

# Rechtsidee

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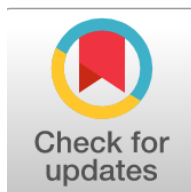
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# **Tax Debt in the Bankruptcy Dispute: Industries Badja Garuda Inc. v.s. Tax Office of Medan Belawan**

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## **Abstract**

The biggest problem for the debtor who is the business actor is his inability to repay the loan to the creditors in case the business activities have problems. The inability to pay may result in the debtor being petitioned for bankruptcy by the creditor or the debtor himself. Curator as the party who performs the management and the settlement of all debtor debts is obliged to make a bill list based on the nature and rights of the bills of creditors as stipulated in Act Number 37 Year 2004 on Bankruptcy and Suspension of Obligation for Payment of Debts (the Law 37/2004). The problem that occurred in the case of Bankruptcy of Industries Badja Garuda Inc. (IBG Inc.) that the Tax Office of Medan Belawan (Tax Office) made a legal effort against the list of tax bills made by the curator of IBG Inc. which set Tax Office as the concurrent creditor through *renvoi* procedures to the Court Commerce so that the Tax Office loses its precedent over tax debt as stipulated in the Law of Commercial Court refuses the request so that the cassation law is also applied to the Supreme Court which in its decision strengthen the decision of the District Court. For that reason, there is a review effort but the Supreme Court in its sentence Number 45 PK/Pdt.Sus/Pailit/2016 still reinforces the previous verdict. This research is normative research with descriptive type and problem approach applied is normative applied with case study type of court decision. The result of the research indicates that the Tax Office has lost its predecessor right as regulated in Article 21 Paragraph (4) in Act Number 16 Year 2009 regarding General Provisions and Tax Procedures (the Law 16/2009) on the status of tax debt of IBG Inc.

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## Introduction

The Company is any form of business that carries on any kind of business that is permanent and continuous and established, operates and domiciled within the territory of the State of Indonesia for the purpose of obtaining profit and or profits. Profit or profit is obtained by running and developing the company in accordance with the form and business activities. To run and develop the company, additional funds are required. Additional funds can be obtained through other parties such as banks or finance institutions as the owner of the funds.

The company's need for additional funds can be obtained by entering into a loan agreement with the fund owner. The lending party is called the creditor or the debtor while the party receiving the loan is called the debtor. Lending by creditors to debtors is due to the belief that the debtor can return the loan to the creditors on time. Creditors are unlikely to lend to debtors without the trust of creditors.<sup>1</sup>

Borrowing is not a bad thing for a company (debtor) if the company is still able to repay its debts. Conversely, if the company continues to suffer losses and setbacks to a state in which the company stops paying or is unable to repay its debts, then the debtor is negligent. Negligence of this debtor can be caused by intentional factors or caused by compulsion (disability).<sup>2</sup> These various factors can not be used as an excuse for the debtor to stop paying its obligations to creditors who have the right to receive a receivable refund.

Company debt may arise from the desired agreement by the company (debtor) with the other party (creditor) whereas the engagement sourced from the law is born due to the will of the legislator and out of the will of the parties concerned. Debts arising from laws such as taxes. Taxation is a compulsory contribution of the state payable by an individual or a coercive body under the law, without direct compensation and used for the purposes of the state for the welfare of the people.

Companies that conduct their business activities and obtain an income are included in the tax subject, provided that their business activities are established or domiciled in Indonesia. That is, that in addition to the debt that the company owns because of the debt obligations agreement, the company has a debt to the state because of the law. Any additional economic capability received or obtained by a taxpayer originating from Indonesia or from outside Indonesia, which may be used for consumption or to increase the property of the company concerned shall become the object of tax as evidenced by the Taxpayer Identification Number. The corporate tax debt can be forcibly requested by the tax authorities<sup>3</sup> Because the circumstances, deeds and events that made the company resulting in corporate debt in the form of taxes. The tax liability shall have prior rights for the state through the General Directorate of Taxation as stipulated in the Law 16/2009 and the Law 37/2004 stipulates that the State has the right to pre-empt the tax bill, except for the repayment provided for in Article 1139 and Article 1149 of the Civil Code. The exceptions are logical because it is devoted to the cost of the case and the execution fee which is the first action to save the debtor's property or the taxpayer.

