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Legal Certainty Regarding the Trustee's Liability for Payment of the Remaining Tax Debt of a Bankrupt Corporation

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Abstract

Corporate bankruptcy may result in outstanding tax debts when the bankruptcy estate is insufficient to satisfy tax obligations, creating uncertainty regarding whether liability rests with the curator, directors, or the bankrupt corporation. This study aimed to analyze the regulation of curators' liability for corporate tax debts and determine the legal certainty arising from conflicting judicial interpretations. It employed normative legal research using statutory and case approaches. The primary legal materials included tax law, bankruptcy law, tax collection regulations, and limited liability company law, along with three Tax Court decisions, Supreme Court Decision Number 1481/B/PK/Pjk/2023, and Constitutional Court Decision Number 41/PUU-XVIII/2020. The materials were examined through qualitative analysis and systematic legal interpretation. The findings demonstrate that a curator represents a bankrupt taxpayer and is responsible for administering verified tax claims using the bankruptcy estate. However, insufficient assets do not automatically transfer the corporation's remaining tax debt to the curator personally. Personal liability arises only when the curator's proven error, negligence, abuse of authority, or professional misconduct causes losses or obstructs proper tax settlement. Meanwhile, directors may remain accountable for intentional misconduct or negligence committed while managing the corporation before bankruptcy. Therefore, distinguishing estate-based payment authority from fault-based personal liability harmonizes the applicable legal regimes and provides legal certainty for tax authorities, curators, directors, creditors, and bankrupt corporations.

INTRODUCTION

The definition of bankruptcy as stated in Black's Law Dictionary is "the state or condition of a person (individual, partnership, corporation, or municipality) who is unable to pay its debts as they become due," a term that also includes parties against whom an involuntary bankruptcy petition has been filed, those who voluntarily file for bankruptcy, or those who have been declared bankrupt by a court. Based on this definition, bankruptcy refers to a condition in which a debtor is no longer able to fulfill financial obligations that have become due. This situation must be addressed through legal proceedings by submitting a bankruptcy petition to the Commercial Court, which may be filed by the debtor itself or initiated at the request of a creditor (Edelman et al., 2019; Gouri, 2025; Lesmono, 2020; Martina & Arjaya, 2018; Nurohim et al., 2022).

The regulation of bankruptcy in Indonesia is primarily derived from the Law on Bankruptcy and Suspension of Debt Payment Obligations (Undang-Undang Kepailitan dan Penundaan Kewajiban Pembayaran Utang [KPKPU Law]). In principle, bankruptcy constitutes an execution mechanism in the form of the seizure and liquidation of the debtor's assets to fulfill the collective rights of creditors. The distribution of proceeds from the sale of assets is adjusted according to the verified claims recorded at the time of the bankruptcy declaration. After the court issues a bankruptcy decision, a juridical restriction occurs whereby the debtor loses the authority to manage and control its assets due to the application of general confiscation (sita umum). All matters concerning the administration and settlement of the bankruptcy estate are subsequently entrusted to a curator appointed by the Commercial Court and directly supervised by a Supervisory Judge.

Under the supervision of the Supervisory Judge, the curator coordinates the legal relationship between the debtor and creditors and carries out the administration and settlement of the bankruptcy estate. This process involves utilizing proceeds from asset liquidation to satisfy the debtor’s obligations fairly, in accordance with the priority structure of claims recognized in bankruptcy law. Based on the KPKPU Law, the curator is authorized to perform actions concerning the bankruptcy estate, including its administration, management, settlement, or transfer. Therefore, the curator’s authority over the bankruptcy estate is intended to facilitate the fulfillment of the debtor’s obligations toward creditors. The law stipulates that the performance of the curator’s duties as an estate administrator is financed from the available bankruptcy estate and not from the curator’s personal assets. Conversely, losses arising from the curator’s actions, negligence, or unprofessional conduct become the curator’s personal responsibility. Accordingly, if the curator is proven to have misused the bankruptcy estate, the curator is obligated to compensate for the resulting losses (Aprita, 2022; Rahardja et al., 2026; Warjiyati et al., 2025).

Consistent with the principle of justice, every rule or decision related to bankruptcy proceedings must accommodate the interests of all parties involved. Therefore, the curator is required to ensure equitable distribution among creditors by considering the rights and interests of each party to achieve legal certainty in resolving bankruptcy cases.\(1\) In bankruptcy practice, it is possible that residual tax debts of a bankrupt debtor remain unpaid because the bankruptcy estate (boedel pailit) is insufficient to satisfy all outstanding tax obligations. Differences in interpretation regarding the curator’s responsibility for such circumstances remain present under the applicable legal framework, particularly when the bankrupt debtor is a limited liability company.

One of the most contested issues in global insolvency law concerns the treatment of tax claims when a debtor’s assets are insufficient to satisfy all liabilities. An International Monetary Fund study published in 2025 examined the treatment of tax claims across 60 jurisdictions representing approximately 91% of global gross domestic product and 84% of the world’s population. The study found that no universal approach exists: some jurisdictions grant tax authorities general or special priority, others limit priority based on amount or duration, and several jurisdictions provide no tax preference. The study also identified a recurring coordination problem when the ranking of tax claims is regulated through tax legislation rather than insolvency legislation (Waerzeggers et al., 2025). These variations demonstrate that tax priority is not merely a collection mechanism but also a policy choice influencing creditor equality, access to credit, business rescue efforts, and the accountability of insolvency practitioners.

