The Deconstruction of Perseroan Terbatas Organs Limited Responsibility Principle on Income Tax Payable in Bankruptcy

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Abstract

The concept of limited responsibility, however, has its pros and cons. On the structural side, this concept can keep shareholders safe in carrying out the business activities of a company without worrying that their personal assets will be affected by errors that may occur in business activities, on the other hand, this concept can transfer the risk of failure from shareholders to creditors, especially in bankruptcy cases. The basic idea of this research is to find a new principle that can protect all the interests of creditors without being limited to the principle of limited responsibility that exists on the bankrupt debtor which in this case is a company. The objectives of this research are firstly to find the philosophical basis of the Perseroan Terbatas Organs Limited Responsibility Principle on Income Tax Payable in Bankruptcy that are not paid before the Perseroan Terbatas goes bankrupt which was subsequently declared bankrupt. Secondly to find a legal instrument that can be carried out by the tax authorities on the organs of a Perseroan Terbatas declared bankrupt on Tax Payables that were not paid by the Company before being declared Bankrupt.

Keywords: *Perseroan Terbatas (company), Income Tax Payable, Bankruptcy, Limited Responsibility Principle, Constitution, Piercing the Corporate Veil*

1. Introduction

The concept of a legal entity (recht person) as an entity separate from humans is thought to have been known since ancient Roman times. The first time, this doctrine was introduced by Paus Innocentius IV, with the concept called persona ficta [1].

In its development, the concept of persona ficta has influenced the emergence of theories relating to entities that are not human, but are legal subjects. In fictional theory, for example, the entity is a company, an artificial person, that has no form (intangible), desire (will), substantial reality born due to legal formation [2]. In other words, a company is a legal person who has legal status, rights, and responsibilities just like humans, however, because it is another entity, it is a separate legal entity from its structure, in this case it is a legal entity, directors and shareholders [3].

Generally, countries in the world use the principle of the company as a separate entity and limited responsibility in regulating the existence of the company as a legal entity, Indonesia is no exception. The regulation regarding the company as a separate entity with its structural and limited responsibility in Indonesia is regulated in the provisions of Article 3 paragraph (1) the Indonesia Republic Constitution Number 40 of 2007 concerning Perseroan Terbatas (hereinafter the UU PT), which essentially stipulates that the shareholders of the Company is not personally responsible for the engagement made on

behalf of the Company and is not responsible for the loss of the company exceeding the shares owned.

The concept of limited responsibility, however, has its pros and cons. On the structural side, this concept can keep shareholders safe in carrying out the business activities of a company without worrying that their personal assets will be affected by errors that may occur in business activities, on the other hand, this concept can transfer the risk of failure from shareholders to creditors, especially in bankruptcy cases [4]. For example, it is difficult for involuntary creditors to know the solvency of a company, so that often, in cases of bankruptcy, they get debt payments that are not appropriate or are far below their bills.

The basic idea of this research is to find a new principle that can protect all the interests of creditors without being limited to the principle of limited responsibility that exists on the bankrupt debtor which in this case is a company. Therefore, the author brings the discourse of this research to the doctrine of piercing the corporate veil which according to the Black's Law Dictionary is defined as the judicial act of imposing personal responsibility on otherwise immune corporate officers, directors, and shareholders for the corporation's wrongful act [5] which piercing the corporate veil is a legal effort to shift personal responsibility to corporate structures, such as directors and shareholders for unlawful acts committed by a company.

Even though there are regulations governing piercing the corporate veil in Indonesia, however, the mechanism for this principle is not clearly regulated, which parties usually do piercing the corporate veil, and also what the mechanism is. Therefore, efforts to find new principles that can protect all creditor interests without being limited to the principle of limited responsibility that exist in bankrupt debtors through the application of piercing the corporate veil are important.

Furthermore, efforts to find a new principle that can protect all creditor's interests without being limited to the principle of limited responsibility that exist in bankrupt debtors is carried out by deconstructing the principle of limited responsibility that exists in Perseroan Terbatas. Deconstruction itself is basically a theory about language and literature that was developed in the 1970s. The theory was born, in large part as a reaction to the prominence of French structuralism and the repressive academic and intellectual system that rigidly governed the unique and definitive interpretation of literary texts. Deconstruction refers to the philosophy of Jacques Derrida, which is a rigorous analysis of language in philosophical and theological texts. What most characterizes deconstruction is its notion of textuality, the view of language as it really is not only in books but in speech, in history and in culture, especially written language [6].

Based on the background of the problems described previously, there are problems in the concept of limited responsibility when a Perseroan Terbatas experiences bankruptcy and on the other hand also has a tax debt. The problem is that first, paying taxes is an obligation because the tax authorities are representatives of the state and have the privilege to pay their debts. On the other hand, the rights of other creditors in a Perseroan Terbatas's bankruptcy must also be guaranteed to get a fair and proportionate share so that they do not get payments that are far below their bills. The following are the objectives of this research are firstly to find the philosophical basis of the Perseroan Terbatas Organs Limited Responsibility Principle on Income Tax Payable in Bankruptcy that are not paid before the Perseroan Terbatas goes bankrupt which was subsequently declared bankrupt. Secondly to find a legal instrument that can be carried out by the tax authorities on the organs of a Perseroan Terbatas declared bankrupt on Tax Payables that were not paid by the Company before being declared Bankrupt.

