

# Juridical Analysis of Constitutional Court Decisions Regarding Tax Collection against Taxpayers Who Are Declared Bankrupt: Case Study of Constitutional Court Decision Number 41/PUU-XVIII/2020

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## Abstract

*This study aims to analyze the implications of the Constitutional Court's decision on state rights in the context of tax collection, tax law enforcement efforts and fair legal protection and certainty for all parties interacting with legal entities. This study indicates that the state's right to collect taxes is a valid authority not only because it is lawful utilizing normative legal research and a legal approach as normative juridical research that directs research on secondary material such as books, positive legislation, and written norms. Article 23A of the 1945 United States Constitution states that it is constitutionally anchored on the Constitution. This analysis also demonstrates that the arrangements outlined in Article 2 paragraph 6 and Article 32 paragraph 2 of the KUP Law, which are subject to material review, are extremely important and helpful for preserving legal certainty and justice in tax payments.*

## Keywords

implication; juridical, constitutional court; tax; constitutional



## I. Introduction

Since the enactment of Law number 6 of 1983 concerning General Provisions and Tax Procedures (KUP) on December 31, 1983, the tax reforms in 1984 began to take effect, which led to a change in the taxation paradigm which originally applied the Official/Government Assessment system with an approach enforcement becomes a self-assessment system with a trust approach that gives full trust to taxpayers in Indonesia (Cahyady & Ambarwaty, 2022; Parwati & Parsa, 2019). Official/Government assessment system is a tax collection system that places taxpayers to be passive and wait for the issuance of a tax assessment by the tax authorities (government) because the amount of a person's tax debt/taxpayer is only known after the issuance of a tax assessment letter, whereas the Self-Assessment system is a tax assessment system that gives full trust to the Taxpayer based on the law, to calculate, calculate (tax credit), deposit, and self-report (tax authorities do not interfere and only supervise) (Sugiono & Supriadi, 2021; Gerungan, 2020).

Tax debt is a taxpayer's debt that must be paid to the state even though the taxpayer is taking legal action (objection, lawsuit, appeal, review). The tax debt is confiscated execution (Executorial Beslag) which occurs as a Tax Assessment Letter (SKP). Even though the self-assessment system has been established in Indonesia's taxation system, which grants full trust to taxpayers, SKPs may be issued in accordance with Article 13 paragraph 1 of Law Number 6 of 1983 covering General Provisions and Tax Procedures (KUP) as amended. The Law of the Republic of Indonesia Number 7 of 2021 concerning Harmonization of Tax Regulations (HPP) stipulates that the Directorate General of Taxes

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may issue SKPKB (Letter Assessment of Underpaid Taxes) within five years after the tax becomes due or the end of the tax period, part of the tax year, if it is known that the Taxpayer made a tax calculation error (Sugitha & Wairocana, 2018; Absari & Parsa, 2019).

The party deemed responsible for settling the tax debt is the Management, namely the Board of Directors and the Commissioner, because legally, the owner of the company has delegated the management to carry out the responsibilities that are his authority in a limited company and to carry out their duties prudently in accordance with the precautionary principle as stated in Article 1 number 5 of Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the Public Company Law), which reads: "The Board of Directors is a Company Organ that is authorized and fully responsible for the management of the Company for the benefit of the Company, in accordance with the purposes and objectives of the Company and represents the Company, both inside and outside the court in accordance with the provisions of the articles of association." In the case of a corporation that is declared bankrupt by the court against a corporate taxpayer, can this also be interpreted as an imperative article also having joint and multiple responsibilities to the management as the tax underwriter through the curator (Cahyani & Suharta, 2019; Wijayanti & Nurmawati, 2018).

The problem is that some taxpayers are of the opinion that Article 32 paragraph (2) and Article 2 paragraph (6) of the KUP Law only focuses on aspects of the interests of the state, so they are considered to only accommodate the principle of formal justice, but overrides substantial justice. , even social justice. The Plaintiff argues that the principle of justice in bankruptcy should limit the right to precede the state in tax collection. Another reason that Article 32 paragraph (2) is considered to only accommodate the principle of formal justice is because with different interpretations from the enactment of Article 32 paragraph (2) of the KUP Law, on the one hand it places an effort to collect the bankrupt company's tax debt to the Curator. (manager of the bankrupt boedel), but on the other hand, when the tax bill has been paid in the settlement process and the bankruptcy is declared over, the tax debt is interpreted: "still able to be billed back to individuals, who were former management when the company was still active, and administratively domiciled as the guarantor of corporate tax. The "double" action taken by the Tax Office is considered an act that is contrary to the principles of settling bankrupt assets in the settlement of company debts.