Companies that are in a state of bankruptcy become one of the economic phenomena that can not be avoided in the business world. The debts of a bankrupt company against a creditor need to be paid attention, especially to tax payments because a bankrupt company often fails to fulfill its obligations to pay taxes in whole or in part or in other words still have tax debt. This situation directly affects the state revenue through taxes, especially when it occurs in large companies that have a very significant contribution in tax deposits.

Bankruptcy is a process whereby a debtor is declared bankrupt by a commercial court for not being able to repay its debt. The competent Commercial Court, shall declare a

<sup>1</sup>Sutan Remy Sjahdeini, *Hukum Kepailitan: Memahami Undang-Undang No. 37 Tahun 2004 tentang Kepailitan*, Jakarta: Pustaka Utama Grafiti, 2010, p. 2.

<sup>2</sup>Zainal Asikin, , Cet. 1, Rajawali Press, Jakarta, 2001, p. 25.

<sup>3</sup>Fiscus is a tax official as a representative of the government in tax collection. The authorized official shall be the Ministry of Finance, the Governor / Head of the First Level Region, through the Regional Revenue Office, and the Regent / Mayor of the Second Level Region, through the Office of the State Revenue Service.

bankrupt debtor if it proves the requirement to be declared bankrupt as referred to in Article 2 Paragraph (1) of the Law 37/2004 (Bankruptcy and Suspension of Obligation for Payment of Debts) Law, the debtor has two or more creditors and does not pay off at least one debt that has been due and can be billed. The declaration of bankruptcy by the judges of the commercial court resulted in the debtor's loss of civil right to control and manage the property which has been placed in the status of public confiscation, under the control of the Heritage Hall or the curator appointed by the judges of the commercial court and under the supervision of the supervisory judge.<sup>4</sup> After the verdict of bankruptcy is done verification meeting (matching debts) that will determine the consideration and sequence of rights of each creditor.

The curator determines the bankruptcy property, which will be used as money to pay all debtor debts. Then, the curator determines the level of creditors that can be paid his receivables with the bankruptcy property and divides

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it according to the Creditor List Plan which will get payment from the bankrupt property. The Law 37/2004 determines the priority order of the right to obtain a settlement of receivables from creditors. The position of the creditors is determined based on the type and nature of the receivables of each creditor divided into three categories of creditors, namely Preferential Creditor (Creditor Preferred) consists of Secured, Privilage Right and Unsecured Creditor).<sup>5</sup>

The results of verification meetings include receivables recognized, receivables recognized, and receivables refuted. If there is no agreement on the receivables it denies, then it is settled by renvoi procedure. Renvoi procedure is a creditor's denial of the list of (temporary) creditors creditor recognized/refuted by the curator. Renvoi procedures are submitted at the meeting of matching receivables by creditors. The reason the creditor denies the list of divisions because the curator does not place the order of debt priority based on the nature and type in the payment of the bankrupt property so that the interested creditors feel disadvantaged.

Article 41 Paragraph (3) of the Law 37/2004 protects the existence of the preceding right to the tax debt, which the settlement of tax debt collection is done outside the bankruptcy proceedings. But this is defined as protection against tax debt that has been paid before the verdict of the bankruptcy read out. To obtain the settlement of debtor's tax debt that has been declared bankrupt done a study, by taking the case of Industries Badja Garuda Inc. (hereinafter abbreviated as IBG Inc.) as a tax object that still has tax payable until the decision of bankruptcy declaration.

Due to the bankruptcy statement of the Medan District Commercial Court Judge against IBG Inc., the company's assets were inserted into the bankruptcy boedel which can be taken by public confiscation of all debtor's bankrupt wealth by the curator. To that end, IBG Inc. is no longer authorized to administer and conduct legal acts of his company for the sake of law turning to the curator who is tasked to perform the order of bankruptcy property. The bill receivable list for tax debt made by the curator in the verification of matching receivables received a rebuttal by the Tax Office of Medan Belawan (Tax Office) representing the country in tax collection. The distribution of receivables to Tax Office as set forth in the distribution list of receivables does not receive a portion consistent with the provisions of prior rights. All of IBG Inc.'s tax debt amounting to Rp 12.273.221.260,00 countries only get paid Rp 1.015.550.245,00 as a very low amount of all tax debt bills as well as list of second stage distribution as well as cover of sale/order of bankrupt property and party property the third being a debt guarantee.