2. Literature Review

2.1. Perseroan Terbatas Concept

Before discussing the limited responsibility of the Perseroan Terbatas organs, it must first be understood what a Perseroan Terbatas abbreviated into PT or Ltd. in foreign term is. Article 1 number (1) of the Perseroan Terbatas Law (UU PT) defines a Perseroan Terbatas as a legal entity which is a capital partnership, established based on an agreement, is a business activity with authorized capital which is entirely divided into shares and fulfills the requirements stipulated in the laws and regulations (Perseroan Terbatas Law and its Implementing Regulations). Historically, a Perseroan Terbatas was a legal entity, which was originally known as Naamloze Vennootschap (NV). The term "Terbatas or Limited" in a Perseroan Terbatas refers to the responsibility of shareholders which is limited to the nominal value of all the shares they own [7]. In line with this definition, according to Muhammad [8] the term "Perseroan or company" refers to the method of determining capital, namely dividing into shares, and the term "Terbatas or limited " refers to the limit of shareholder responsibility, which is limited to the nominal number of shares owned. Perseroan Terbatas is a legal entity partnership company.

Referring to the previous explanation, what needs to be emphasized from the concept of a Perseroan Terbatas is in three aspects:

1. The form of a Perseroan Terbatas which is a legal entity symbolizes that the Perseroan Terbatas is a separate entity from its founder.
2. A Perseroan Terbatas is established with separate capital from the person of the founder, meaning that it has its own assets.
3. As a consequence of the previous two points, the responsibility of the Perseroan Terbatas is limited in nature, not exceeding the shares paid up by the founder and separate from the responsibilities.

2.2. Limited Responsibility of Perseroan Terbatas Organ

In a Perseroan Terbatas, there is a structure in it that holds the respective authorities and responsibilities. These organs consist of the General Meeting of Shareholders, hereinafter referred to as (GMS or RUPS), the Board of Directors and the Board of Commissioners. Article 1 point 4, number 5 and number 6 of the Company Law (UU PT) regulates the definition of what is meant by the three organs.

The GMS holds all powers that are not delegated to the Board of Directors and the Board of Commissioners. Meanwhile, the Board of Directors is the organ of the Company that is fully responsible for the management of the Company for the interests 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. Then, what is meant by the Board of Commissioners is the organ of the Company which is tasked with conducting general and/or specific supervision in accordance with the articles of association and providing advice to the Board of Directors.

3. Research Method

3.1. Research Type

This research is a legal research which is also a reform-oriented research as stated by Hutchinson [9] "Reform oriented Research is Research which intensively evaluated the adequacy of existing rules and which recommends changes to any rules found wanting." Reform-oriented research is a legal research that intensively evaluates the adequacy of existing legal rules and aims to provide recommendations for changes to deficiencies which are later found in a certain legal rule [10]. Through this study, the authors

recommend that there be reforms to the principle of limited responsibility for Perseroan Terbatas that are declared bankrupt and have tax debts.

This study uses three types of approach methods, namely conceptual approach, statute approach, and case approach. The conceptual approach is carried out when the researcher does not stand on the existing legal rules or there are no legal rules for the problems at hand. In using a conceptual approach, researchers need to refer to legal principles that can be found in the views of legal scholars or legal doctrines [11]. In this study, the authors examine the concepts related to this problem, however, they are not explained or not explicitly explained in the provisions of the legislation. Such as the concept of piercing the corporate veil, the characteristics of tax debt, and the principle of limited responsibility.

The statutory approach is carried out by collecting and analyzing all laws and regulations relating to the problems in this research. Furthermore, the case approach is carried out by collecting, then analyzing cases related to the problems discussed.

3.2. Source of Legal Material

The legal materials in this study are sourced from primary legal materials and secondary legal materials. Primary legal materials are legal materials that are authoritative, meaning they have authority. Primary legal materials consist of legislation, official records or minutes in the making of legislation and judges' decisions. The secondary legal materials are all publications on law which are not official documents. Publications on law include textbooks, legal dictionaries, legal journals, and comments on court decisions [11].

3.3. Legal Material Collection Method

Existing legal materials, both primary and secondary, will be collected using library research, which is collected, then inventoried, and linked to existing problems. The legal materials that have been inventoried are then used to answer the problems that are the subject of this research, namely to find the philosophical basis of the Personal Liability of the Organs of the Perseroan Terbatas for the Tax Payables that are not paid before the Perseroan Terbatas goes bankrupt which then the Perseroan Terbatas was declared bankrupt and to find a legal instrument that can be carried out by the tax Fiscus on the Organ of a Perseroan Terbatas declared bankrupt on Tax Payables that are not paid by the Company before being declared Bankrupt.

4. Discussion & Conclusion

4.1. The Principle of Piercing the Corporate Veil

The brief historical analysis outlined above reminds us that although today the company as a separate entity and limited responsibility is accepted, however, the principle was not born naturally or easily. This principle was finally accepted because of the assessment that there are benefits that outweigh the risks if a company adheres to the principle of limited responsibility. In America, for example, in the decision of the William H. Sanders v. Roselawn Memorial Garden case. Inc, it is stated that:

"*The doctrine that a corporation is a legal entity that is independent and separate from the people who compose it is a legal theory introduced for the purpose of convenience and to serve the purpose of justice. It is clear that a corporation is actually a collection of individuals, and that the idea of a corporation as a legal entity or person apart from its members is just a fiction of the Act which was introduced for the convenience of doing business in this special way*."

While the provision that a company is a separate entity from its structure is a principle that applies today, however, laws on companies often contain express exceptions for separate entities or limited responsibility, and it's not uncommon for other laws to do so.

express exceptions in certain circumstances. The exception arises because of the policy choice that the benefits of the principle should not be fully available under certain conditions

The concept of a legal entity (recht person) as an entity separate from humans, is thought to have been known since ancient Roman times. The first time, this doctrine was introduced by Paus Innocentius IV, with the concept called persona ficta [1]. In Kanon law, the concept of persona ficta requires the existence of a separate law between monasteries and monks. The implication of this concept is that as a "fictional person" the monastery cannot be held accountable, nor found guilty of a crime because it has no soul. Instead, those who can be held accountable are the people in the monastery, this is there to protect the structure of the monastery from accountability, besides, at that time, the sanction for a disgraceful act was exile, only humans could be exiled [1].

