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LEGAL STANDING OF TAX BEARERS AFTER THE COMPLETION OF
BANKRUPTCY DUE PROCESS

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ABSTRACT

The purpose of this research is to identify legal responsibilities of the Shareholders and Management of the company as tax bearers (the parties responsible for paying taxes) to carry out rights and obligations of tax payer's representative after the completion of bankruptcy due process by bankruptcy solicitor and to identify legal efforts of the Company's Shareholders and Management to be legally unaccountable to jointly pay the company's unpaid tax debt after the completion of bankruptcy due process.

INTRODUCTION

The objectives of the Indonesian state listed in the Preamble of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the "1945 Constitution") are to protect the entire Indonesian nation and all of Indonesia's bloodshed, and to promote public welfare, educate the nation's life, and participate in implementing world order. The main ideas contained in the opening Preamble of the Republic of Indonesia is to realize social justice for all Indonesian people based on Pancasila and the 1945 Constitution. (State, 1945).

To achieve this goal, a large amount of funds is needed. The source of state funding generally comes from natural resources and human resources in the form of taxes. The longer the natural resources will decrease the more chances tax collection becomes the main choice. (Bustamar, 2017)

Tax is one form of state income which accounts for the largest percentage compared to other income sectors such as oil and gas and non-oil and gas. The success of a country in collecting taxes from its citizens will certainly benefit the economic stability of the country concerned. The World Bank considers that Indonesia is a country with the lowest tax revenues compared to countries in Asia and the G20. Therefore, the World Bank advises the Government of Indonesia to carry out policy reforms and intensive efforts through improving tax policies and increasing taxpayer compliance.

Various efforts have been carried out and will continue to be carried out by the state/government in order to increase taxpayer compliance including to develop a complete, accurate, integrated and guaranteed database management system so that it could be used to support service activities, supervision, intensification of tax revenues and extensification of potential tax revenues including taxpayers who have been declared bankrupt by the Commercial Court Verdict. (Farouq, 2018).

This can be seen from the case of PT Muara Manggalindo's bankruptcy (hereinafter referred to "PT. MM") in the Commercial Court Verdict Number 08/Pailit/2011/PN.Niaga.Jkt.Pst. dated 16 March 2011, whose due process has been completed based on the Commercial Court Verdict Number 08/Pailit/2011/PN.Niaga.Jkt.Pst dated 8 August 2017.

In due process of PT. MM bankruptcy, the Bankruptcy Solicitor (hereafter referred to "Solicitor") paid to the Director General of Taxes (hereinafter referred to as the "DGT") as the preferred creditor based on the Renvoi Precedure Verdict of Commercial Court and Supreme Court verdicts.

Then, the Solicitor completed bankruptcy due process by preparing an accountability report and announcing the completion of bankruptcy in 2 (two) national newspapers, which are Media Indonesia and Rakyat Merdeka and eventually registered the said completion in the State Gazette of Indonesia.

But then the DGT blocked the personal bank accounts of all shareholders and management of PT. MM on the grounds that the tax owed by PT. MM has not been fully paid by the Solicitor as the tax bearer according to the DGT underpayment tax assessment letter.

METHOD OF RESEARCH

Data collection technique

Secondary data in the form of primary legal materials, secondary legal materials and tertiary legal materials was obtained through library research techniques.

Through library research, document study and archival studies are identified, then the necessary legal material is recorded and cited on a sheet of notes that has been prepared specifically by coding on each legal material based on the classification of legal material sources and sequences. From the legal materials obtained, the author will introduce legal principles, conceptions and legal theories that are relevant to the topic and problems.

After the secondary data is collected, which is obtained from library studies and document studies, the first process which is carried out, is “editing”, in which data was obtained, examined and re-examined regarding its completeness, clarity and truth. Second, “systematic”, which is to prepare and place data in each subject systematically. Legal materials are reviewed and analyzed in normative legal research, covering primary, secondary and tertiary legal materials. Techniques for reviewing and collecting all three legal materials, are using documentary studies.

Data analysis technique

After secondary data was collected, then it was processed and analyzed qualitatively. This means outlining the data processed in detail into sentences (“descriptive”). Qualitative analysis is carried out starting from normative analysis. Based on the results of the analysis, conclusions are drawn deductively, which is the way of thinking based on general facts and then drawn to a specific conclusion.

RESULT AND DISCUSSION

On 16 March 2011, based on Verdict Number 08/Pailit/2011/PN.Niaga.Jkt.Pst, PT. MM was declared bankrupt with all legal consequences because PT. MM has a debt payable to CV. CBM, which was already due and collectable in the amount of Rp. 2,160,873,930 - (two billion one hundred and sixty million eight hundred seventy three thousand nine hundred thirty rupiah). PT. MM also has other creditors who have accounts receivable from PT. MM, namely Julius Albert worth Rp. 718,530,500 (seven hundred eighteen million five hundred thirty thousand five hundred rupiahs) and PT. Jaya Moria worth Rp. 1,983,685,780 (one billion nine hundred eighty three million six hundred eighty five thousand seven hundred eighty rupiah). (Commercial Court, 2011).

