013).

### **3.2 Bankruptcy in a Limited Liability Company that Owes Taxes**

The principle of legal certainty in tax law explains that a decisive principle is that the nature of tax legislation should not result in a double interpretation, hence preventing the potential to commit irregularities.

Bankruptis is not the end of everything for the Limited Liability Company, the rules of the bankruptcy law and delays in debt payment obligations are contained in Law Number 37 of 2004 concerning Bankruptcy and delay in debt payment obligations. The redefinition of bankruptcy is the general confiscation for all the wealth of bankrupt debtors who are managing and the reception is carried out by the curator under the supervision of the supervisor.

While bankruptcy is defined as the confiscation and execution of all ritual wealth for the benefit of all creditors who, at the moment the debtor is declared bankrupt, have accounts receivable and for the aggregate amount of receivables that each creditor has at the time (Purbandari, 2014).

Article 2 paragraph (1) of the Bankruptcy Law and debt moratorium/suspension of payment (PKPU) stressed that related to the requirement to submit bankruptcy, namely the debtor has two or more creditors and does not pay off at least one debt that has fallen time and can be billed, declared bankrupt with court decisions, both for one or more applications its creditors. Requirements for bankruptcy applicants in accordance with the provisions of Article 2 of the Bankruptcy Law and PKPU parties who can apply for bankruptcy are debtors themselves; A creditor or more; Attorney; Bank.

The Niaga Registrar must register the request on the date of the request concerned submitted and to the applicant is given a written receipt signed by the authorized official with the same date as the registration date.

### **3.3 Characteristics of Tax-Responsible Accountable Individuals for Tax Debt Payments**

Responsibilities associated with liabilities, liabilities are often defined as the burden imposed by law on individuals or legal entities. For instance, the requirement to pay taxes. The taxation obligation encompasses public commitments, namely those concerning public rights.

Characteristics of company management obligations. The duty of the Board of Directors and Commissioners is in Article 92 paragraph (1), Article 97 paragraph (1), and Article 98 paragraph (1) of the PT Law includes several things, among others, carrying out the Company's management for the benefit of the Company in accordance with the Purpose and Goals of the Company, responsible For the management of the Company, representing the company in and outside the court, as well as the task of the Board of Commissioners is to carry out surveillance in general and / or specifically in accordance with the Articles of Association and provide advice to the Board of Directors (Kurniawan, 2012).

According to Article 1 of Law No. 19 of 2000, a tax department is a person or agency responsible for tax collection, including representatives who exercise taxpayer rights and execute taxpayer obligations in accordance with tax legislation.

The accountability of a Bankruptcy Legal Entity that has been designated taxable under applicable tax law involves a number of parties, including curators, directors, persons directly, and shareholders (Sukmana, Y. 2020). The Board of Directors bears sole responsibility for the management of the Company prior to its bankruptcy, whereas the curator bears sole responsibility for the management and emergent of the Company's bankruptcy, which does not eliminate the possibility of shareholder error or negligence. According to Article 32 paragraph (1) letter b, UU KUP was represented by the curator, who began serving and being accountable once the bankruptcy was decided by the Commercial Court Judge, and the Directors of the Company's Bankruptcy lacked elderly to administer the Company's bankruptcy.

### **3.4 Efforts to Resolve Tax Issues Following the Conclusion of Bankruptcy by a Travel Country Against Directors and Commissioners**

Self Assessment is now used in tax collection in Indonesia, (Mappadang, A. 2018) where taxpayers are entirely trusted to comply with their tax commitments. In order to comply with these requirements, taxpayers must comprehend the tax legislation, calculate and pay any tax liabilities that must be paid (Sapie, 2013).

Tax Billing is a series of actions designed to ensure that the Tax Insurer pays off taxes and collection costs through rebuke or warning, instantaneous and concurrent billing, informing forced letters, proposing prevention, carrying out foreclosures, carrying out hostages, and selling confiscated goods (Putri, C.I. 2013). It is governed in Article 1 Number 9 of Law Number 19 of 1997, as revised most recently by Law Number 19 of 2000, regulating Tax Billing with Forced Letters.