In its development, the concept of persona ficta has influenced the emergence of theories relating to entities that are not human, but are legal subjects. In fictional theory, for example, the entity is a company which is an artificial person that has no form (intangible), desire (will), substantial reality that were born due to legal formation [2]. In other words, a company is a legal person who has legal status, rights, and responsibilities just like humans, however, because it is another entity, it is a separate legal entity from its structure, in this case it is a legal entity. directors and shareholders [3].

4.2. The Inseparability of the Company Entity

The previous explanation of the principle of piercing the corporate veil places an important understanding of the core of the principle, that understanding is that the principle of piercing the corporate veil is an attempt to penetrate the veil of the company as a separate entity so that the company structure can be held personally accountable. Likewise, Black's Law Dictionary defines piercing the corporate veil as the judicial act of imposing personal liability on otherwise immune corporate officers, directors, and shareholders for the corporation's wrongful act [5]. If defined, then what is meant by piercing the corporate veil is a legal effort to transfer personal responsibility to company structures, such as directors and shareholders for unlawful acts committed by a company.

Referring to the definition presented earlier, the important point of the principle of piercing the corporate veil lies in whether an act that is wrong or violates the law (wrongful act) has been done. If the deed has been done then, mutatis mutandis, the application of the principle then becomes possible. In connection with the action (wrongful act), several countries that have applied the principle in certain cases found one thing in common, namely the principle will be applied when a company as a separate entity is no longer separated or the boundaries of the company's interests are lost. and structural personal of the company due to a certain action that is contrary to the provisions regarding the limitation of limited responsibility.

Furthermore, with regard to the disappearance of the separate entity, Barber writes several factors that are the causes or indicators of the disappearance of the 'separate entity' from the company which these factors are [12]:

1. Commingling of funds and other assets of the corporation with those of the individual shareholders (corporation XYZ holds no separate bank account but deposits the receipts from its business transactions in the personal account of A, its sole shareholder);
2. Diversion of the corporation's funds or assets to noncorporate uses (to the personal uses of the corporation's shareholders);

3. Failure to maintain the corporate formalities necessary for the issuance or subscription to the corporation's stock, such as formal approval of the stock issue by an independent board of directors;
4. An individual shareholder to persons outside the corporation that he or she is liable to personally represent for the debts or other obligations of the corporation;
5. Failure to maintain corporate minutes or adequate corporate records;
6. Identical equitable ownership in two entities (corporation A is owned by the same shareholders and in the same proportions as corporation B);
7. Identity of the directors and officer of two entities who are responsible for supervision and management (a partnership or sole proprietorship and a corporation owned and managed by the same parties);
8. Failure to adequately capitalize a corporation for the reasonable risks of the corporate undertaking;
9. Absence of separately held corporate assets;
10. Use of a corporation as a mere shell or conduit to operate a single venture or some particular aspect of the business of an individual or another corporation;
11. Sole ownership of all the stock by one individual or members of a single family;
12. Use the same office of business location by the corporation and its individual shareholders;
13. Employment of the same employees or attorney by the corporation and its shareholders;
14. Concealment or misrepresentation of the identity of the ownership, management, or financial interest in the corporation which makes loans to them without adequate security;
15. Disregard of legal formalities and failure to maintain proper arm's length relationships among related entities;
16. Use of a corporate entity as a conduit to procure labor, services, or merchandise for another person or entity;
17. Diversion of corporate assets from the corporation by or to a stockholder or other person or entity to the detriment of creditors, or the manipulation of assets and liabilities between entities to concentrate the assets in one and the liabilities in another;
18. Contracting by the corporation with another person with the intent to avoid the risk of non-performance by use of corporate entity, or the use of a corporation as a subterfuge for illegal transactions;
19. The formation and use of the corporation to assume the existing liabilities of another person or entity.

These factors, however, do not necessarily apply and can be applied. In determining which factors can be applied from all of these factors, there must be a balance of considerations between the application of these factors

4.3. Philosophical Legitimacy of Tax Payment Obligations

The obligation to pay taxes is common in every country around the world. Although sometimes there is a debate about whether a certain thing can be taxed or not, however, taxation itself is no longer a debate, in other words the obligation to pay taxes is something that is generally accepted everywhere.

Acceptance of the obligation to pay taxes raises a question that can be assembled by questioning it through statements of antecedent and consequent logic. For example, if the state has the power to coerce the public, then the public accepts to be obliged to pay taxes because the state is the ruler; or if taxes basically have a certain meaning that provides a

basis for legitimacy that the obligation to pay taxes is a truth or value that has no objection, then the acceptance of tax payments is voluntary or something that is indeed the right thing to do. In understanding the two premises, an analysis of the ontological side of taxes becomes important to know which premises are actually relevant to the obligation to pay taxes.

The first important discussion in an effort to understand the ontological side of taxes begins with an understanding of the state as an organization of power. Understanding the state is important considering that the state itself collects taxes. In a country like Indonesia itself, in fact, the basis of tax levies has constitutional legitimacy, namely precisely in the provisions of Article 23A of the 1945 Constitution of the Republic of Indonesia (hereinafter the 1945 Constitution of the Republic of Indonesia or UUD NRI 1945) which stipulates that: the state is regulated by law, not by government regulation. It is interesting to note that the Indonesian constitution itself does not only provide a place for taxes on its torso, but also provides direct confirmation that taxes can only be collected through the existence of a law, not by government regulations.