<sup>4</sup>Imran Nating, *Peranan dan Tanggung Jawab Kurator dalam Pengurusan dan Pembersan Harta Pailit*, Raja Grafindo Persada, Jakarta, 2005, p. 44.

<sup>5</sup>Sutan Remy Sjahdeni, *Sejarah, Asas, dan Teori Hukum Kepailitan*, cet-1, Prenadamedia Group, Jakarta, 2016, p. 13.

The legal action that a creditor may make in the event of an objection to a list of accounts receivable is renvoi procedure (reappointment). To that end, Tax Office filed a request for renvoi procedure on objections to the division of receivables list made by the curator of IBG Inc. (in bankruptcy) by registering to the Medan Commercial Court Clerk as stated in the Commercial Court Judgment of Medan Number 04/Pailit/ 2013/PN.Niaga.Mdn with the verdict stated that the objection petition of Tax Office can not be accepted or known as Niet Onvankelijke Verklaard (N.O.)<sup>6</sup>.

The decision of the Panel of Judges at the first level is considered wrong in applying the law so that the Tax Office filed a cassation appeal decided by the Supreme Court in its decision No. 406 K/Pdt.Sus-Pailit/2015. The Supreme Court ruling reaffirmed the first decision by rejecting the appeal request from Tax Office so that the Tax Office conducted an extraordinary remedy, namely the review decided by the Supreme Court in decision Number 45 PK/Pdt.Sus/Pailit/2016 with legal considerations reinforce Judgment of the Judges of the Commercial Court of Medan and the verdict of the Cassation Judges and declared the Refusal to reject the request.

The purpose of this study is to obtain a clear, detailed and systematic description of the prior rights owned by the General Directorate of Taxation on tax debt to collect taxpayers who are in an insolvency state or in the process of bankruptcy of debtors as taxpayers. This paper is divided into four parts, namely part one is the introduction or background, part two is the method and material used in the research and section three describes the results and discussion of the status of tax debt in bankruptcy of IBG Inc. and the application of the preceding right of billing tax debt in bankruptcy as well as the last as a pole is a conclusion and suggestion.

## Research Methods

This research used a normative research with descriptive research type. The problem approach is the applied normative approach with case study type. The data used are secondary data in the form of primary legal materials, namely law and court decision and secondary law material that is literature and other library resources. Data collection was done by literature study and document study. Data processing is done by examination of data, data reconstruction and systematisation of data which then conducted qualitative analysis.



## Result and Discussion

The bankruptcy status is obtained by the debtor or creditor applying to the Commercial Court in accordance with the requirements and procedures as Law Number 37 Year 2004 on Bankruptcy and Suspension of Obligation for Payment of Debts (the Law 37/2004). IBG Inc. is a legal entity that has been declared bankrupt in Verdict Number 04/Pailit/ 2013/PN.Niaga.Mdn upon application of IBG Inc. employees. As a result of the ruling, IBG Inc. lost the right to take care of his property and turned to the curator (Article 15 of the Law 37/2004).

Based on its authority, IBG Inc. curator records all property of the Company to be used as payment of creditors' receivables (Article 100 Paragraph (1) of the Law 37/2004). The bills of creditors get paid in accordance with the rights and nature of the bills. Furthermore, to determine the right and nature of the bill, the Curator IBG Inc. calls the creditors to conduct verification meeting of accounts receivable which will be described as follows:

<sup>6</sup>Abdulkadir Muhammad, *Hukum Acara Perdata Indonesia*, PT Citra Aditya Bakti, Bandung, 2012, p.

212.

The Panel of Judges of Commercial Court of Medan in Verdict Number 04/Pailit/ 2013/PN.Niaga.Mdn appoints Arif Rohman Syaeful, S.H. and Sahat Parulian, S.H. as curator and supervised by Janner Manik, S.H., M.M as a supervisory judge to perform the ordering and handling of IBG Inc. bankruptcy property. The first stage of the handling of IBG Inc.'s bankruptcy property, namely the supervisory judge shall notify the creditors to file a bill (Article 113 Paragraph (1) of the Law 37/2004). The creditor who filed the bill is PT. Bank Negara Indonesia (PT BNI), employees of IBG Inc. and Tax Office of Medan Belawan.