A similar coordination problem exists in Indonesia, where the settlement of tax debts of bankrupt corporations is governed by multiple statutory regimes. Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations regulates that the administration and settlement of the bankruptcy estate are conducted by a curator under the supervision of a Supervisory Judge. Meanwhile, Article 32 paragraphs (1) and (2) of the Law on General Provisions and Tax Procedures, most recently amended through Law Number 6 of 2023, recognizes the curator as the representative of a bankrupt corporate taxpayer and provides for personal and/or joint liability of taxpayer representatives unless they can prove that such responsibility should not reasonably be imposed. Law Number 19 of 2000 concerning Tax Collection by Compulsory Letter further regulates the delivery of compulsory collection documents in bankruptcy proceedings, while Article 21 of the tax law establishes the state's preferential right over tax receivables. The interaction of these provisions creates uncertainty as to whether the curator merely administers payment from the bankruptcy estate or personally guarantees the settlement of remaining tax debts.

This uncertainty becomes particularly significant when the bankruptcy estate has been fully administered but remains insufficient to discharge the corporation's tax liabilities. In such circumstances, the curator no longer controls assets from which payment can be made; however, a literal interpretation of Article 32 of the tax law may expose the curator to personal and/or joint liability as the taxpayer's representative. Such interpretation may conflict with Articles 69 and 72 of Law Number 37 of 2004, which establish that the curator's primary responsibility is the administration and settlement of the bankruptcy estate, while personal liability arises only when the curator's fault or negligence causes losses to the estate. This issue must also be harmonized with Articles 92 and 104 of Law Number 40 of 2007 concerning Limited Liability Companies, which impose corporate management responsibilities on the board of directors and allow directors to be held personally or jointly liable when their fault or negligence contributes to bankruptcy and the insufficiency of corporate assets to satisfy obligations.

Previous Indonesian studies have primarily examined the preferential position of the state and the curator's obligation to protect tax receivables during bankruptcy proceedings. Siburian, Susilowati, and Ispriyarso (2017), for example, concluded that tax debts possess a privileged position because they arise by operation of law and that curators must prioritize the settlement of state tax claims in the distribution of bankruptcy assets. They further argued that a curator may be held personally or jointly liable when the curator completely fails to settle tax debts owed by the bankrupt taxpayer. However, their research was conducted before Constitutional Court Decision Number 41/PUU-XVIII/2020 and Supreme Court Decision Number 1481/B/PK/Pjk/2023, which provide subsequent judicial interpretations regarding the allocation of liability among the corporation, its management, and the curator. Therefore, these previous conclusions require reassessment in light of subsequent judicial developments and the evolving statutory framework.

Other relevant studies have approached this issue from different perspectives. Hartini (2019) examined the priority relationship between tax debts and workers' wages, whereas Keliat, Sunarmi, Siregar, and Sukarja (2021) analyzed the curator's authority when the state acts as a preferred creditor. Sitompul (2021) discussed the constitutionality of settling tax liabilities of bankrupt companies and emphasized that corporate management remains central to accountability because a legal entity cannot act independently from the individuals responsible for its management. Similarly, the Constitutional Court in Decision Number

41/PUU-XVIII/2020 held that the removal of a taxpayer identification number, whether due to bankruptcy or other reasons, does not automatically eliminate existing tax obligations. The Court further stated that the scope of a manager's liability depends on the losses caused by the manager's negligence or intentional misconduct while actively managing the corporation.

Despite these contributions, existing research has predominantly focused on the state's status as a preferred creditor, the priority of tax claims relative to other claims, the curator's general authority over the bankruptcy estate, or the liability of corporate directors. Limited attention has been given to the specific legal question of who bears responsibility for residual tax debts after the bankruptcy estate becomes insufficient or has already been distributed. Moreover, previous studies have not comprehensively compared the legal reasoning adopted in Tax Court Decisions Numbers PUT-006841.99/2018/PP/M.IVB, PUT-006842.99/2018/PP/M.IVB, and PUT-006931.99/2019/PP/M.IVB with Supreme Court Decision Number 1481/B/PK/Pjk/2023 and Constitutional Court Decision Number 41/PUU-XVIII/2020. This absence of integrated analysis creates an important research gap concerning the interpretation of representation, responsibility, fault, and payment liability across taxation, bankruptcy, and corporate law.

Addressing this gap is urgent because inconsistent judicial interpretations may expose curators to liabilities that exceed the assets entrusted to them and are unrelated to their professional fault. Such uncertainty may discourage qualified professionals from accepting appointments, encourage overly defensive administration of bankruptcy estates, delay distributions to creditors, and increase disputes between curators and tax authorities. Conversely, an interpretation that completely releases curators from all forms of responsibility could weaken tax enforcement when tax debts remain unpaid due to improper distribution or negligent administration of the bankruptcy estate. Legal certainty must therefore distinguish between the curator's functional obligation to administer and pay verified tax claims from available bankruptcy assets, the curator's personal liability arising from proven fault or negligence, and the directors' responsibility for corporate decisions made before bankruptcy that caused or aggravated tax non-payment.