Taxes are bills that have the right to overtake the country as a preferred creditor in bankruptcy proceedings. According to expert Teddy Anggoro, the curator's reach is limited by the bankruptcy Boedel. Boedel covered assets and passivas, but not errors made by bankrupt debtors or bankrupt debtor administrators. In 2004 Law No. 37. This is demonstrated in Article 26 paragraphs (1) and (2), which read as follows:

- (1) Demands on rights and obligations concerning bankrupt treasures must be submitted by or against the curator;
- (2) In the event that the demand as referred to in paragraph (1) submitted or forwarded by or against the bankruptcy debtor, if the demands cause a punishment of bankrupt debtors, the judgment does not have a legal consequence of bankrupt treasures.

This provision clearly confirms that debts caused by debtor bankrupt and / or bankrupt debtor administrators are separate responsibilities with existing bankruptcy Boedel.

Limited Liability Company law serves as the primary underpinning for all other corporate governance regulations in Indonesia. According to the Limited Liability Company, a company is a distinct legal body with its own directors and commissioners. According to Widjaja there are three organs of the Company, Directors, Komirasis and General Meeting of Shareholders (GMS).

A firm declaring bankruptcy does not automatically dissolve. Thus, the Company's legal entity remains intact; however, the Company has forfeited its rights to manage and master its riches, as well as the management and reception of bankruptcy given to Curator.

As a preferred creditor in bankruptcy proceedings, the state's tax debt is a country's bill that has the right to prepare, the privilege of covering the principal, tax sanctions, administrative sanctions in the form of interest, fines, increases, and tax billing costs mandated by laws, as set forth in article 21 paragraph (1), (2) of the The General Tax Provisions and Procedures Law.

Article 32 of Law No. 6 of 1983, as most recently revised by Law No. 28 of 2007 on General Provisions and Tax Procedures, Regulates the Following:

- (1) Taxpayers are represented in the following ways when it comes to carrying out their rights and obligations under the Taxis Regulations:
  - a. Body by the administrator; b. The body declared bankrupt by Curator; c. Bodies in dissolution by people or bodies assigned to carry out the recommendations; Body in liquidation by liquidator; e. A legacy that has not been divided by one of his heirs, his will or who takes care of his relics; or f. An adult child or person who is in the ability to be the guardian or his behavior.
- (2) The representative referred to in paragraph (1) is personally and / or collectively liable for the payment of the tax due, unless you can demonstrate and convince the Directorate General of Taxes that they are truly incapable of shouldering the obligation owing in their position.
- (3) Individuals or organizations may appoint a special power of attorney to exercise rights and execute obligations in line with the Taxis Regulations.
- (3a) The requirements and implementation of the rights and obligations of the power as referred to in paragraph (3) are regulated by or based on the Minister of Finance Regulation.
- (4) A genuine person who has the authority to participate in determining wisdom and / or making choices regarding the operation of the company is included in the management sense as defined in paragraph (1) letter a.

### 3.5 Case Study of Constitutional Court Decision Number 41/PUU-XVIII/2020

The authors review the Constitutional Court Decision Number 41 / PUU-XVIII / 2020 submitted by Taufik Surya Dharma (Petitioner) on June 2, 2020 based on the receipt of the request file 98 / pan.mk / 2020 and recorded in the registration of the Constitutional Case Registration Number 41 / Puu-XVIII / 2020 on June 9, 2020. The applicant applied to the Constitutional Court as Article 24C paragraph (1) of the 1945 Constitution that the Constitutional Court was authorized to prosecute at the first and final level whose decision was final to test the Law on the Constitution, deciding the dispute in state institutions whose authority was given by The Constitution, cut off the dissolution of political parties and decided on disputes about the results of the general election.

The main points and reasons for the request submitted by the Applicant are the objections of the validity of the provisions concerning the responsibilities of the Company's management to the personal property of the agency taxpayer representative as stipulated in Article 32 paragraph (2) of the Law, explained the representative as referred to in paragraph (1) Personally and / or cultedly for payment of tax payable, unless you can prove and convince the Director General of Taxes, that they in their position are really impossible to be burdened with the responsibility of the payable tax. And objections to the enactment of the provisions regarding the delete of the Taxpayer Identification Number (NPWP) which did not include the condition of the bankruptcy company because of insolved as stipulated in a paragraph 2 paragraph (6), the Petitioner according to the Petitioner was contrary to Article 28D paragraph (1) of the 1945 Constitution.