As an appeal to Verdict Number 08/Pailit/2011/PN.Niaga.Jkt.Pst dated 16 March 2011, stating that PT. MM was declared bankrupt, PT. MM filed an application to the Cassation Supreme Court and was declined based on Verdict Number 295K/Pdt.Sus/2011 dated on 8 December 2011 for the reason that Commercial Court was correct in making verdict, because the bankruptcy file already fulfilled Article 2 paragraph (1) and Article 8 of Bankruptcy Law. (Commercial Court, 2011). (Cassation Supreme Court, 2011).

Afterwards, The Solicitor announced the list of fixed Creditors and Claims therefore rejecting KPP’s claim of Rp. 17,616,393,615 (seventeen billion six hundred sixteen million three hundred ninety three thousand six hundred fifteen rupiahs). But then the North Jakarta Intermediate Tax Office (hereinafter referred to as KPP) filed a Renvoi Procedure Appeal to the list of fixed Creditors and Claims against the Solicitor to the Commercial Court requesting the Commercial Court to acknowledge all tax arrears of PT. MM, which is valued at Rp. 17,616,393,615 (seventeen billion six hundred sixteen million three hundred ninety three thousand six hundred fifteen rupiahs), However, Renvoi Procedure Verdict only granted the tax arrears of PT. MM which is Rp. 12,065,180,312 (Twelve billion sixty five million one hundred eighty thousand three hundred and twelve rupiah) and Solicitor was ordered to admit KPP’s claim of Rp. 12,065,180,312 (Twelve billion sixty five million one hundred eighty thousand three hundred and twelve rupiah), based on Commercial Court Verdict Number 08/Pailit/2011/PN.NIAGA.JKT.PST dated 1 June 2011. (Commercial Court, 2011).

As an appeal to the Verdict Number 08/Pailit/ 2011/PN.Niaga.JKT.PST dated 1 June, KPP filed an application to The Cassation Supreme Court and was declined based on Verdict Number 471 K/Pdt.Sus/2011 dated 3 October 2011, because Commercial Court was correct in making verdict considering that the tax of PT. MM in arrears is amounting to Rp. 12,065,180,312,- (twelve billion sixty five million one hundred eighty thousand three hundred and twelve rupiahs). (Cassation Supreme Court, 2011)

As an appeal to Verdict Number 471 K/Pdt.Sus/2011 dated 3 October 2011, KPP filed an application to The Judicial Review Supreme Court and was declined based on Verdict Number 74 PK/Pdt.Sus/2012, dated 16 July 2012 because there was no oversight or a real mistake found in the Verdict of the Supreme Court Number 471 K/Pdt.Sus/2011 and because the consideration was correct in deciding the a quo case. (Cassation Supreme Court, 2011). (Judicial Review Supreme Court, 2012).

Afterwards, The Solicitor announced the List of Payment Distribution stating that The Kanwil's right of payment is only Rp. 823,467,441.53 (eight hundred twenty three million four hundred sixty seven thousand four hundred forty one rupiahs and fifty three cents). But then The Ministry of Finance of the Republic of Indonesia Directorate General of Tax Regional Office of North Jakarta (hereinafter referred to as "Kanwil") filed a Renvoi Procedure Appeal to the List of Payment Distribution against the Solicitor to The Commercial Court, requesting The Commercial Court to pay all tax arrears of PT. MM which is Rp. 12,065,180,312 (Twelve billion sixty five million one hundred eighty thousand three hundred and twelve rupiah), and was declined and ordered Solicitor to pay the final part of Kanwil which is Rp. 823,467,441.53 (eight hundred twenty three million four hundred sixty seven thousand four hundred forty one rupiahs and fifty three cents), based on Verdict Number 08/Pailit/2011/PN.Niaga.JKT.PST dated 15 February 2013. (Commercial Court, 2013).

As an appeal to verdict Number 08/Pailit/2011/PN.Niaga.JKT.PST dated 15 February 2013, Kanwil filed an application to The Cassation Supreme Court and was declined based on verdict Number 144 K/Pdt.Sus-Pailit/2013 dated 18 April 2013, because The Commercial Court was correct in implementing the law. (Commercial Court, 2013). (Cassation Supreme Court, 2013).

As an appeal to Verdict Number 144 K/Pdt.Sus-Pailit/2013 dated 18 April 2013, Kanwil filed an application to The Judicial Review Supreme Court and was declined based on Verdict Number 49/PK/Pdt.Sus-Pailit/ 2014 dated 28 November 2014 and because the consideration was right in deciding the a quo case. (Cassation Supreme Court, 2013). (Judicial Review Supreme Court, 2014).