Based on the invoice, on November 19, 2013 the curator delivers and classifies the creditor according to the nature of the invoice in the Temporary Billing List (hereinafter abbreviated TBL). TBL states that PT BNI is a Separatist Creditors because of the nature of the bill is protected with the right of dependents while the employees of IBG Inc. as Creditors with Privileges whose bills in the form of unpaid wages. Furthermore, Tax Office which has a bill in the form of tax debt is classified as a concurrent creditor. To that end, the curator calls the creditors to conduct verification meetings related to TBL (Article 102 of the Law 37/2004).

Verification Meeting of Receivables of IBG Inc.

Based on the decision of bankruptcy statement of IBG Inc., Supervisory Judge within 14 (fourteen) days stipulates the deadline for submission of bill (Article 113 Paragraph (1) the Law 37/2004) as stipulated No. 01/HP/04/Pailit/2013/PN.Niaga.Mdn dated 04 October 2013. The determination is made so that the creditors register the bill. The bill list submitted by the creditors of IBG Inc. is listed in Table 1 as follows:

No.	Name	Invoice
1.	PT BNI	Rp 431.919.667.498,00
2.	Tax Office	Rp 12. 275.221.260,00
3.	Employees of IBG Inc. counted 411 (four hundred and eleven)	Rp 11.532.956.128,00
4.	Employees of IBG Inc. counted 48 (forty eight)	Rp 923.810.920,00
5.	Employees of IBG Inc. counted 42 (forty two)	Rp 622.130.724,00

**Table 1.** The creditors of IBG Inc. Verdict of Commercial Court Number 04/Pailit/2013/PN.Niaga.Mdn.

The bill list submitted by creditors can be recognized or denied by the curator based on the description of the Bankrupt Debtor (Article 116 Paragraph (1) of the Law 37/2004). IBG Inc. as a Bankrupt Debtor provides information regarding the amount of debt and the nature of each bill. Furthermore, the IBG Inc. curator makes TBL which contains the claim recognized or denied and the position of each creditor based on the nature of the receivables. TBL made by the curator in bankruptcy case of IBG Inc. are listed in table 2 below:

No.	Name	Creditor Invoice (Rp)	Creditor Invoice (Curator Version) (Rp)			Recognize d
			Acknowledged			
			Special	Separatist	Concurren t	
1.	PT BNI	431.919.667.498,00	0,00	431.811.167.498,00	108.500.000,00	0,00
2.	Tax Office	12.275.221.260,00	2.100.0000,00	0,00	12.273.121.260,00	0,00

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3.	Employees of IBG Inc. counted 411 (four hundred and eleven)	11.532.956.128,00	10.926.157.453,00	0,00	0,00	606.798.675,00
4.	Employees of IBG Inc. counted 48 (forty eight)	923.810.920,00	901.005.280,00	0,00	0,00	22.805.640,00
5.	Employees of IBG Inc. counted 42 (forty two)	622.130.724,00	468.026.665,00	0,00	0,00	154.104.059,00
Total Invoice		457.273.786.530,00	12.297.289.398,00	431.811.167.498,00	12.381.621.260,00	783.708.374,00

**Table 2.** Temporary Billing List IBG Inc. Verdict of Commercial Court Number 04/Pailit/2013/PN.Niaga.Mdn

TBL that has been recognized/refuted by the curator as shown in Table 2 is then verified for receipt of negotiations with creditors if there is any objection to the collection received (Article 111 Paragraph (1 b) of the Law 37/2004). Based on Table 2, PT BNI has a bill amounting to Rp 431.811.167.498,00 which belongs to the group of bills that have the right of preference and is separatist because the bill is protected by material security rights. While the remaining bill of Rp. 108.500.000,00 is classified as a concurrent bill and recognized by PT BNI through its attorney as Law Firm Duma & Co Our Letter. Ref: 083/DC/Pailit/IBG/XI/2013 dated 01 November 2013.