The novelty of this research lies in its integrated and decision-based construction of liability for residual tax debts of bankrupt limited liability companies. Rather than interpreting the phrase "represented by the curator" in Article 32 paragraph (1)(b) of the tax law as automatically creating personal liability, this study distinguishes legal representation, estate-based payment authority, and fault-based personal responsibility. It employs systematic interpretation to harmonize the relevant provisions of tax law, the Tax Collection by Compulsory Letter Law, the Bankruptcy and Suspension of Debt Payment Obligations Law, and the Limited Liability Company Law. This statutory analysis is combined with a comparative examination of the ratio decidendi of selected Tax Court, Supreme Court, and Constitutional Court decisions to determine whether their interpretations establish consistent standards for allocating responsibility among the bankrupt corporation, its directors, and the curator.

Accordingly, this research aims to analyze the statutory regulation of the curator's responsibility for paying the tax debts of a bankrupt corporation and to determine the legal certainty provided by tax legislation and judicial decisions regarding residual tax debts that cannot be satisfied from the bankruptcy estate. Specifically, it seeks to clarify the legal consequences of the curator's position as the representative of a bankrupt taxpayer, identify the circumstances under which personal liability may lawfully arise, and formulate a harmonized interpretation of the relevant statutory provisions and judicial decisions. Theoretically, this study contributes to the development of Indonesian bankruptcy and tax law by clarifying the boundaries between institutional representation and personal liability. Practically, its findings are expected to provide guidance for curators, corporate directors, tax authorities, Supervisory Judges, and Commercial and Tax Courts, while supporting future legislative reform that protects state revenue without imposing liability on curators in the absence of proven fault or negligence.

METHOD

The study employed a normative legal research method, focusing on library research through the analysis of secondary data and legal literature. The legal materials used in this study were classified into primary, secondary, and tertiary sources. The primary legal materials consisted of relevant laws and regulations, including the Law on General Provisions and Tax Procedures (KUP Law), the Limited Liability Company Law (PT Law), the Bankruptcy and Suspension of Debt Payment Obligations Law (KPKPU Law), and Law Number 19 of 2000 concerning Amendments to Law Number 19 of 1997 concerning Tax Collection by Compulsory Letter (PPSP Law). Secondary legal materials included textbooks, scientific journal articles, previous research documents, and reliable online sources. Tertiary legal materials were used to support conceptual analysis.

The study applied doctrinal legal research as the primary methodological framework. To examine the legal issues, the study utilized a statutory approach and a case approach. Data were collected through documentation and literature review, followed by qualitative descriptive analysis.The collected legal materials were analyzed to identify and interpret relevant legal principles, statutory provisions, and judicial considerations. The results of the interpretation were then used as an argumentative basis for addressing the legal issues examined in this study.

RESULTS AND DISCUSSION

Curator's Responsibilities in Paying Tax Debts Based on Applicable Legal Provisions

Based on Hans Kelsen's thinking on legal responsibility, it is emphasized that the legal subject or individual bears a juridical obligation for the specific actions he or she commits. This indicates that the subject of the law is obliged to accept consequences in the form of sanctions if they commit actions that violate the rules (Salim HS & Nurbani, 2009, p. 7). The definition of responsibility according to KBBI emphasizes the condition of being obliged to bear everything. This implies that the subject of the law has to bear every effect born of his act, regardless of whether the act was done consciously or not. Meanwhile, the term responsibility in the legal dictionary is interpreted as a necessity for individuals to implement the obligations that have been imposed on them (Hamzah, 2005).

According to the author, the definition of responsibility has a broader scope than the definition of duty alone, and this study focuses on the responsibility of the curator in the payment of the remaining tax debt of the bankrupt company. The provisions of laws and regulations that regulate the curator's responsibility for the payment of the remaining tax debt can be found in the KUP Law, the PPSP Law, and the KPKPU Law. The KPKPU Law defines a curator as a Heritage Center or an individual appointed by the court to manage and settle the assets of a bankrupt debtor under the supervision of a supervisory judge (Law No. 37 of 2004, Art. 1(5)). Referring to the PPSP Law, the scope of tax debt covers all remaining tax payments that have not been completed, including the accumulation of administrative sanctions in the form of increases, interest, and fines. The legal basis for this collection is sourced from a tax determination letter or similar written instrument issued on the basis of the applicable tax laws and regulations.

Based on the provisions of Article 32 paragraph (1) of the KUP Law, the implementation of tax rights and obligations for Taxpayers can be represented to certain parties according to the following conditions: The company's management acts to represent the legal entity entity; The curator is assigned if the legal entity goes bankrupt; The appointed party is authorized to complete the liquidation process when the legal entity is in the dissolution stage; The liquidator is responsible for representing a legal entity that is in the liquidation process; The heirs, executors of the will, or the administrator of the estate have the right to represent the taxation matters of the undivided inheritance; and the guardian or pardon acts on behalf of the minor child and the person under guardianship. In essence, the regulation underlines the determination of legal subjects who act on behalf of taxpayers to take care of their tax affairs in certain emergency conditions. This includes the state of the bankruptcy company, the process of dissolution or liquidation of business entities, the management of undivided inheritances, and individuals who are immature or under guardianship. The urgency of the appointment of a representative is based on the juridical inability or physical limitations of the original taxpayer to implement their own tax legal actions.