Article 2 paragraph (6) of the KUP Law explains that the Removal of the NPWP is carried out by the Director General of Taxes if 1. Ingoing the application for the elimination of NPWP by taxpayers and / or its heirs if the Taxpayer does not meet subjective and / or objective requirements in accordance with the provisions of legislation taxation; 2. The body tax is liquidated due to termination or merger of the business; 3. Taxpayers for business forms continue to stop their business activities in Indonesia; or 4. It is deemed necessary by the Director General of Taxes to eliminate the NPWP of taxpayers who have not met subjective and / or objective requirements in accordance with the provisions of the Tax Legitimate Regulations.

**Table 1.** Chronology of Bankrupt Statements at PT UCI

Chronology of Bankrupt Statements at PT UCI	
Stages of activity	Bankruptcy date and process
Bankruptcy petition	October 5, 2014
Temporary Debt Moratorium / Suspension of Payment (PKPU)	October 15, 2014
Permanent Debt Moratorium / Suspension of Payment (PKPU)	November 25, 2014
Peace agreement.	January 8, 2015
Homologation - Establishment of Peace Agreement	January 14, 2015
Bankrupt statement	November 24, 2015
Announcement of the list of the final distribution of bankrupt treasures	December 21, 2017
Request for objection / resistance announcement of list of final distribution of bankrupt treasures	December 27, 2017

Cassation for objections / resistance Announcement of List of Final Distribution of Bankrupt Treasures	July 10, 2018
Bankruptcy end	February 13, 2019
Announcement of Bankruptcy Exchange in Kompas and Rakyat Merdeka Daily Newspapers	February 15, 2019
Request the announcement of PT UCI's bankruptcy in the state news	February 18, 2019
Charged to individual (applicant)	May 27, 2019

Teddy Anggoro Experts submitted by the President in the trial at the Constitutional Court, explain the concept of the responsibility of the Board of Directors, especially in the field of taxation, namely the responsibilities of the Directors regarding Income Tax (PPH), including annual Income Tax, PPH which is reported on a monthly / incidental (period), and so on Including the PPH cut / collected from employees / other parties (withholding taxes such as salaries, honorariums, etc.) and value added tax (VAT) (Online Law, 2020). Teddy Anggoro also provides an explanation that the Board of Directors as a Limited Company Personification, where limited liability companies are legal subjects (Harahap, A.S. 2008). The obligation set by legislation must be obeyed and carried out with the act of directors for and on behalf of the Limited Liability Company. Regarding the closeness of responsibility when the company is limited to bankruptcy, Teddy Anggoro explained that the bankruptcy law regulates after the bankruptcy state of the bankruptcy and the reception of the bankruptcy turned to the curator (Harahap, P. 2021). But do not take over the responsibility of the Board of Directors to fulfill the taxation obligations of the Company's limited, if the bankrupt treasure is insufficient to pay off tax debt, it is very logical if the state has a mechanism to request accountability to fulfill tax obligations in the form of tax debt that is still not repaid to the Board of Directors or Managers concerned.

Dian Puji N Simatupang Experts submitted by the President also conveyed information from the legal aspects of state administration and public finance related to authority to be public power regulated by law especially related to tax in accordance with Article 23A of the 1945 Constitution, he explained the tax regulation in the law It is a mandatory regulation function, it means to force other taxation and levies and not necessarily be managed by law and not with other settings under the law (Sinaga, N.A. 2016).

Then Dian stated that under public and tax law, delegating responsibility for the company's tax payments to the personal administrator is a sort of anticipatory legal duty intended to avoid tax avoidance. The administrators are presumed to know personally and factually anybody and anyplace who may be required to pay the company's tax receivables, and hence the management will seek legal relationships with those who may be required to pay the company's tax receivables.

The notion of anticipatory legal responsibility is used to avoid tax payment ambiguity caused by a lack of data and information on responsible parties. State-specific tax arrangements linked to the activities are established as part of the application of the principle of Contarius Actus; if the termination is to be subject to public law rules, the law must formulate and regulate it. Dian asserts that the principle of Contarius Actus respects both public and private legal systems, is not adversarial, and is incapable of interpreting or interpreting action (Hermawan, S. 2021).