Employee or laborer of IBG Inc. as much as 501 (five hundred one) person with total bill of Rp. 13.078.897.772,00 and which was denied by the Curator of IBG Inc. of Rp. 783.708.374,00 because the invoice document was not found. Tax Office has total bill of Rp. 12.275.221.260,00. The total bill is divided into 2 (two), namely the bill that has the right prior (preferen) is special Rp. 2.100.000,00 and the remaining bill of Rp. 12.273.121.260,00 belong to a concurrent bill.

Tax Office of Medan Belawan (Tax Office) as the concurrent creditor of IBG Inc.

The Temporary Billing List (TBL) recognized or denied by IBG Inc. Curator has placed the creditors' receivables based on the nature of the receivables as is the Bankruptcy Law. The curator classifies the nature of the bill to determine which receivables will be paid in advance compared to other creditors. For that reason, the bankruptcy of IBG Inc. based on TBL that PT BNI has a separatist and concurrent bill whereas IBG Inc. employees have outstanding bills.

Total bill of Tax Office is classified as a special bill of Rp. 2.100.000,00 and the remaining bill of Rp. 12.273.121.260,00 belong to a concurrent bill. The concurrent bill has received recognition from Tax Office in the verification meeting on October 08, 2014. As the letter of notification No. S-458/WPJ.01/KP.0404/2013 dated 31 October 2014, the total Tax Office bill is stated in Table 3 below:

No.	Kohir Number	Dated	Invoice
1.	00001/301/01/112/05	26 Mei 2005	Rp.83.087.566,00
2.	00003/307/97/112/99	04 Januari 1999	Rp. 436.861.492,00
3.	00004/307/01/112/05	26 Mei 2005	Rp.1.742.215.816,00
4.	00013/240/00/112/02	11 Juli 2002	Rp.1.675.909,00
5.	00017/207/97/112/98	09 Desember 1998	Rp. 4.050.002.103,00
6.	00021/107/05/112/05	16 Juni 2005	Rp.150.000,00
7.	00022/107/06/112/06	20 Juni 2006	Rp.150.000,00
8.	00024//201/01/112/02	02 September 2002	Rp. 102.823.113,00
9.	00045/207/01/112/03	17 April 2003	Rp.460.103.306,00
10.	00059/207/00/112/03	01 Agustus 2003	Rp. 318.180,00
11.	00061/207/00/112/03	01 Agustus 2003	Rp. 882.728,00
12.	00067/201/00/112/02	11 Juli 2002	Rp.89.040.387,00
13.	00069/201/99/112/02	06 Maret 2002	Rp. 17.208.526,00
14.	00085/107/07/112/06	27 Februari 2006	Rp. 300.000,00
15.	00087/207/01/112/05	26 Mei 2005	Rp.1.398.134.744,00
16.	00092/206/01/112/05	26 Mei 2005	Rp.3.556.139.264,00

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17.	00241/107/06/112/06	16 Nopember 2006	Rp. 150.000,00
18.	00300/101/07/112/08	26 Februari 2008	Rp. 100.000,00
19.	00398/101/05/112/06	15 September 2006	Rp. 100.000,00
20.	00455/107/05/112/05	12 September 2005	Rp. 150.000,00
21.	00488/107/06/112/07	10 April 2007	Rp.150.000,00

**Table 3.** *The Annual Tax Return IBG Inc. Verdict of Commercial Court Number 04/Pailit/2013/PN.Niaga.Mdn.*

22.	00563/107//01/112/05	26 Mei 2005	Rp.328.109.745,00
23.	00566/101/06/112/07	31 Mei 2007	Rp.600.000,00
24.	00568/106/05/112/06	28 Agustus 2006	Rp. 100.000,00
25.	00642/101/02/112/03	29 Juli 2003	Rp.2.758.249,00
26.	00849/106/06/112/06	05 Oktober 2006	Rp. 300.000,00
27.	00968/106/04/112/06	10 Februari 2006	Rp. 100.000,00
28.	01090/101/04/112/05	02 Februari 2005	Rp. 150.000,00
29.	01292/107/05/112/06	07 Maret 2006	Rp. 100.000,00
30.	01541/101/04/112/05	11 Februari 2005	Rp. 150.000,00
31.	01897/101/06/112/07	06 Desember 2007	Rp. 100.000,00
32.	02408/106/06/112/07	01 Maret 2007	Rp. 300.000,00
33.	02410/106/06/112/07	16 Agustus 2007	Rp. 100.000,00
34.	02766/106/07/112/07	10 Desember 2007	Rp. 100.000,00
35.	03257/101/03/112/04	14 Juni 2004	Rp.10.132,00
36.	Distress Warrant		Rp. 1.500.000,00
37.	The Cost of Ordering Letter Force Execution		Rp. 500.000,00
Total			Rp. 12.273.221.260,00