Furthermore, the provisions of Article 32 paragraph (2) of the KUP Law affirm the existence of personal and joint responsibility for the parties in paragraph (1) related to the repayment of tax debts. However, this obligation can be excluded if they succeed in providing evidence and convincing the Directorate General of Taxes (DGT) that their position as representatives cannot be used as a basis for imposing responsibility for the tax payable (Law No. 6 of 2023, Art. 32(2)). The provision confirms that the taxpayer's representative is individually or jointly responsible for paying off the tax owed, unless the DGT grants an exemption after the taxpayer's representative has successfully proved that, based on fairness and propriety, such responsibility cannot be imposed on him.

The mechanism for submitting a Compulsory Letter according to the PPSP Law distinguishes the subject of the recipient based on the legal status of the taxpayer. In bankruptcy conditions, these forced collection documents are submitted to the supervisory judge, curator, or the Bankruptcy Property Office. On the other hand, if the taxpayer is taking the path of liquidation or dissolution of the business, the Compulsory Letter must be addressed to the liquidator or the holder of the corporate governance settlement authority (Law No. 19 of 2000, Art. 10(5)). Based on the provisions of Article 21 paragraph (3a) of the KUP Law, there is a prohibition for the appointed curator, liquidator, or management party to distribute the taxpayer's assets to other creditors or shareholders during the bankruptcy, dissolution, or liquidation period. This restriction applies absolutely throughout the process, unless all existing assets have been allocated in advance for the payment of tax arrears from the taxpayer concerned (Law No. 6 of 2023, Art. 21(3a)).

Based on the explanation above, in Article 32 paragraph (1) b and paragraph (2) and Article 21 paragraph (3a) of the KUP Law in conjunction with Article 10 paragraph (5) of the PPSP Law, the position of the curator is as a representative of the bankrupt taxpayer, so that the tax rights and obligations of bankrupt taxpayers can be fulfilled to the state through the curator. Meanwhile, the rules in Article 32 paragraph (2) of the KUP Law underline that the curator bears responsibility, either individually or jointly, for unpaid tax arrears during the bankruptcy period. However, this juridical burden of responsibility is only binding if the curator is proven to have committed negligence in clearing the tax obligations attached to the debtor as a taxpayer. In essence, all liability burdens arising from the implementation of bankruptcy duties are sourced directly from the bankruptcy office. This exempts the curator from personal liability for any impairment or loss that occurs, with the exception that the loss is triggered by personal negligence or a form of professional malpractice in question.

Based on Article 72 of the KPKPU, the curator holds full responsibility for all forms of errors or omissions during the management and settlement process that result in losses in bankruptcy assets. This provision limits the curator's liability only to actions that directly cause losses to the bankruptcy estate. Therefore, material liability can be independently charged to the curator through the legal process, provided that there is a decrease in the value of the bankruptcy boedel caused by its negligence. The degradation of the value of this asset leads to the non-fulfillment of creditors' billing rights to the maximum from the results of the asset conversion.

Legal Certainty in the Tax Law and Tax Court Decisions Related to the Responsibility of the Curator for the Payment of the Remaining Tax Debt of the Bankruptcy Company

The concept of legal certainty was originally initiated by Gustav Radbruch through his work entitled "Einführung in die Rechtswissenschaften". Legal certainty requires the law to function as a rule that must be obeyed. This obligation is not limited to the process of implementing regulations, but also to the content of norms that must reflect the basic principles of law (Prayogo, 2016, p. 192). Adam Smith stated the principle of taxation regarding legal certainty which requires that tax obligations for taxpayers must be clear and specific, and cannot be postponed or used as an object of negotiation (not arbitrary) (Kadir, 2014, p. 60).

E. Utrecht stated that the essence of legal certainty is divided into two main aspects. The first aspect is related to the existence of general regulations that provide clarity for the public regarding legal and illegal actions. Meanwhile, the second aspect emphasizes on guaranteeing protection for everyone to avoid arbitrary treatment by the authorities. Legal certainty in the law is general (erga omnes) because it applies and binds the entire community since it was promulgated. On the other hand, the legal certainty of a court decision is special (inter partes) and generally only binds the parties to the dispute in the related case. Legal certainty is always the goal of every legal framework, so that the applicable laws and regulations should be formulated clearly and unambiguously in order to avoid confusion of meaning or conflict of legal interpretation among taxpayers and tax officials. This is important so that the enforcement of rules in the field can be carried out in a harmonious manner.

A bankruptcy statement from a debtor in the form of a Limited Liability Company does not necessarily abolish the status of a legal entity or the status of a Taxpayer of the company concerned. The application for the deletion of the NPWP of a bankrupt company is valid if all tax obligations have been fully resolved (Diarsa et al., 2023, p. 249). In many cases, companies that have been declared bankrupt still have unpaid tax debts, both those that arose before the bankruptcy judgment was pronounced and those that arise from financial activities that occurred during the settlement process, and there is also a possibility that the amount of bankruptcy assets (boedel) is smaller than the amount of tax debt that must be repaid, resulting in the remaining unpaid tax debts.

The problem that then arises is which party is legally responsible for settling the remaining tax debt if the bankruptcy assets (bankruptcy boedel) have been distributed to creditors but the tax obligations have not been fully paid. The provisions of Article 32 paragraph (1) letter b of the KUP Law state that corporate taxpayers who are declared bankrupt are represented by the curator in the exercise of their tax rights and obligations, which is further affirmed by Article 32 paragraph (2) of the KUP Law as previously described (Zuraida & Advianto, 2011, pp. 135–136).