The decision of the Constitutional Court Number 41/PUU-XVIII/2020 is final and binding, providing legal certainty to all parties, including the government, the management of Limited Liability Companies in bankruptcy as taxpayers, and the team of curators who manage the bankruptcy of Limited Liability Companies in Indonesia. Affirmation of the responsibilities of the Board of Directors and Commissioners for the Tax Payable of a bankrupt Limited Liability Company that remains the responsibility of the Board of Directors and Commissioners following the conclusion of the bankruptcy, without being transferred to the curator (Kanantha & Edwar, 2022; Putri et al., 2021).

Consequently, in accordance with the implementation of Article 2 paragraph (6) of the KUP Law, the NPWP of bankrupt firms that are administratively still operating is still used as the basis for tax collection, although the collection is not the responsibility of the Management. In fact, the plaintiff believes that substantial justice, in accordance with Article 28D paragraph (1) of the 1945 Constitution, stipulates that everyone has the right to recognition, protection, fair legal certainty, and equitable treatment under the law.

The Constitutional Court's decision Number 41/PUU-XVIII/2020 on the lawsuit to test Article 2 paragraph (6) and Article 32 paragraph (2) of the KUP Law (General Tax

Provisions) is interesting to discuss because there should be no legal issues regarding which law applies more specifically (lex specialist) between the KUP Law and the Limited Liability Company Law (Open Company) and Bankruptcy and Suspension of Debt Payment Obligations (UUK-PKPU), as the KUP Law regulates

Interest in writing is also attributable to the establishment of the rule of law, whose guiding concept, legal certainty, is designed to bring clarity to the rule of law. Ilyas (2012) presented the concept of the principle of legal certainty in his work titled "Einführung in die Rechtswissenschaften." According to Radbruch, there are three fundamental values in law: (1) Justice (Gerechtigkeit), (2) Benefit (Zweckmassigkeit), and (3) Legal Certainty (Rechtssicherheit). When discussing Article 1 number 28 of the KUP Law, which states, "The tax bearer is an individual or entity responsible for paying taxes, including representatives who exercise the rights and fulfill the obligations of the Taxpayer in accordance with the provisions of the legislation. taxation," justice and legal certainty become the central issue. While joint liability is outlined in Article 32 paragraph (2) of the KUP Law, which states: "the representative referred to in paragraph (1) is individually and/or jointly liable for the payment of taxes payable..."

Although in its decision the Constitutional Court rejected the Petitioner's application in its entirety, the significance of the implications of Constitutional Court Decision Number 41/PUU-XVIII/2020 on the lawsuit to test Article 2 paragraph (6) and Article 32 paragraph (2) of the KUP Law because the Petitioner believed it contradicted Article 28D paragraph (1) and is deemed to have harmed and violated the Petitioner's constitutional rights and/or authority, is deemed to be of constitutional significance. From a certain legal entity through a party or person who acts as the administrator of the legal entity as a tax guarantor and also affects the protection and fair legal certainty for all parties interacting with a legal entity declared bankrupt (Sinaga et al., 2020; Hajawiyah et al. al., 2021).

Efforts to protect and provide fair legal certainty to all parties interacting with legal entities that are declared bankrupt are important if it is contextualized with the argument that tax debts have prior rights and are special debts in the field of public law, which cannot be equated with debts (receivables) that occur in the field of public law. field of civil law (Burton, 2020). State receivables must be given a more important position than civil receivables. Article 21 paragraph (3a) of the KUP Law expressly stipulates that in the event that a taxpayer is declared bankrupt, the curator is prohibited from distributing the taxpayer's assets in bankruptcy to other creditors before using the assets to pay the taxpayer's tax debt.

## II. Research Method

By using a normative legal research approach, through a legal approach that is categorized by Wicaksono & Nurbaningsih (2020) as normative juridical research that directs research on secondary data such as books, positive law, and written norms, this article discusses the following questions related to legal certainty and its implications in the case of the Constitutional Court Decision Number 41/PUU-XVIII/2020, namely: What are the ramifications of the Constitutional Court's decision number 41/PUU-XVIII/2020 on the Directorate General of Taxes' efforts to collect taxes from business taxpayers who declare bankruptcy, and What are the implications of the Constitutional Court's decision number 41/PUU-XVIII/2020 for measures to preserve and ensure legal certainty for bankrupt corporate management.