This provision then raises a fundamental question regarding the differences between Laws and Government Regulations, and why then the levies can only be implemented through laws. In answering this question, it is necessary first to understand that basically law has a hierarchy, this kind of theory is called Stufenbau or Stufentheorie which was initiated by Hans Kelsen. According to this theory, legal norms are basically tiered and layered in a hierarchy (organization), in the sense that a lower norm applies, originates and is based on a higher norm, a higher norm applies, originates and based on a higher norm, and so on, until a norm that cannot be traced further and is hypothetical and fictitious, namely the basic norm (Grundnorm) [13] a basic norm is said to be presupposed [14].

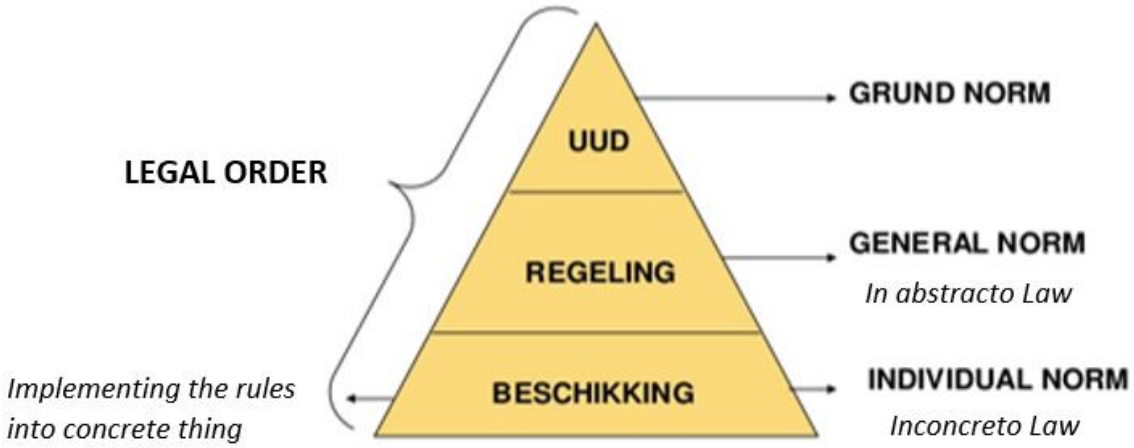

Figure 1. Stufenbau Theory Kelsen

Furthermore, the theory regarding the level of norms was presented by Adolf Julius Merkl. Merkl's view of the norm level was inspired by the opinion of her teacher, Hans Kelsen. According to Merkl, a legal norm has two faces (des doppelte rechtsanltz), the first face facing up and the second face looking down. This means that a legal norm is a norm formed by the norms above it. Not only that, a legal norm is also the basis for the formation of norms under it. This has the consequence that a legal norm has a relative validity period (rechtskracht) because the validity period of a norm depends on the validity period of the

above norm. If the legal norms above are revoked or deleted, basically the legal norms below will be revoked or erased as well [15].

The next level of norm theory was presented by another student of Hans Kelsen, namely Hans Nawiasky. Unlike Merkl, Hans Nawiasky perfected the theory of level norms conceptualized by Hans Kelsen. Nawiasky in his book (Allgemeine Rechtslehre), argues that according to Hans Kelsen's theory, a legal norm of any country is always layered and tiered. The lower norms apply and are sourced from higher norms, higher norms are sourced and based on higher norms until a higher norm is called the basic norm [15]. Furthermore, different from Hans Kelsen, he also said that legal norms in a country are also grouped [15].

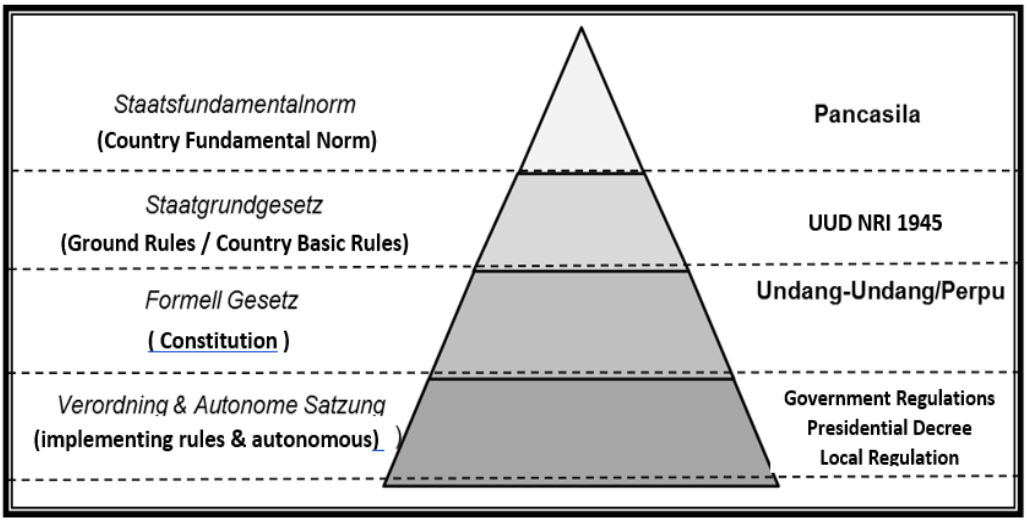

Figure 2 Hierarki Norma Hans Nawiasky

These groups include:

1) State Fundamental Norm (statsfundamentalnorm), is a norm which is the basis for the formation of a constitution or basic law of a country (staatsverfasung) including its modifier norms. In essence, it is a condition for the enactment of a constitution or constitution [15].
2) The Basic Rules of the State (staatsgrundgesetz), are a group of legal norms that originate and are hierarchically located right under the staatsfundamentalnorm. The basic norms of the state, because they are sourced directly from the fundamental norms of the state, usually have a basic substance and are general rules that are still in outline, so they are still a single legal norm.
3) Formal laws (formell gesetz), are legal norms that, unlike the norms above, contain more detailed and concrete provisions and can be applied directly to society. In Indonesia, formell gesetz is translated as a law without a formal word behind it.
4) Implementing Regulations and Autonomous Regional Regulations (Verorldnung & Autonome Satzung), are a group of norms located under the law (formell gesetz). In essence, implementing regulations and autonomous regional regulations function to implement the provisions of the law. Implementing regulations are sourced from delegation authority, while autonomous regional regulations are sourced from attribution authority. The attribution of authority in the formation of laws and regulations is the granting of the authority to form laws and regulations given by groundwet (basic law) or wet (law) to a state/government institution [15]. While the delegation of authority in the formation of laws and regulations is the

authority to form laws and regulations that are carried out by higher laws and regulations to lower laws and regulations.

Referring to these explanations, there are several possible reasons related to the collection of taxes that must go through the law, namely:

1. Constitution is set of rules that are higher than government regulations and are based directly on the constitution.
2. Government regulations that are hierarchically under the Act, so it is impossible for there to be provisions for tax collection in government regulations without constitution that precedes it.

These two reasons, if you pay attention to the explanation of the hierarchy theory, can be said to be in accordance with the provisions that taxes must be collected through law. However, this of course does not answer the two initial premises regarding public acceptance of the obligation to pay taxes, namely whether the public accepts that they are obliged to pay taxes solely because it is determined by the state and the state is the ruler, or whether there is a certain meaning of taxes and therefore the public voluntarily accept such coercive levies.

4.4. Tax Responsibilities by Bankrupt Company Organs

Bankruptcy against a company occurs when a Perseroan Terbatas responsibility no longer has the ability to make payments on its debts, referring to the provisions of Article 2 of the Bankruptcy Law, an application for bankruptcy is filed by two or more creditors for debtor debts that have not paid off in full at least one debt owed due and collectible. Bankruptcy itself based on Article 1 point 1 of the Bankruptcy Law is defined as a general confiscation of all assets of a bankrupt debtor whose management and settlement is carried out by a curator under the supervision of a supervisory judge. From this understanding, there are several important elements in the definition of bankruptcy, namely:

1. Bankruptcy is a general confiscation;
2. The general confiscation is the assets of the bankrupt debtor;
3. Conducted by the curator under the supervision of the supervisory judge.

Bankruptcy is a condition in which the debtor is unable to make payments on the debts of the creditors. This situation is basically caused by the financial distress of the debtor's business which is experiencing a setback [17].

Referring to the description of the bankruptcy, it is quite clear that when a bankruptcy occurs, the responsibility of the company's organs for its debts is carried out by the curator. This includes those related to tax debts that exist after the bankruptcy. In this logic, the responsibility for taxation of the company's organs in the event of bankruptcy will arise if there are certain problems that can interfere with the distribution of bankrupt assets by the management related to taxation issues.

4.5. Legitimacy of Tax Collection Authority

It is important to know that the ontological side of taxes is a tool so that the state can run as it should. This includes development and equitable distribution of welfare. This is important because the Indonesian constitution, the 1945 Constitution of the Republic of Indonesia also mandates the welfare of the Indonesian people through its preamble, so that improper tax administration, in other words, is a form of denial of the constitution, which will also have an impact on the lives of Indonesian citizens.

The basic question that arises from the existence of this collection is regarding the important elements of a tax so that it requires an additional procedure to be billed when

there is tax avoidance by the taxpayer. An important element of a tax can then be seen from the essence and function of the tax itself.

With regard to the essence of taxes, tax itself is not a new concept that exists in modern times. Historically, taxes have been known even since the time of Ancient Egypt, namely in 3000-2800 BC [17]. However, at that time the form of tax was still in the form of a corvee or tithe. Corvee is a forced labor system imposed by the state on poor people as a form of tax payment, while tithe is a form of offering or tithing of income given to religious organizations or the government [18]. As the times progressed and followed by the collapse of tyrannical regimes, the taxation paradigm began to change. Taxes are no longer authoritarian, but their coercive nature is maintained. The change, for example, occurred in 1765 in Boston, America after America slowly began to break away from British colonialism. John Otis, who was a lawyer and political activist in America at that time, began to protest the application of taxes by the British colonial government, as stipulated in the stamp act because it was considered unconstitutional [19]. This opposition to tax policy occurred during the American revolution (1750-1783) which resulted in a famous adage in taxation, namely taxation without representation is tyranny [20]. However, the tax orientation remains the same, only the form of the tax has changed, and the determination is made by a representation which is considered to be the embodiment of the people's voice.

Referring to the understanding and historical side, in essence there are three important points of tax, namely:

1. Tax collection is coercive and carried out by the state;
2. Parties who pay taxes do not get direct achievements;
3. The tax funds are used to finance general expenses [21].

Referring to this understanding, explicitly because of its coercive nature and aimed at the public interest, taxes have certain functions, these functions also determine the importance of a tax so that it must be paid.