Eventually On 8 August 2017, based on the Verdict Number 08/Pailit/2011/PN.Niaga.Jkt.Pst, Bankruptcy due process of PT. MM was completed on the grounds that the Solicitor has carried out his duties, which was approved by the Supervisory Judge dated 29 October 2013 and was already announced in the Kompas and Bisnis Indonesia Daily Newspaper, the 4th of July 2013 edition and registered the completion in the Official Gazette of the Republic of Indonesia on 8 July 2013. (Commercial Court, 2017).

Based on the description of the legal efforts mentioned above, the author concludes that the tax arrear of PT. MM which originally was Rp. 17,616,393,615 (seventeen billion six hundred sixteen million three hundred ninety three thousand six hundred fifteen rupiahs) but later, after being trialed, was granted only Rp. 12,065,180,312, - (Twelve billion sixty five million one hundred eighty thousand three hundred and twelve rupiahs) by the Commercial Court and the Supreme Court, and based on the list of payment distribution, Kanwil only gets the final portion of Rp. 823,467,441.53 (eight hundred twenty three million four hundred sixty seven thousand four hundred forty one and fifty three cents).

The question is whether the remaining tax arrears from the original Rp. 17,616,393,615 (seventeen billion six hundred sixteen million three hundred ninety three thousand six hundred fifteen rupiahs) and already paid Rp. 823,467,441.53 (eight hundred twenty three million four hundred sixty seven thousand four hundred forty one and fifth three cents) should be paid by shareholders and management of PT. MM as tax bearers.

According to General Provisions and Tax Procedures Law (hereinafter called "UUKUP"), it is identified who would be the representative to carry out the taxpayer's tax rights and obligations towards the entity declared bankrupt. For those taxpayers, it is necessary to identify who is the representative because entities cannot carry out the legal action themselves. Article 32 paragraph (1) letter b and paragraph (2) UUKUP stipulates that Solicitor is party authorized to represent taxpayer's rights and obligations declared bankrupt by court verdict and therefore the Solicitor immediately becomes the tax representative by court verdict. This means that taxation rights and obligations have been transferred from the taxpayer to the Solicitor since the bankruptcy verdict was announced by the Commercial Court, therefore KPP or Kanwil can no longer collect taxes from the tax payer after the verdict of the Commercial Court is announced. Because of that, all taxation rights and obligations of the taxpayer have been represented by the Solicitor and, by law, the Solicitor has become the tax representative to carry out the taxpayer's rights and obligations who are declared bankrupt. (State, 2009).

However, The General Provisions and Tax Procedures Law does not stipulate clearly that after the completion of bankruptcy, The Shareholders and Management, by law, should become the tax bearers of the company's tax debt. The said law only stipulates in the case of bankruptcy, the Solicitor becomes a representative of tax payer. Although article 1 number 3 of Act Number 19 of 1997 concerning Tax Collection With Forced Letters as last amended by Law Number 19 Year 2000 (hereinafter called "UU PPSP") stipulates that "Tax bearer is an individual or entity responsible for paying taxes, including *representatives* who exercise the rights and fulfill the obligations of the Taxpayer according to general provisions and tax procedure law," doesn't mean that the Solicitor consequently becomes the tax bearer and, vice versa, it doesn't mean that the Shareholders and Management consequently become the tax bearers either. (State, 2000).

In the case of KPP or Kanwil arguing that there is still tax debt unpaid or tax payable according to the calculation of KPP or Kanwil but already paid by the Solicitor partially based on the Renvoi Procedure Verdicts, then valid and binding tax payable amount is the amount based on The Commercial Court and The Supreme Court Verdicts. This is because since KPP or Kanwil registered PT. MM tax arrears as preferred creditor to the Solicitor, therefore KPP and Kanwil must abide and adhere to the bankruptcy provisions governing the Creditors, including preferred Creditors. If KPP or Kanwil registered as preferred creditor to the Solicitor, the bankruptcy procedure should apply. However, if KPP or Kanwil conducts its own collection efforts until seizure orders and auction, KPP or Kanwil only adheres to General Provisions and Tax Procedures Law through seizure orders and forced letters, therefore KPP or Kanwil does not have to adhere to the Bankruptcy provisions but to the General Provisions and Tax Procedures only. (Tax Court, 2019).

CONCLUSIONS

In accordance with the discussion described above, the author draws conclusions as follows:

1. The shareholders and management of the company can not be held accountable as the tax bearers (the parties responsible for paying taxes) after completion of bankruptcy due process by Solicitor because the authority to carry out taxpayer rights and obligations has been represented or transferred from the taxpayer to the solicitor in the event of bankruptcy.

2. The Legal Effort of Shareholders and Management of PT MM to be legally unaccountable to jointly pay the unpaid tax debt of PT. MM after the completion of bankruptcy is filing a lawsuit to the Tax Court based on the provisions of Law Number 14 of 2002 concerning the Tax Court in relation to legal remedies and awards for blocking personal accounts of shareholders and management of the company within 30 (thirty) days from the issuance of account/s blocking decree or within 14 (fourteen days) from the seizure orders and auction date of fixed assets.

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