### III. Result and Discussion

#### 3.1 Taxpayer Legal Protection and Certainty

Article 28 letter d paragraph (1) of the 1945 Constitution mandates the notion of legal protection for all people, stating: "Everyone has the right to recognition, assurance, protection, and legal certainty that is fair and equal treatment before the law." This section obligates the state to provide citizens with recognition, assurance, protection, and legal certainty, which is fair and equal treatment under the law.

According to Ardiansyah (2017) and Fauziati et al. (2020), the state requires legal subjects known as preventative legal protection and repressive legal protection in order to carry out and provide legal protection. Preventive legal protection seeks to avoid disputes, whereas repressive legal protection seeks to resolve them. In other words, legal protection can provide society with security, justice, peace, and order.

However, Article 1 point 3 of the KUP Law states, that "Tax bearers are individuals or entities who are responsible for paying taxes, including representatives who exercise the rights and fulfill the obligations of taxpayers in accordance with the provisions of tax laws and regulations", especially according to Anggoro piercing the corporate veil of management, related to state or public demands, is subject to the provisions of the law that governs it. If taxes are regulated in laws and regulations in the field of taxation, even though Article 32 paragraph (1) of the KUP states that payments for taxes owed by legal entities are represented by the directors/management and are responsible both personally and jointly.

The discussion on the principle of legal certainty is typically characterized as a circumstance in which the law is certain due to the law's actual force. The existence of the principle of legal certainty is a sort of protection for justice (seeking justice) against arbitrary actions, since it ensures that a person will and can obtain the anticipated outcome under specific conditions. This statement, according to Hasan (2021), is consistent with what Van Apeldoorn stated, namely that legal certainty has two aspects: the determination of the law in concrete terms and legal security, which means that parties seeking justice want to know what the law is on a particular issue. Certainty before beginning the case and protection for those seeking justice.

Legal certainty, according to Lord Lloyd as quoted by Mirza (2010) is a situation described by: "law seems to require a certain minimum degree of regularity and certainty, for without that it would be impossible to assert that what was operating in a given territory amounted to a legal system". Legal certainty refers to the application of a clear, permanent, and consistent law whose implementation cannot be changed by subjective conditions. This is required because, in the absence of legal certainty, people do not know what to do, which ultimately leads to doubt. Due to the indecisiveness of the legal system, there occurs violence (chaos).

In the context of tax law enforcement, legal certainty in the form of tax principles must be grounded in the law, and the placement of taxes as coercive levies, as stated in the text of Article 23A of the 1945 Constitution of the Republic of Indonesia, is an absolute prerequisite for the protection of taxpayers and state justification in the use of tax instruments for financing the course of government. In accordance with the 1945 Constitution, Article 1 number (1) of Law Number 6 of 1983 concerning General Provisions and Tax Procedures (KUP) as last amended by Law of the Republic of Indonesia Number 7 of 2021 concerning Harmonization of Tax Regulations (HPP) defines the coercive nature of taxes as follows: "Taxes are mandatory contributions to the state

owed by individuals or entities that are coercive under the law, without receiving direct compensation and are collected by the government."

### 3.2 Implications of the Decision of the Constitutional Court Number 41/PUU-XVIII/2020 on Efforts to Collect Tax Debt by the Directorate General of Taxes for Corporate Taxpayers Declared Bankrupt

Mr. Taufik Surya Dharma, in his capacity as the Petitioner, filed a lawsuit through his advocates and legal consultants. -Law Number 6 of 1983 Regarding General Provisions and Tax Procedures (UU 28/2007/UU KUP) vs the 1945 Constitution of the Republic of Indonesia (UUD 1945).

The applicant for the lawsuit is an individual who is a former Manager of a Public Company. United Coal Indonesia ("UCI Ltd"), which has been declared bankrupt upon the bankruptcy petition filed by the Public Company. GMT and a Public Company. Palaran Indah Lestari, as stated in the Decision of the Commercial Court at the Central Jakarta District Court Number 55/Pdt/Sus/PKPU 2014/Pn.Niaga.Jkt.Pst in conjunction with Decision Number 32/Pdt.Sus.Pailit/2014/Pn.Niaga.Jkt.Pst and Decision Number 11/Pdt.Sus/Cancellation of Peace/2015/PN.Jkt.Pst in conjunction with Decision Number 55/Pdt.Sus/PKPU/2014/Pn.Niaga.Jkt.Pst in conjunction with Decision Number 32/Pdt.Sus/Pailit/2014/ Pn.Niaga.Jkt.Pst dated November 24, 2015 which in its decision declared UCI Ltd "bankrupt with all the legal consequences", and appointed a team of curators who were then followed up with announcements in national newspapers.