Regarding the function, the tax law literature often mentions that basically taxes have two functions, namely the budgetary function and the regulatory function (regular). However, in its development, the tax function can be developed and added two more functions, namely the function of democracy and the function of redistribution. The details will be explained as follows [22]:

1. Budgetary function.
   Taxes are used as a tool to optimally enter funds into the state treasury based on the applicable Taxation Law. It is called the main function because this function historically first emerged. Based on this function, the government that needs funds to finance various interests collects taxes from its citizens. So, the meaning of the tax function when viewed from the word usefulness is more likely to be the main use or the main benefit of the tax itself. The benefits are reflected in the tax budgetary function which is the main function of taxes, in addition to the supporting function, namely the regulerend function.
2. Regulating function (regulerend).
   The regular end function or regulating function is also called an additional function, which is a function in which taxes are used by the government as a tool to achieve certain goals. referred to as an additional function because this function is a complement to the main tax function, namely the budgetary function.
3. The function of democracy.
   It is a function which is one of the incarnations or forms of the gotong royong system, including government and development activities for the benefit of mankind. The function of democracy at this time is often associated with a person's right to obtain

services from the government. If a person has fulfilled his obligation to pay taxes to the state in accordance with applicable regulations, then he also has the right to get good service from the government. If the government does not provide good services, taxpayers can protest (complain) against the government by saying that it has paid taxes, why not get proper service.

4. Redistribution Function.
   Is a function that emphasizes more on the elements of equity and justice in society. This can be seen, for example, by the existence of progressive rates that impose more taxes on people who have large incomes and smaller taxes on people who have less (small) incomes.

The third and fourth tax functions above are often referred to as additional functions because the third and fourth functions are not the main purpose of tax collection. However, with the development of modern society, the third and fourth functions are also very important and inseparable functions in the context of human benefit and balance in realizing the rights and obligations of the community.

Referring to the explanation of the history and function of the tax, it is important to know that the ontological side [23] of the tax is a tool so that the state can run as it should. This includes development and equitable distribution of welfare. This is important because the Indonesian constitution, the 1945 Constitution of the Republic of Indonesia also mandates the welfare of the Indonesian people through its preamble, so that improper tax administration, in other words, is a form of denial of the constitution, which will also have an impact on the lives of Indonesian citizens.

4.6. Legitimacy of Fiscus Authority in Tax Collection

The previous sub-discussion has emphasized that the ontological side of taxes that can be seen from their function is as a tool so that the state can run as it should. This includes development and equitable distribution of welfare. Furthermore, because even the Indonesian constitution also mandates the same thing, proper tax administration is important to ensure that taxation runs well.

In this regard, the legal regulations in Indonesia relating to taxes have clearly and in detail regulated who exercises tax authority. The problem is that taxation does not always run as expected, and the discussion in the previous sub-chapter has shown evidence that Indonesian taxpayer compliance is still low in terms of fulfilling tax obligations. Therefore, tax law instruments have regulations regarding collection which are the authority of the tax bailiff. The tax bailiff's own authority as explained in the previous sub-chapter, includes the authority in terms of reprimand, coercion, confiscation, prevention, and hostage taking. At first glance, these powers seem like authorities that contain elements of arbitrariness. However, it is important to remember that each authority has its own basis of legitimacy—and in certain circumstances additional effort is required to enforce a rule of law. In relation to the legitimacy of this authority, first, the authority itself will be discussed.

According to Raz [24], the authority itself is divided into two spectrums, the authority to do something (authority to perform an action) and authority over other people (authority over persons). The first concept of authority, which will be the focus of this discussion, namely the authority to do something, we often encounter in practice, both in public law and private law. However, legal regulations in Indonesia do not recognize, or do not define authority in regulations that are in the domain of private law (such as the Perseroan Terbatas responsibility Law, for example), instead, the definition of authority appears in the Law of the Republic of Indonesia Number 30 of 2014 on Government Administration. ,

therefore, it is simple to state that authority is a concept that falls under the auspices of public law.

The concept of authority that is under the auspices of public law, brings this discussion to the sources of authority described by Brouwer & Schilder [25], which are sourced from attribution, delegation, and mandate. In this regard, he stated:

a. With attribution, power is granted to an administrative authority by an independent legislative body. The power is initial (originair), which is to say that is not derived from a previously existing power. The legislative body creates independent and previously non existent powers and assigns them to an authority.
b. Delegation is a transfer of an acquired atribution of power from one administrative authority to another, so that the delegate (the body that the acquired the power) can exercise power in its own name.
c. With mandate, there is not transfer, but the mandate giver (mandans) assigns power to the body (mandataris) to make decision or take action in its name.

The statement regarding the source of authority conveyed by Brouwer & Schilder [25] raises the question of whether the authority possessed by the tax bailiff is the authority that comes from the delegation originating from the laws and regulations - in this case it is clearly not a mandate because the tax bailiff uses his own name in exercise their authority, not on behalf of another organ.

Furthermore, because the delegation of authority to tax bailiffs in tax collection comes from laws and regulations (in this case the Tax Collection Law, Foreclosure PP, Tax Collection PMK), of course the granting of authority is very dependent on the existence of legal instruments that regulate it, and one of the an important principle that needs to be considered in the preparation of these legal instruments is legal certainty.

Legal certainty as one of the most important elements that cannot be ignored in making a statutory regulation can only be understood by understanding what the law is first. In understanding the law, the author bases his opinion on Radburch's view of what the law is. Law is formed from three elements, namely reality, values, and ideas. In his full statement [26], Radbruch states that law is a reality that aims to serve the value of law, and the idea of law. Law as a reality referred to by Radburch is law in the sense of positive law. While the values and ideas of the law consist of three principles, namely: justice (justice), goals that are in accordance with the basis of a reality that is formed (expediency), and certainty (certainty).