On the contrary, the PT Law underlines the position of the board of directors as a corporate organ that bears full control in managing the company in order to achieve the organization's vision, as well as being a legal representation both in court and outside the legal realm. Moreover, if it is proven that there is an element of error or negligence in governance that triggers corporate losses, the board of directors can be subject to financial sanctions personally or jointly and severally. On the other hand, the regulations in the KPKPU Law provide concrete limitations that the curator's work jurisdiction is purely limited to the managerial aspects and liquidation of a bankrupt boedel with the supervision of the Supervisory Judge. This rule does not impose the power or responsibility for the curator to pay off personal arrears belonging to the bankruptcy debtor, including unresolved tax obligations (Ondang, 2017, p. 35).

The insynchronization between regulations has caused real polemics in judicial practice and caused legal uncertainty that will be further analyzed in this section, by examining the legal considerations of PP Judges, Supreme Court Judges, and Constitutional Court Judges regarding the application of Article 32 paragraph (1) b of the KUP Law.

Dualism of the Interpretation of Article 32 paragraph (1) b of the KUP Law in Court Decisions and Its Implications

The Curator is Responsible for the Payment of the Remaining Tax Debt of the Bankruptcy Company

In Decision of PP No. PUT-006842.99/2018/PP/M.IVB of 2019 which was pronounced on June 27, 2019, the panel of judges interpreted Article 32 paragraph (1) b of the KUP with the position that if the corporate taxpayer is declared bankrupt, the responsibility for tax obligations shifts to the curator. Based on page 18 of the a quo decision, it is known that the lawsuit began from the actions of the DGT as the defendant who blocked the account of PT LU as a shareholder of PT AD in order to ensure the fulfillment of tax obligations that have not been completed by the specified deadline, as the authority given by Article 18 of the KUP Law to the DGT to collect taxes as a form of forced state effort to ensure the repayment of tax debts that are still overdue. PT LU as the plaintiff rejected the blocking action on the grounds that at the time the blocking was carried out, PT AD was in a state of bankruptcy since December 5, 2016 based on the Commercial Court Decision at the Semarang District Court Number: 14/Pdt.Sus.Pailit/2016/PN. Niaga.Sm, so that in accordance with Article 32 paragraph (1) b of the KUP Law, the curator is responsible for the settlement of tax debts arising after the company is declared bankrupt. Based on page 29 of the a quo decision, the composition of the management and shareholders of PT AD according to the deed of amendment dated January 19, 2012 is as follows: (a) Mr. SH as a director; (b) U.S. Brother as commissioner; (c) U.S. Brother as a shareholder of 80%; (d) PT AL as a shareholder of 10%; and (e) PT LU as a 10% shareholder.

On page 57 of the a quo decision, the panel of judges considered that in accordance with Article 32 paragraph (2) of the KUP Law, the curator personally and/or jointly and/or jointly and severally liable is responsible for paying PT AD's tax debt after it is declared bankrupt, unless the curator can prove and convince the DGT that in fact the responsibility cannot be imposed on him. The panel of judges also considered that at the time the DGT blocked PT LU's account, the process of settling PT AD's bankruptcy assets by the curator was still ongoing and had not ended, so that the blocking of the account was considered contrary to the provisions of Article 32 paragraph (1) letter b and Article 32 paragraph (2) of the KUP Law. From the a quo decision, it can be concluded that the panel of judges is of the opinion that since the taxpayer was declared bankrupt, it is the curator who is personally and/or jointly responsible for paying off the tax debt in accordance with Article 32 of the KUP Law, an interpretation that the author categorizes as a purely grammatical interpretation of the provision.

Furthermore, in Decision of PP No. PUT-006931.99/2019/PP/M.IVB of 2021 which was pronounced on June 10, 2021, the plaintiffs, namely Brother AS together with Brother IJ, PT AL, PT LU, and Brother GUW sued the DGT Letter dated June 26, 2019 regarding the Response to the Objection to the Certificate of Status as a Tax Bearer dated April 30, 2018. In its ruling, the panel of judges granted part of the plaintiff's lawsuit on the consideration that the DGT Letter dated April 30, 2018, along with the confiscation act in the form of blocking the plaintiff's account and book transfer, preventing mobility outside Indonesian territory and coercive actions in the form of body hostage (gijzeling), has no legal basis and is therefore null and void because it is contrary to Article 32 paragraph (1) letter b of the KUP Law.

On pages 54–55 of the a quo decision, the panel of judges stated that the consideration was in line with and consistent with Decision of PP No. PUT-006841.99/2018/PP/M.IVB of 2019 (pronounced on June 27, 2019) on the lawsuit of PT AL and PUT-006842.99/2018/PP/M.IVB of 2019 on the lawsuit of PT LU, for a substantially the same dispute regarding the position as a taxpayer of PT AD in the DGT Letter dated April 30, 2018, Both of which were decided by granting all plaintiffs' lawsuits. In its appeal, the panel of judges canceled the DGT Letter dated June 26, 2019 concerning Response to the Objection to the Certificate of Status as a Tax Bearer of PT AD, as well as canceling the DGT Letter dated April 30, 2018 concerning the Certificate of Status as a Tax Bearer of PT AD.

