

Analisis hak mendahulu dalam perpajakan atas hutang pajak perusahaan pailit: studi kasus kepailitan pada PT. ABC dan PT. XYZ

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Abstrak

Endless Economic crisis knock over Indonesia since 1997 causing many companies cannot pay for the obligation and the creditor proposed it to be a bankrupt in Commercial Justice. This Condition for Tax General Directorate (DJP) become separate problems, because to the number of Taxpayers which is bankrupt cause DJP losing of Taxpayer and un-billed for tax debt. In bankrupt case there is interesting matter needing careful attention that is existence of different interpretation of Judge of Commercial Justice to the domiciling of tax debt. At the case of PT. ABC Judge of Commercial Justice treat tax debt is equal to commercial debt, whereas at case of PT. XYZ, Judge of Commercial Justice differentiate tax debt of commercial debt so that, it has to pay ahead then the rest of estate divided for the creditor of other commercial. Therefore problem which raised in this research is how domiciling Taxation rule in penalty system in Indonesia and whether there is correlation of synergy between Taxation rule with rights rule and bankrupt bill for debt including tax payable and what effort able to be conducted to harmonize taxation rule with Bankrupt rule.

Research method used is descriptive with qualitative approach. From research result obtained result of tax rule that has to domicile as *lex specialis* in Indonesia law for problem related to tax, while civil law and other public law as *lex generalis*. But in Bankrupt rule, bankrupt problem is *lex specialis*, so that has to domicile which is equal strength. So that whether DJP and Commercial Justice stay with rule of each rule which cause UUK (bankrupt rule) with Taxation rule cannot synergize in solution of tax debt for company's bankrupt. Position relating to *lex specialis*, hence both, that is taxation rule and bankrupt rule is less synergy, this matter seen in case of PT. ABC and PT. XYZ. Judge of Commercial Justice handling the case in different interpretation. In case of PT. ABC Judge of Commercial justice overrule tax and only focusing at Bankrupt rule in order to be billed for tax payable DJP must conduct an effort to many levels of Cassation Appellate Court. While case of PT. XYZ Judge of Commercial Justice overrules the problem of tax from bankrupt problem because tax arranged in Taxation rule, it means that Judge of Commercial Justice pay attention at Taxation rule as *lex specialis*. The above mentioned can be avoided by adding coherent rule in bankrupt rule that tax has to be differentiated with civil debt and is not in bankrupt scope.

In order to have legal force which is jurisprudence remain from Appellate Court decision in case of cassation taxation area was presumably packed into recorection of other trading law. For example bankrupt problem, Bankrupt rule consist of 308 section only mentioning word "taxation" that is section 113 Sentence (1) letter b, expressing that must be done verification tax debt, without expressing that tax is not civil debt. This matter not explained in explanation of section 113 UUK (bankrupt rule) so that just arise different interpretations or understanding. By equalizing DJP with other creditor make DJP must be at one's feet of bankrupt mechanism, in fact, clearly tax debt is not civil debt so that there must be coherent in UUK that

DJP is not creditor and tax debt is not civil debt but obligation of political. In order to conduct activity of collection at once and at the same time Taxpayer showing bankrupt marking, hence DJP need information from Commercial Justice if there is Taxpayer which is processing by application of its bankrupt. It can be made by a kind of MoU (Memorandum of Understanding) between DJP with Commercial Justice to obtain information quickly if there is bankrupt case. Then resources of DJP out of condition to finish tax collection at Taxpayer which is bankrupt, hence activity of collection tax can be more intensive again.