Furthermore, justice, a goal that is in accordance with the basis of a reality is formed, and certainty is something that is on a philosophical level and is interconnected with one another. The first is about justice. Radbruch is not much rhetoric about what he means as justice, instead, he describes justice in simple sentences but has a complex meaning, namely as "the form of what is right". The complexity of the meaning of what is 'true' is what leads to what he calls expediency. The word expediency is meant to describe a real implication of the intended destination by a reality or law. However, Radbruch puts a limit on what that goal is, namely something whose value cannot be contested (capable of absolute value). The last part of the values and ideas is what he calls certainty. Radburch in his formula, states that a rule of law as a reality must at least accommodate the two values and ideas of the law even though it is not fully (flawed law). In his full statement, Radbruch's view against legal positivism which fails to serve the "ought" side of the law or the validity of the law, leads him to two formulas that he offers relating to legislation. He stated that:

1. The Positive law, secured by legislation and power, takes precedence even when its content is unjust and fails to benefit the people, unless the conflict between statute

and justice reaches such an intolerable degree that the statute, as “flawed law”, must yield to justice.

2. Where there is not even an attempt of justice, where equality, the core of justice, is deliberately betrayed in the issuance of positive law, the statute is not merely “flawed law,” it lacks completely the very nature of law. For law, including positive law, cannot be otherwise defined than as a system and an institution whose very meaning is to serve justice.

In simple terms, Radburch's view of law means placing the relationship between values and legal ideas into a reality that produces a certainty - with that certainty the law is validated for its validity, and legal certainty is what will be achieved if justice and the appropriate goals of the establishment of regulations are made. as a legal reality it can be implemented.

Referring to the explanation above, basically it can be said that a legal rule that is formed is declared to have legal certainty value if it can serve or strive to achieve justice or something right through the fulfillment of the purpose of the establishment of a legal rule. In other words, a rule of law that does not meet the values and ideas of the law can be declared to have no legal certainty value because its reality does not serve the values and ideas of the law.

Based on the descriptions above, the legitimacy of the tax bailiff's authority in collecting collections is an effort to carry out tax law properly. This is because the self-assessment system adopted in the KUP Law (Law of General Provisions and Tax Procedures) has shortcomings, so that other legal instruments (Tax Collection Law, Foreclosure PP (PP means Government Rules), and Tax Collection PMK (PMK means Minister of Finance Regulation)) that authorize tax bailiffs to collect collections are to support legal certainty from The KUP Law can be implemented by fulfilling the value of justice (justice) and the objectives to be achieved (expediency). The justice side is related to the nature of the tax function as a tool so that the state can run as it should, including in terms of development and equitable distribution of welfare. While the objectives to be achieved are also related to the tax function, namely the budgetary function, the regulatory function, the democratic function, and the redistribution function.

4.7. Bankruptcy of the Company and All its Legal Consequences

Bankruptcy against a Perseroan Terbatas responsibility occurs when a Perseroan Terbatas responsibility no longer has the ability to make payments on its debts. Referring to the provisions of Article 2 of the Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payments (hereinafter referred to as the Bankruptcy Law), the petition for bankruptcy is filed by two or more creditors for the debtor's debts which have not been paid in full at least one debt owed due and collectible. Bankruptcy itself based on Article 1 point 1 of the Bankruptcy Law is defined as a general confiscation of all assets of a bankrupt debtor whose management and settlement is carried out by a curator under the supervision of a supervisory judge. From this understanding, there are several important elements in the definition of bankruptcy, namely:

1. Bankruptcy is a general confiscation;
2. The general confiscation is the assets of the bankrupt debtor;
3. Conducted by the curator under the supervision of the supervisory judge.

Reflecting on these elements, it can be said that a bankruptcy results in the loss of the debtor's right to manage his assets. In addition, their assets will be subject to general confiscation to pay off all debts to creditors. In bankruptcy, the creditors include [27]:

1. Separatist Creditors.

These creditors are creditors whose receivables are guaranteed because they have material guarantees (mortgages, mortgages, liens, fiduciaries).

2. Preferred Creditors.
   This creditor is a type of creditor regulated by law. Preferred creditors are divided into two, namely special and general. In principle, payments to special preferred creditors take precedence over general preferred creditors.
3. Concurrent creditors.
   Often these creditors are referred to as unsecured creditors because they do not have certain unsecured receivables, and do not have the privileges of preferred creditors. Payments to concurrent creditors are made according to the size of the receivables of each existing creditor.

It should be remembered that the distribution of creditors in the field of general civil law and bankruptcy law is different. In general civil law, creditors are simply divided into preferred and concurrent creditors, the preference refers to creditors who must be prioritized by law and who hold material guarantees. Bankruptcy law on the other hand, as described earlier, divides creditors into 3 types, preferred creditors who have privileges, while those who hold material guarantees are called separatist creditors [16], other than that, they are referred to as concurrent creditors.

The consequence of the distribution of creditors in the bankruptcy is the order of payment for the debts of the creditors. This is as stipulated in the provisions of Article 1132 Burgerlijk Wetboek (hereinafter referred to as BW) which essentially stipulates that all debtor's assets sold must be distributed to creditors in a balanced manner, unless there are creditors whose receivables fulfillment takes precedence [28]. The first creditor whose payment is prioritized is the preferred creditor. This is due to its nature which has precedence rights compared to other creditors, followed by separatist creditors, and finally concurrent creditors. In line with that, Sjahdeni [10] stated that according to article 1134 BW, if it is not explicitly stipulated otherwise by the law, then the creditor holding the security right must take precedence over the creditor holding the privilege to obtain repayment of the debt from the sale of the debtor's assets.