Based on the above description, the author concludes that the legal considerations of the PP Judge in Decision No. PUT-006842.99/2018/PP/M.IVB of 2019, PUT-006841.99/2018/PP/M.IVB of 2019, and PUT-006931.99/2019/PP/M.IVB of 2021 consistently take the position that since the taxpayer was declared bankrupt, it is the curator who is personally and/or jointly responsible for paying off the tax debt in accordance with the grammatical interpretation of Article 32 of the KUP Law.

In addition, in the author's research on the Decision of PP No. PUT-006841.99/2018/PP/M.IVB of 2019 and PUT-006842.99/2018/PP/M.IVB of 2019, there is no Supreme Court Decision either canceling or maintaining the decision, so it can be said that both decisions are final and binding or have permanent legal force (Inkracht van gewijsde).

The Curator is Not Responsible for the Payment of the Remaining Tax Debt of the Bankruptcy Company

Supreme Court Decision No. 1481/B/PK/Pjk/2023 dated May 30, 2023 cancels Decision PP No. PUT-006931.99/2019/PP/M.IVB of 2021. The a quo decision stated that the Letter of the Director General of Taxes dated June 26, 2019 regarding Responses Related to Objections to the Certificate of Position as the Person in Charge of PT. The AD dated April 30, 2018 has been in accordance with the provisions of the applicable tax laws and regulations, it was decided with legal considerations that factually, the Plaintiff is now the Respondent for Review as a tax bearer because of his legal position in the Company as a commissioner, shareholder, capital owner, head of representative, head of branch, person in charge and administrator of the Legal Entity Taxpayer of PT. AD (in bankruptcy). That in casu has a position that is appropriate and juridically correlated and cannot be separated from the legal position of Article 32 paragraph (1) letter b of the KUP Law and Article 10 (5) of the PPSP, with the existence of a bankruptcy decision based on the decision of the Semarang District Court No. 14/Pdt.Sus.Bankruptcy/2016/PN. Niaga.Smg on December 5, 2016. That thus the Supreme Court Panel of Judges is of the opinion that regardless of the curator is the representative of and for taxpayers who are declared bankrupt as stipulated in Article 32 paragraph (1) letter b of the KUP Law, but the curator is only responsible for the bankruptcy bankruptcy property, The existence of a curator does not mean that tax debts can only be repaid from the bankruptcy property and the curator is a party who in his position cannot be burdened with the responsibility of paying taxes in a personally and/or jointly upon payment of taxes owed. Thus, the issuance of the Defendant's decision now Respondent for Review Number S-11081/WPJ.10/KP.09/2018 dated April 30, 2018 regarding the Certificate of Status as a Tax Bearer of PT AD has been carried out based on legal authority and in a measurable manner in the context of the implementation of the General Principles of Good Governance (AUPB), especially the principle of legal certainty and the principle of prudence.

Another decision is the Constitutional Court Decision No. 41/PUU-XVIII/2020 which was pronounced on January 14, 2020, with the exception of rejecting the applicant's application in its entirety. The applicant, Mr. TSD, submitted an application for a material review of Article 2 paragraph (6) and Article 32 paragraph (2) of the KUP Law, with the main problem centered on the provisions of Article 32 paragraph (2) of the KUP Law which regulates the obligations of corporate taxpayers without distinguishing between companies operating normally and companies in bankruptcy proceedings, as well as the provisions of Article 2 paragraph (6) The KUP Law which regulates the cancellation of Taxpayer Identification Number (NPWP) without containing special provisions regarding cancellation due to company bankruptcy. The Constitutional Court in its legal considerations expressly stated that the rules contained in Article 32 paragraph (2) of the KUP Law must be comprehensively understood together with Article 32 paragraph (1) of the KUP Law, so that the responsibility for handling the entity's tax obligations remains with the management of the entity concerned. The Court further held that the fulfillment of the obligations of the bankrupt entity to external parties must be handled by the appointed curator, along with the settlement of other obligations that have not been resolved, while the responsibility imposed on the management of the entity is determined by the amount of losses incurred, especially if the losses are caused by the negligence or intentionality of the management of the entity while still actively carrying out the management of the entity concerned. Based on these legal considerations, the author concludes that fundamentally, the Constitutional Court is of the view that the responsibility for the payment of the remaining tax debt of the bankrupt company does not lie with the curator, and the responsibility remains with the management of the agency concerned.

The implication of the dualism of the court decision mentioned above is to create legal uncertainty over the curator's responsibility for the payment of the remaining tax debt. Although the Decision of PP No. PUT-006931.99/2019/PP/M.IVB of 2021 has been canceled with the Decision of the Supreme Court No. 1481/B/PK/Pjk/2023, but the other two PP Decisions, namely PUT-006841.99/2018/PP/M.IVB Year 2019 and PUT-006842.99/2018/PP/M.IVB Year 2019, have permanent legal force.