The chronology of bankruptcy as well as legal efforts that have been made by the applicant can be described in the following table:

**Table 1. Chronology of Bankruptcy Statements**

<b>Bankruptcy Statement Chronology</b>	
<b>UCI Ltd</b>	<b>Bankruptcy Process</b>
Bankruptcy Application	October 5, 2014
Temporary PKPU	October 15, 2014 (45 days)
Fixed PKPU	November 25, 2014 (50 days)
Peace agreement	January 8th 2015
Homologation - Establishing a Peace Treaty	January 14th 2015
Bankruptcy Statement	November 24, 2015
Announcement of the list of final distribution of Bankrupt Assets	December 21, 2017
Application for Objection/Resistance Announcement of the list of final distribution of Bankrupt Assets	December 27, 2017
Cassation for Objections/Responses Announcement of Distribution list end of bankruptcy estate	July 10 2018
Bankruptcy Ends	February 13, 2019
Announcement of the End of Bankruptcy in the Daily Newspapers Kompas and Rakyat Merdeka	February 15, 2019
Application for Announcement of the End of UCI Ltd's Bankruptcy in the State Gazette	February 18, 2019
Billed to Individual (Applicant)	May 27, 2019

*Source: data proceed*



**Table 2.** Comparison of tax debt collection

<b>Comparison of Collection of Taxes Payable</b>		
<b>Tax Debt</b>	<b>First Interpretation</b>	<b>Double Interpretation / Second Interpretation</b>
Billing period	Boedel Settlement Period in bankruptcy	Post Bankruptcy
Billed to	<b>Curator</b>	<b>Individual</b>
Value of Tax Payable	IDR. 43,334,542,465,- (forty three billion three hundred thirty four million five hundred forty two thousand four hundred sixty five rupiah)	IDR. 193.625.721.483,- (one hundred ninety three billion six hundred twenty five million seven hundred twenty one thousand four hundred and eighty three rupiah)
Legal Status	Upon the determination of the Supervisory Judge, the Tax Office Bill is paid in full in the amount of IDR. 2,549,161,883,-	For the unilateral determination of the tax office: The applicant is banned, personal account is blocked, burdened with the obligation to pay to personal property

The Petitioner is of the opinion that if a company has been declared bankrupt based on a court decision, it will result in the company being paralyzed and unable to carry out business activities except for the management and settlement of bankrupt assets carried out by the Curator. The management of the company, in this case the Board of Directors and all of its management, no longer has any authority to act in managing their assets.

### 3.3 Tax Responsibilities

Article 16 F of Law Number 42 of 2009 concerning the Third Amendment to Law Number 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Goods Luxury (PPN and PPnBM) specifies that "The Buyer of Taxable Goods or the recipient of Taxable Services is jointly and severally responsible for paying taxes, as long as they cannot show proof that they have already paid the taxes" (KUP).

For the sake of legal certainty, the duties of the taxpayer for the business entity must be able to identify the parties who are the guarantors of the corporate taxpayer's tax obligations. Furthermore, in Article 1 number 28 of the KUP Law, it is stated that the Tax Bearer is "an individual or entity responsible for paying taxes, including representatives who exercise the rights and fulfill the obligations of the Taxpayer in accordance with the provisions of the tax laws and regulations."

Likewise, in the provisions of Article 14 paragraph (1a) of the PPSP Law, the confiscation of the Corporate Tax Insurer can be carried out on "goods belonging to the company, management, head of representative, head of branch, person in charge, owner of capital, or chairman of the foundation, both at the place of domicile concerned, at their place of residence or elsewhere". From the description above, it has actually been textually explicitly stated that the responsibility of the individual tax bearer for the obligation to pay off the tax debt of the corporate taxpayer can be jointly and severally responsible for the personal assets of the management, something that is considered by the claimant as seen in the Constitutional Court Decision. Number 41/PUU-XVIII/2020 as a situation that is

contrary to the provisions of Article 28D paragraph (1) of the 1945 Constitution which states that: "Everyone has the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law" because the Petitioners are of the opinion that efforts to collect corporate tax debts that demand joint and multiple responsibility for the assets of the management do not provide fair guarantees, protection, and legal certainty.