Expert from the next president, Hendry Julian Noor gave an explanation that it was not easy to read the law, because it was not just reading the sound of his words, the tepai must

look for meanings, meanings and purposes. Hendry quoted Oliver Wendell Holmes who said that “the rational study of the law is still to a large extent the study of history. History must be part of the study, because without it we cannot know the precise scope of rules. It is a part of the rational study, because it is the first step toward an enlightened scepticism, that is, towards a deliberate reconsideration of the worth of those rules.”

From the legal aspects of the State Administration Hendry explain that one of the tax functions is as a budget, where tax is a tool or source to include as much money as possible to the state treasury which is then used to finance state expenditure, including for the development and welfare of the community (Naharto, M.J. 2014). The role is relevant to the notion of Good Governance in the implementation of the government's function of safeguarding the public interest, which is also related to the government's three fundamental responsibilities, namely: 1. Ensure the security of everyone and the community; 2. Manage an effective structure for the public, private and public sectors; 3. Promote economic, social and other fields with the will of the people, thus tax law can be said to be part of the public legal regime (Tomuka, S. 2013).

Expanding on the distinction between public and private law, Hendry asserts that there are several criteria for separating these two types of laws, the first of which is about interests, with public law regulating the public / public interest and private law regulating special interests / civilians (Santoso, A. 2019). Second, how public law is upheld by the government while private law is upheld by people. Thirdly, public law has exceptional principles, whereas private law contains ordinary principles. Fourth, in terms of legal relations, public law governs vertical interactions between the government and its citizens, whereas private law governs horizontal ties between citizens. One idea associated with this is that public law has always taken precedence over private law, with the public law being viewed as a constitution.

The Court determined that the President submitted further information regarding the Petitioner's request in the form of two written documents, namely the President's statement without the extra date and the presidential statement without dates, September 2020, supported by attachments. Dr. Abdul Anshari Ritonga, S.e, S.H., M.A; Hansel Teddy Anggoro, S.h., M.H.; Hansel Dian Puji N Simatupang, S.H., M.H.; and Dr. Hendry Julian Noor, S.H., M.KN., two of these experts, Dr. Abdul Anshari Ritonga, S.e, S.H., M. His explanation was also heard during his October 14, 2020, trial.

The Court concludes based on the assessment of facts and law as described as follows  
1. The Court is authorized to prosecute a request a quo. 2. The applicant has a legal position to apply for a quo. 3. The main request for the applicant is unreasonable according to law for all.

#### **IV. Conclusion**

Indonesia regulates more specific taxes under Law No. 28 of 2007 about the Third Amendment to General Provisions and Procedures for Taxation. Taxes are classified as Central Tax and Regional Taxes in the 1945 Constitution. Corporations with Limited Liability the Limited Liability Company, as defined by Law No. 40 of 2007, is a legal entity enterprise in which the owner's personal property and shareholders are not actively involved in the company's operations. Although the fiction in the body is valid as an entity, the body cannot enforce the law on its own; the body is merely a name and container, but the body committed legal activities through the company's management.

In Indonesia, bankruptcy is governed by Law No. 37 of 2004, and the requirement to file bankruptcy is set forth in Article 2 paragraph (1) of the bankruptcy and The General Tax Provisions and Procedures Law (UU KUP). Shareholders, particularly majority shareholders or controllers, are liable for the payment of debt-debt bankrupt issues (debtor bankrupt) that

have been deemed taxable under Article 21 Jo. and Article 32 concerning bankruptcy and The General Tax Provisions and Procedures Law (UU KUP).

The Constitutional Court's verdict No. 41 / PUU-XVIII / 2020 is conclusive and binding, providing legal certainty to all parties, including the government, the management of the Limited Liability Company in bankruptcy as a taxpayer, and the curator team that handles the Limited Liability Company's bankruptcy in Indonesia. The affirmation regarding the Board of Directors and Commissioners' responsibility for the Limited Company Tax Debt that experienced bankruptcy and continues to be the Board of Directors and Commissioners' responsibility after the bankruptcy expires, without being turned over to the curator for all responsibilities.

Along with making a genuine contribution to the Directorate of Tax Director General of Taxes to ensure that the taxpayer's state rights are protected, becoming a guide for business owners / prospective investors in Indonesia to be more cautious in selecting the Board of Directors and Commissioners, and paying more attention to the Company's tax obligations Li A court judgement resolving a clear issue is a sort of legal justice.

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