Legal Certainty of the Curator's Responsibility for the Payment of the Remaining Tax Debt of the Bankruptcy Company

After the bankruptcy decree has legal force, the debtor loses the absolute right to manage and control his property. The wealth was transferred into joint guarantees to meet the demands of the creditors. The curator, in accordance with the KPKPU Law, is appointed to protect the interests of creditors, so that the bankruptcy debtor no longer has the right or ability to manage or settle the bankruptcy assets after the bankruptcy decision. Nevertheless, the company's directors still have the authority and obligation to take legal action, including paying the company's tax debts, even though they no longer have the legal authority to manage bankruptcy assets.

To understand the precise division of responsibility between curators and debtors in bankruptcy cases, according to the author, it is necessary to interpret the law that is not purely grammatical. R. Santoso Brotodihardjo stated, by referring to the teachings of J.H.A. Logemann, that every legal interpretation is limited by the will of the lawmakers, so that the interpretation of binding legal principles cannot be carried out arbitrarily. An interpretation that is considered correct is an interpretation that is in line with the intention and purpose of the lawmakers, which is basically based on the principle of justice, so that the purpose of each interpretation is to produce a verdict that reflects as much as possible the sense of justice. Thus, both individuals, state administrations, and judges are obliged to submit to the will of the lawmakers, that is, everything that, through proper and accountable interpretation, can be accepted rationally and logically as the intention of the law-making ("kennelijke bedoeling van de wetgever") (Brotodihardjo, 2008, p. 160).

Sudikno Mertokusumo argued that the judge's interpretation is an explanation of legal provisions associated with concrete events, in a way that can be understood by the public, so that interpretation functions as a method to reveal the meaning intended by a law (Mertokusumo, 2018, pp. 218–219). As for Anthon Freddy Susanto, he emphasized that the interpretation of a legal provision should not be limited to the interpretation of the meaning of words or language alone, and cannot be completely dependent on the reality observed by the senses, because interpretation is essentially the peak of human creativity in an effort to seek the truth through reason (Susanto, 2005, pp. 97–98).

R. Santoso Brotodihardjo further emphasized that laws function as a system, where the provisions are logically connected and always related to other laws, so that all laws and regulations form a coherent system (Brotodihardjo, 2008, pp. 165–166). Scholten emphasized that the legal system is a complete unit so that there should be no conflicting rules in it. Sudikno

Mertokusumo also called the interpretation of laws that are associated with other legal regulations or with the entire legal framework as a systematic interpretation, which requires that the results of interpretation remain consistent with the legislative structure as a whole (Mertokusumo, 2009, p. 58).

Based on this frame of thought, the interpretation of Article 32 paragraph (1) b of the KUP Law in relation to a bankruptcy debtor in the form of a limited liability company cannot be carried out solely based on textual or grammatical meaning, but must consider other relevant provisions, especially regarding the position and responsibilities of the curator according to the KPKPU Law and the responsibility of the company's directors according to the PT Law. Systematic interpretation of Article 32 paragraph (1) b of the KUP Law is carried out by referring to other provisions in the law itself and related laws, especially with regard to the role and obligations of curators, therefore, the relevant rules are considered as an inseparable unit in the comprehensive national legal system. This interpretive approach is important to fully explain the role and obligations of the curator as a representative of the bankrupt taxpayer as stipulated in tax regulations, the responsibilities of the bankrupt company according to the PT Law, and the bankruptcy provisions as stipulated in the KPKPU Law.

The author argues that an in-depth review of the tax provisions in the KUP Law and the PPSP Law does not find a single provision that explicitly requires the curator to bear the settlement of unpaid tax obligations by the bankrupt company after the change in its legal status. The interpretation of Article 32 paragraph (1) b of the KUP Law regarding the responsibility of the curator for the payment of the remaining tax debt also needs to be associated with Article 21 paragraph (4) of the KUP Law, which determines that the right of precedence of the state is lost after a period of five years has passed since the issuance of the Tax Bill Letter, the Underpaid Tax Determination Letter, the Additional Underpaid Tax Determination Letter, A Corrective Decree, Objection Decree, Appeal Decision, or Review Decision that causes the amount of tax to be paid to increase. Thus, if the responsibility for repaying tax debts is solely imposed on the temporary curator (boedel) of the bankruptcy assets (boedel) is insufficient to pay off all tax debts, the state's right of precedence has the potential to be lost because the remaining tax debt cannot be repaid from the available bankruptcy assets.

Based on Article 24 paragraph (1) of the KPKPU, the reading of the bankruptcy decree automatically revokes the debtor's rights in managing and controlling bankruptcy assets. The power immediately passes into the hands of the curator, but the debtor still has personal rights and obligations that are not related to the bankruptcy property. The existence of Article 32 paragraph (1) b in conjunction with Article 32 paragraph (2) of the KUP Law emphasizes that the curator, in accordance with the KPKPU Law, is given the task of managing and supervising the assets of the bankrupt debtor, so that the procedure for collecting taxes by the tax authorities to the bankrupt entity is legally required to be bridged by a court-appointed curator, but the repayment of tax debts as a tax bearer for the bankrupt debtor must still be fulfilled by the bankrupt taxpayer himself. According to the author, the explanation is in line with the construction of liability for tax debts in the state of a bankrupt company, considering that the fulfillment of the debtor's rights and obligations outside the bankruptcy property remains attached to the debtor concerned.