### **3.4 Analysis of the Constitutional Court's Decision on the Lawsuit Article 2 (6) of the KUP Law Regarding the Requirements for the Elimination of the Taxpayer Identification Number (NPWP)**

In connection with the enactment of Article 2 paragraph (6) of the Law, the NPWP of insolvent companies that are administratively still active whose NPWP cannot be revoked/removed because there is still a requirement for the object of the tax payable that has not been paid off even though the corporate taxpayer as a tax subject is legally declared bankrupt. In this situation, the collection can be imposed on the Management as the tax guarantor as the representative of the corporate taxpayer who is declared bankrupt in accordance with the provisions of Article 32 (2) of the KUP Law.

By comparing the provisions of Article 2 (6) of the KUP Law with the provisions of Law (UU) No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UU KPKPU) and Law (UU) No. 40/2007 concerning Limited Liability Companies (Public Companies), it is clear that Article 2 paragraph (6) of the KUP Law, which does not include taxpayer bankruptcy as a condition for the abolition of NPWP, is in fact, does not always mean that it will be followed up with the dissolution of the company (liquidation), Article 143 of the Public Business Law provides that the dissolution of a firm does not result in the company losing its legal entity status until liquidation is completed and the liquidator's liability is acknowledged by GMS or court.

The argument that the abolition of TIN is part of the realm of Public Law and not Private, because according to Simatupang "the authority in Article 2 paragraph (6) of Law 6/1983 as amended by Law 28/2007 is intended to provide: reasonable assurance in taking tax legal actions which has an influence on state revenues; part of the right to precede the state (preferred right) to ensure that tax receivables can still be paid in accordance with the provisions; and ensure the possibility of write-offs being carried out based on legal and factual grounds, with separate procedures in the realm of public law, which differ from the principles and concepts in the realm of private law, particularly regarding bankruptcy and debt settlement."

In the Decision of the Constitutional Court Number 41/PUU-XVIII/2020, although there has been a commercial court decision which has permanent legal force and declares the bankruptcy of the taxpayer to be in accordance with the laws and regulations, the decision is not legally binding on the provisions and principles of applicable government administration. general. This is due to the existence of a balanced position between the positions of the judiciary and government bodies which do not negate each other, but instead monitor and balance each other (checks and balances). In other words, if there are matters relating to procedures for government administrative actions in a commercial court decision that has permanent legal force, then this cannot immediately override the procedures and conditions as stipulated in the law as a form of *bestuursdwang* because it exercises its authority in Constitution.

### **3.5 Analysis of the Constitutional Court's Decision on the Lawsuit Article 32 (2) of the KUP Law Regarding Management as Tax Insurers**

The argument that Article 32 (2) of the KUP contradicts the Constitution Article 28D of the 1945 Constitution is based on the first: Paragraph 9 of the General Elucidation of the KPKPU Law which states, "The decision on the declaration of bankruptcy changes a person's legal status to become incompetent to carry out legal actions, control, and manage assets. his assets since the declaration of bankruptcy was pronounced", so that according to the Petitioner he is no longer legally competent or able to assume his rights and obligations as the administrator of c.q. directors at that time, with the reasons for bankruptcy. Second, based on the provisions of the Articles of the KPKPU Law, which stipulates, that: "The debtor by law loses his right to control and manage his assets which are included in the bankruptcy estate, from the date the bankruptcy declaration decision is pronounced"; and thirdly, referring to the Articles of Association and Bylaws of UCI Ltd (hereinafter referred to as "AD/ART"), specifically Article 10 point 8 letter b which states that a member of the board of directors in casu director, has ended his position (because he no longer meets the requirements laws and regulations), legally not personally responsible for the bankruptcy of UCI Ltd.

On the basis of the three matters above, the Petitioner in submitting the application acts for and on behalf of himself as an individual, and who is legally no longer able to act for and on behalf of UCI Ltd. As for the cause of UCI Ltd's insolvency (in bankruptcy) as determined by the Commercial Court, it is not due to the fault or negligence of the management, as well as the absence of other decisions from civil or criminal courts that prove the management's fault, until the application for judicial review of the Act is submitted. Thus, in accordance with the provisions of Article 104 of the Public Company Law, in his position as a board of directors at that time, the Petitioner was not responsible for the bankruptcy of the company which was not caused by his fault or negligence.