Furthermore, due to the characteristics of a Perseroan Terbatas responsibility which is a separate entity from its shareholders and the 'limited' nomenclature which describes the form of limited responsibility adopted in a Perseroan Terbatas responsibility [8], the debtor is strictly defined as a Perseroan Terbatas responsibility as a separate entity. with its shareholders, and regarding the assets of the debtor, the assets in question are the assets of the Perseroan Terbatas responsibility which are separate from the shareholders. In other words, the bankruptcy of a Perseroan Terbatas responsibility means only the management of the assets of the Perseroan Terbatas responsibility, nothing more.

4.8. Tax Fiscus as Preferred Creditor

One of the preferred creditors who exist when a bankruptcy occurs is the tax authorities. This is based on the provisions of Article 21 paragraphs (1), (2), (3), and (3a) of the KUP Law which stipulates that:

(1) The state has the preemptive right for tax debts on the property of the tax bearer.
(2) Provisions regarding the right to precede as referred to in paragraph (1) cover tax principal, administrative sanctions in the form of interest, fines, increases, and tax collection fees.
(3) The right of precedence for tax debts exceeds all other precedent rights, except for:
    a. Court fees that are only caused by a sentence to auction a movable and/or immovable property;
    b. Costs that have been incurred to save the goods in question; and/or

c. Court fees, which are only caused by the auction and settlement of an inheritance.

(3a) In the event that a taxpayer is declared bankrupt, disbanded, or liquidated, the curator, liquidator, or person or entity tasked with conducting settlements is prohibited from distributing the taxpayer's assets in bankruptcy, dissolution, or liquidation to shareholders or other creditors before using the assets. to pay the taxpayer's tax debt.

Based on the provisions of the article it is clear that tax is a preferred creditor, but its nature is a general preferred creditor. This is because there are several costs that can precede the payment of taxes as regulated in the provisions of paragraph (3). In addition, what needs to be remembered is that in bankruptcy the payment of tax debt must be made even before the settlement of the assets of the bankrupt debtor.

Furthermore, even in the case of bankruptcy, the tax authorities are the preferred creditors and the payment of tax debts must take precedence, several cases that have occurred in Indonesia show that the precedent right may be invalidated.

4.9. The Authority of the Tax Fiscus in Collection of Tax Debts of Bankrupt Debtors

In several cases of tax collection on a bankrupt company, it shows that however, the collection procedure is subject to the Bankruptcy Law regime, such as the matching of receivables as regulated in the provisions of Article 113 of the Bankruptcy Law which stipulates that:

(1) No later than 14 (fourteen) days after the decision on the declaration of bankruptcy is pronounced, the supervisory judge must determine:
a. Deadline for submission of invoices;
b. The deadline for tax verification is to determine the amount of tax liability in accordance with the laws and regulations in the field of taxation;
c. The day, date, time and place of the creditor's meeting to conduct the reconciliation of accounts receivable.

(2) The grace period between the dates as referred to in paragraph (1) letter a and letter b is at least 14 (fourteen) days.

One of the weaknesses of the Bankruptcy Law enactment in the collection of bankrupt companies taxes is the possibility that the tax receivables owned by the state may not be paid in full-of course this violates the nature and function of taxes.

In several cases of bankruptcy that occurred in Indonesia, it shows that it is very possible that it was due to an error or even an intentional act by the company because it did not pay taxes, causing state tax receivables to be not paid in full. Tax law instruments on the other hand also provide arrangements to overcome these problems. For example, preventively, this can be achieved by making direct and instant collections as stipulated in the provisions of Article 8 PMK Tax Collection, regulating several reasons for instant and simultaneous collections, namely in the case of:

a. The tax bearer will leave Indonesia in perpetuity or intends to do so;
b. The tax bearer transfers the goods owned or controlled to stop or reduce the company's activities or work carried out in Indonesia;
c. There are signs that the entity will be dissolved, merged, expanded, transferred, or other forms of change are made;
d. The agency will be dissolved by the state;
e. There is a confiscation of the tax-bearing goods by a third party; or
f. There are signs of bankruptcy.

However, the tax collection system in the form of a self-assessment system with its shortcomings almost does not allow the tax authorities to see any signs of bankruptcy in a

company. In addition, in bankruptcy practice it is difficult for involuntary creditors to know the solvency of the company, so that often, in bankruptcy cases, they get debt payments that are not appropriate or are far below the bills they have [29].

On the other hand, a Limited Liability Company which is a separate entity mutatis mutandis must apply the principle of limited liability. Even though Indonesia also recognizes the doctrine of piercing the corporate veil, the application of bankruptcy disputes has never been carried out in Indonesia in relation to tax debts. The provision principles are further regulated in Article 3 paragraph (2) of the Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies (UU PT) which affirms:

The provisions as referred to in paragraph (1) do not apply if:

a. The requirements of the company as a legal entity have not been or are not met;
b. The shareholder concerned either directly or indirectly in bad faith uses the company for personal gain;
c. The shareholder concerned is involved in an unlawful act committed by the company, or
d. The shareholders concerned either directly or indirectly unlawfully use the company's assets, which results in the company's assets being insufficient to pay off the company's debts.

These things, of course, although possible, but seem impossible to happen. Whereas the cause of insufficient assets due to delays in tax payments by the company, whether you like it or not, is certainly a form of law violation. This is because in tax law, tax debt includes an engagement born of the Act. In other words, the delay in paying taxes for so many years is a form of violation of the law, consequently, the taxpayer has the obligation to pay taxes (schuld) and if the taxpayer does not want to pay the tax, the taxpayer is considered to have left his assets unpaid. the object is taken by the state as much as the tax debt (haftung) [30].

Unfortunately, both the Bankruptcy Law and all tax law instruments do not provide specific arrangements regarding legal remedies that can be taken by the tax authorities in penetrating the corporate veil so that the company structure can be held personally responsible so that the payment of tax debts that are in error can be made properly.

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