In determining tax responsibilities for bankrupt companies, the provisions of Article 1 number 5 of the PT Law must be considered. This article emphasizes that the board of directors, as the organ in charge, holds full control and accountability in managing the company in order to achieve the company's visions and missions, including acting as an official representation inside or outside the realm of the judiciary in accordance with the articles of association. This legal basis is emphasized by Article 104 paragraph (2) of the PT Law, which emphasizes that all boards of directors are obliged to shoulder the remaining financial obligations jointly (joint liability). This sanction applies if the corporate bankruptcy is triggered by mismanagement or carelessness, and the existing bankruptcy assets are insufficient to pay off all of the company's debts. The regulation in Article 69 paragraph (1) of the KPKPU Law also stipulates that the curator is obliged to manage and settle the bankruptcy boedel under the control of the Supervisory Judge. However, based on Article 72 of the KPPPU Law, this authority is accompanied by legal consequences, where the curator is obliged to recover losses on bankruptcy assets born due to his negligence or personal error.

The Constitutional Court Decision Number 41/PUU-XVIII/2020 is an important point in straightening out the interpretation of Article 32 paragraph (2) of the KUP Law, which is then in line with the Supreme Court Decision No. 1481/B/PK/Pjk/2023. The Constitutional Court emphasized that the appointment of the management as a representative of the corporate taxpayer aims to ensure certainty that the actions of the legal entity can be held accountable, and the imposition of such responsibility on a person or group of administrators is not contrary to the 1945 Constitution. Furthermore, the Constitutional Court argued that negligence or intentionality that results in non-payment of taxes can only be held accountable to the management who actively manages the legal entity when the entity has not been declared bankrupt, dissolved, or liquidated, because it is the management who decides whether to pay taxes when the company earns profits or instead postpone the payment until it leads to failure to pay taxes (Sitompul, 2021, pp. 743–744).

The Constitutional Court also underlined a crucial legal construction, whereby once an entity is officially declared bankrupt, the management authority to pay debts to creditors (including tax arrears) fully passes into the hands of the curator. This process is carried out simultaneously with the settlement of other obligations using bankruptcy bonds. However, the personal accountability and joint responsibility of the board of directors is not necessarily lost, but is still measured by the presence or absence of intentional or negligent factors while still actively leading the company (Sitompul, 2021). With this construction, the Constitutional Court basically separates two dimensions of responsibility that have been mixed in practice: first, the administrative-functional dimension in the form of the implementation of the settlement of tax obligations from the available bankruptcy assets, which is the domain of the curator; and second, the substantive dimension in the form of personal liability/joint liability for negligence that causes non-payment of taxes, which remains attached to the directors as the party that controls the Company's financial policies before bankruptcy.

Thus, for mistakes committed by the bankrupt company that result in the incurability of tax debts that cannot be paid off from the bankruptcy assets, the responsibility for the remaining tax debt remains attached to the board of directors and cannot be delegated to the responsibility of the curator. The provisions of Article 32 of the KUP Law which places the curator as a representative of the taxpayer of the bankrupt company, which based on the PPSP Law can also be interpreted as the taxpayer of the bankrupt company, is basically intended to optimize the implementation of tax collection in the field and clarify the party responsible for the payment of tax debts for the realization of legal certainty of tax collection, and is not intended to impose the responsibility of paying the remaining tax debts that arise not due to the curator's mistake or negligence to the curator himself.

According to the author, the Constitutional Court Judge's considerations in the a quo decision include a systematic interpretation of Article 32 paragraph (1) b of the KUP Law as previously described which does not only interpret the article grammatically speaking. A systematic interpretation of the a quo article can realize general and special legal certainty.

CONCLUSION

This study concludes that the curator’s responsibility for the remaining tax debt of a bankrupt corporation must be interpreted systematically by harmonizing the KUP Law, the PPSP Law, the KPKPU Law, and the Limited Liability Company Law. The curator acts as the representative of the bankrupt taxpayer and is responsible for administering and paying verified tax claims from the available bankruptcy estate. However, the curator should not be held personally or jointly liable for unpaid tax debts solely because the bankruptcy estate is insufficient. Personal liability may arise only when proven error, negligence, abuse of authority, or professional misconduct by the curator causes losses to the bankruptcy estate or obstructs the proper settlement of tax obligations. The legal reasoning in Constitutional Court Decision Number 41/PUU-XVIII/2020 and Supreme Court Decision Number 1481/B/PK/Pjk/2023 supports the distinction between the curator’s functional responsibility and the substantive liability of corporate directors for intentional misconduct or negligence committed while managing the company. This interpretation provides greater legal certainty while balancing the state’s right to collect taxes with professional protection for curators.

Future research should examine a broader range of Tax Court, Commercial Court, Supreme Court, and Constitutional Court decisions to evaluate the consistency of judicial interpretations concerning residual corporate tax debts following bankruptcy. Empirical research involving curators, tax officials, Supervisory Judges, corporate directors, and creditors is also recommended to identify practical challenges in verifying, prioritizing, and settling tax claims from bankruptcy estates. Comparative studies of jurisdictions with different approaches to tax priority and insolvency practitioner liability may provide a stronger foundation for reforming Indonesian bankruptcy and tax legislation. Future legislative studies should specifically consider establishing clearer standards to distinguish liabilities payable from the bankruptcy estate, directors’ fault-based liability, and curators’ professional liability, including the applicable burden of proof and procedures for obtaining exemptions under Article 32 paragraph (2) of the KUP Law.

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