Regarding the responsibility of the Board of Directors for the governance of a Public Company, the provisions of Article 97 paragraph (2) of the Public Company Law states that, "The Board of Directors is responsible for the management for the benefit of the company in accordance with the aims and objectives of the company, which must be carried out in good faith and full of responsibility, and do not misuse position and information. The management of the company in good faith and full of responsibility or in full sense of responsibility, must be in line with the obligations of the Board of Directors. The Board of Directors is required to be able to make appropriate and fast business decisions, due to rapidly changing business conditions and intense competition, all of which decisions must be based on the principle of fiduciary duty."

Regarding joint responsibility, actually Article 97 paragraph (3) of the Public Company Law requires that, "each member of the Board of Directors is fully personally responsible for the company's losses if proven guilty". However, personal liability is excluded "as long as the member of the Board of Directors has not made any mistakes or omissions, manages the company in good faith and carefully, does not have a conflict of interest, and has taken action to prevent the occurrence or continuation of losses", as regulated in Article 97 paragraph (5) Public Company Law.

The petitioner's lawsuit in the Decision of the Constitutional Court Number 41/PUU-XVIII/2020 argues that the Board of Directors must be proven responsible for the bankruptcy. Article 104 paragraph (2) of the Public Company Law states, "If the bankruptcy referred to in paragraph (1) occurs due to the errors or omissions of the Board of Directors and the bankrupt assets are insufficient to pay all of the creditors, the Board of Directors shall be held accountable." To hold the members of the Board of Directors



collectively and individually accountable, it is necessary to demonstrate their errors or omissions.

The applicant's lawsuit in Constitutional Court Decision No. 41/PUU-XVIII/2020 asserts that, in accordance with the provisions of Article 142 paragraph (1) letter e of Law No. 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the "Public Company Law"), UCI Ltd materially automatically satisfies the legal requirements for dissolution. According to paragraph (1) letter e of Article 142 of the Public Company Law, the company is dissolved "because the bankruptcy assets of the Company, which has been declared bankrupt, are in a condition of insolvency pursuant to the Law on Bankruptcy and Suspension of Debt Payment Obligations."

### **3.6 Joint Responsibility Based on Article 32 (2) of the KUP Law**

In Article 32 paragraph (2) of the KUP Law, it can be clearly seen that corporate taxpayers and their management are required to apply the principles of Good Corporate Governance, namely: accountability, willingness to provide information (responsibility) and fairness in running the company, especially regarding their tax obligations so that they can avoid sanctions that will impact on personal and/or joint responsibility by regulating who is referred to as a taxpayer representative who is responsible as a tax guarantor.

There are similarities regarding joint and multiple responsibilities in Article 32 (2) of the KUP Law with the provisions in the Public Company Law, because in essence, personal and joint responsibilities for representatives of corporate or corporate Taxpayers are not only known in the Law on General Tax Provisions (KUP), but also known in the Public Company Law. Articles in the Public Company Law which explicitly assign personal and/or joint responsibility to the company's Management/Directors include Article 1 point 5; Article 69 paragraph (3) and paragraph (4).

The state of legal certainty caused by this decision is related to the certainty of collection rights to the management as the tax bearer so that tax collection efforts such as obtaining confirmation through the Constitutional Court Decision Number 41/PUU-XVIII/2020 which is a consideration that the Tax Collection Letter can be issued on the basis of the enactment of the norm in Article 32 paragraph (2) of the KUP Law which regulates the obligations of the corporate tax insurer without distinguishing between the status of the entity in normal conditions and the entity experiencing bankruptcy, as well as the enactment of the norm in Article 2 paragraph (6) of the KUP Law, which regulates the abolition of the TIN must meet the loss of both subjective and objective conditions, although specifically it has not/not included a clause regarding write-off due to the condition of the bankrupt company.

The provisions in Article 32 paragraph (2) and Article 2 paragraph (6) of the Law, the meaning focuses on aspects of the interests of the state, which more accommodates the principles of formal justice and social justice because it involves raising funds by the state for the benefit of the state, society, without completely overriding substantive justice. Legal certainty must also consider the fact that taxes have a dominant role in state revenue, so paying taxes is not only the obligation of the taxpayer but also the tax bearer. The basic legal certainty of the imposition of taxes is in accordance with Article 23A of the 1945 Constitution of the Republic of Indonesia because taxes and other levies that are coercive for the purposes of the state are regulated by law.

Without Article 32 paragraph (2) of the KUP Law, the management of the company has a real moral hazard in terms of delaying or even not paying taxes. The mechanism for paying off debt is through the bankruptcy mechanism, which ensures that the right to state treasury in the form of tax debt that should have been paid will not be paid off in full.

According to Sastrawidjaja, “unwilling to pay” and “unable to pay” are two different circumstances. This “unwilling to pay” attitude may occur when the debtor is “able” or “unable to pay”. Whereas in the case of “unable to pay” is a condition of inability to pay which is generally caused by financial problems that suffer losses or bankruptcy even though the debtor is still aware of the obligation to pay.

As stated in Article 23A of the 1945 Constitution, the state's ability to collect taxes is valid not only because it is doctrinally justified, but also because it is anchored in the Constitution. Regarding the fact that not all residents can pay taxes, this is a social fact or reality. This fact is empirical, but it cannot be used to argue that the state's right to collect taxes is antithetical to the 1945 Constitution.

#### IV. Conclusion

The effects of the Constitutional Court's decision number 41/PUU-XVIII/2020 on the Directorate General of Taxes' efforts to collect taxes from corporate taxpayers who declare bankruptcy. Article 23A of the 1945 Constitution provides a strong legal paradigm for both tax authorities and taxpayers/proxies/taxpayer representatives that the state's authority to collect Taxes is a legitimate authority not only because they are doctrinally legitimate, but also because they are constitutionally grounded in the Constitution. Not all citizens are able to pay taxes; this is a social fact or empirical reality, but a fact nonetheless. This cannot be used to argue that the state's right to collect taxes is inconsistent with the Constitution of 1945. The issuing of NPWP in accordance with Article 1 point 6 and Article 2 paragraph (1) of the KUP Law is a means of tax administration that serves as a personal identification or identity of the required Pajak for the purposes of exercising their tax rights and responsibilities.

#### References

- Absari, G. A. P. D. W., & Parsa, I. W. (2019). Pengenaan Pajak Penerangan Jalan terhadap Konsumsi Tenaga Listrik yang Dihasilkan Sendiri setelah Putusan Mahkamah Konstitusi Nomor 80/PUU-XV/2017. *Kertha Negara: Journal Ilmu Hukum*, 7(3), 1-17.
- Ardiansyah, B. G. (2017). Implikasi Putusan Mahkamah Konstitusi terhadap Pajak Daerah. *Jurnal Pajak Indonesia (Indonesian Tax Review)*, 1(2), 1-8.
- Burton, R. B. (2020). Assessment of Certain Justice towards Tax Omnibus Law in Indonesia. *International Journal of Multicultural and Multireligious Understanding*, 7(5), 486-493.
- Cahyady, Y., & Ambarwati, R. D. (2022). Pembaruan Hukum pada Pengadilan Pajak Pasca Putusan Mahkamah Konstitusi atas Uji Materi terhadap Undang-Undang Nomor 14 Tahun 2002. *Bunga Rampai Keuangan Negara 2021*, 267.
- Cahyani, G. A. D., & Suharta, I. N. (2019). Implikasi Yuridis Putusan Mahkamah Konstitusi Nomor 63/Puu-Xv/2017 terhadap Penunjukan Kuasa Wajib Pajak. *Kertha Negara: Journal Ilmu Hukum*, 7(6), 1-15.
- Fauziati, P., Minovia, A. F., Muslim, R. Y., & Nasrah, R. (2020). The Impact of Tax Knowledge On Tax Compliance Case Study in Kota Padang, Indonesia. *Journal of Advanced Research in Business and Management Studies*, 2(1), 22-30.
- Gerungan, R. M. (2020). Implikasi Hukum dan Legalitas Tax Amnesty terhadap Tingkat Kepatuhan Wajib Pajak di Indonesi dalam Kajian Putusan Mahkamah Konstitusi Nomor 63/PUU-XIV/2016. *Lex Administratum*, 8(1).

- Hajawiyah, A., Suryarini, T., & Tarmudji, T. (2021). Analysis of a Tax Amnesty's Effectiveness in Indonesia. *Journal of International Accounting, Auditing and Taxation*, 44, 100415.
- Handini, R. S., Ispriyarso, B., & Sa'adah, N. (2022). Kewenangan Menteri Keuangan dalam Pemilihan Ketua dan Wakil Ketua Pengadilan Pajak setelah Dikeluarkannya Putusan Mahkamah Konstitusi Nomor 10/PUU-XVIII/2020. *Administrative Law and Governance Journal*, 5(1), 90-102.
- Harvelian, A. (2017). Implikasi Hukum dan Legalitas Tax Amnesty terhadap Tingkat kepatuhan Wajib Pajak di Indonesia. *Jurnal Yudisial*, 10(3), 277-294.
- Hasan, D. (2021). Konsep Pengenaan Pajak Alat Berat Pasca Putusan Mahkamah Konstitusi nomor 15/PUU-XV/2017. *Jurnal Hukum Ius Quia Iustum*, 28(3), 505-526.
- Hermawan, A. W., & Sinaga, H. D. P. (2020). Public Benefit Principle in Regulating E-Commerce Tax on Consumer's Location in Indonesia. *International Journal of Advanced Science and Technology*, 29(08), 1212-1222.
- Ilyas, W. B. (2012). Analisis Hukum terhadap Pengenaan Pajak Ganda. *Jurnal Hukum Ius Quia Iustum*, 19(4), 566-585.
- Kanantha, A. M., & Edwar, F. (2022). Independensi Pengadilan Pajak Ditinjau dari Pasal 24 Ayat (1) UUD NRI 1945. *Reformasi Hukum Trisakti*, 4(3), 519-528.
- Parwati, N. N. T., & Parsa, I. W. (2019). Implikasi Yuridis Putusan Mahkamah Konstitusi nomor 15/PUU-XV/2017 terhadap Alat Berat sebagai Obyek Pajak Ganda. *Jurnal Ilmu Hukum*, (3).
- Putri, I. P., Yustikaningrum, R. Y., & Devitasari, A. A. (2021). Implementasi Tax on Food dalam Tanggung Jawab Negara Terhadap Hak Pangan Berdasarkan Putusan Mahkamah Konstitusi 39/PUU-XIV/2016. *Jurnal Konstitusi*, 18(2), 294-320.
- Sinaga, B. R. P., Sinaga, E. N., Barus, L. B., Sinaga, R. Y., & Sinaga, H. D. P. (2020). Justice Reconciliation in Establishing Responsive Tax Law in Indonesia: A Rawlsian Perspective. *Ayer Journal*, 27(3), 171-189.
- Sinaga, H. D. P. (2018, July). Reorientation of Tax Legal Certainty in Indonesia: An Exploration of Transcendental Law. In 1st International Conference on Indonesian Legal Studies (ICILS 2018) (pp. 282-287). Atlantis Press.
- Sugiono, T. V., & Supriyadi, S. (2021). Pelaksanaan Putusan Mahkamah Konstitusi No. 10/PUU-XVIII/2020 atas Mekanisme Pengusulan Ketua dan Wakil Ketua Pengadilan Pajak. *Jurnal Pajak Indonesia (Indonesian Tax Review)*, 5(2), 150-163.
- Sugitha, K. N. R., & Wairocana, I. G. N. (2018). Implikasi Yuridis Putusan Mahkamah Konstitusi Nomor 52 Tahun 2011 terhadap Objek Pajak Hiburan Olahraga Golf. *Kertha Negara: Journal Ilmu Hukum*, 1-16.
- Wicaksono, D. A., & Nurbaningsih, E. (2020). Ratio Legis Penetapan Pembayar Pajak (Taxpayer) sebagai Kedudukan Hukum dalam Pengujian Undang-Undang oleh Mahkamah Konstitusi. *Jurnal Konstitusi*, 17(3), 461-494.
- Wijaya, S., & Arumningtias, D. (2021). Preventing the Potential Tax Avoidance in Government Regulation of the Republic of Indonesia Number 23 of 2018. *Multicultural Education*, 7(1), 288-301.
- Wijayanti, N. M. R., & Nurmawati, M. (2018). Implikasi Yuridis Putusan Mahkamah Konstitusi Nomor 39/Puu-Xiv/2016 terhadap Barang Kebutuhan Pokok sebagai Objek Pajak Pertambahan Nilai. *Kertha Negara: Journal Ilmu Hukum*, 1-16.