**Table 4.**

Based on table 3, IBG Inc. has tax due from 1998 to 2008 with total bill of Rp. 12.273.221.260,00. Tax Office billing which is the cost of Distress Warrant and the cost of the Order of Undertaking Forfeiture of Rp 2.000.000,00 is recognized by the curator as a bill that is precedent because it meets the criteria of Article 1137 Civil Code *j.o.* Article 21, Article 22 and Article 45 of Law Number 16 Year 2009 regarding General Provisions and Tax Procedures (the Law 16/2009). While the remaining tax invoice amounting to Rp 12.273.121.260,00 is classified as a concurrent bill because the preceding nature has been lost due to expiration (Article 21 Paragraph (4) Letter (a) of the Law 16/2009). The billing expiry that resulted in Tax Office is classified as a concurrent creditor.

Reasons and Legal Considerations regarding the Status of Taxes Payable in Bankruptcy IBG Inc.

The application for Tax Office is filed against the Phase II Permanent Phase List (PPL

II) which is the closing of the IBG Inc. bankruptcy property. The Panel of Judges of

Commercial Court in Verdict Number 04/Pailit/2013/PN.Niaga.Mdn states that the application of Tax Office is unacceptable (N.O.). On the ruling of the Commercial Court, Tax Office made a cassation appeal to the Supreme Court. The Supreme Court Assembly rejected the appeal of Tax Office in Verdict Number 406 K/Pdt.Sus-Pailit/2015.

The extraordinary legal effort is made by Tax Office because it considers the errors of the judge and the obvious mistake with *Judex Juris* and *Judex Facti* considerations. Tax Office filed a request for review (PK) to the Supreme Court. Supreme Court Assembly in Verdict Number 45 PK/Pdt.Sus/Pailit/2016 strengthen Cassation Verdict No. 406 K/Pdt.Sus- Bankrupt/2015 and Verdict of Commercial Court of Medan No. 04/Pailit/2013/ PN.Niaga.Mdn. The existence of the verdict of the Constitutional Court which reinforces the Cassation Verdict and the Commercial Court Ruling then the reasons and legal considerations are the same, which will be described as follows:

Absence of Judge Errors and Errors with *Judex Juris* Considerations and *Judex Facti*

The application of *renvoi* procedure of Tax Office does not meet the formal requirements as the Medan Commercial Court ruling stating the request is unacceptable (N.O.). The verdict was upheld by the Supreme Court Assembly with Verdict Number 406 K/ Pdt.Sus-Bankrupt/2015. Tax Office in bankruptcy of IBG Inc. has filed a tax bill as Letter Number: S-458/WPJ.01/KP.0404/2013 dated October 31, 2014. Total bill of Tax Office is Rp. 12.273.221.260,00.

In the process of bankruptcy of IBG Inc., the curator has announced to the creditors to file an objection on the

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Temporary Billing List (TBL) until December 13, 2014 with the renovation of the procedure as Article 193 Paragraph (1) of the Law 37/2004. Up to the specified date, no creditor has filed an objection and the TBL is deemed to have been binding. The Tax Office submits an objection as the letter of the Head of Tax Office dated December 16, 2014 Number: S-983/WPJ.01/KP.0404/2014 on the announcement of Phase II Permanent Phase List (PPL II) which is the closing of IBG Inc. bankruptcy process. Such objection letters in consideration of the Supreme Court Assembly should be filed against TBL which is a list of claims recognized and denied by the curator. Thus, the objection of Tax Office has been past time as the Supreme Court Judge Verdict Number 45 PK/Pdt.Sus/Pailit/2016 states that there is no mistake in Judex Juris and Judex Facti considerations. The request for renovation of the Tax Office procedure should be filed against TBL not against PPL II which is a list of divisions and closings of IBG Inc. bankruptcy.

## Loss on the Preliminary Tax Debts due to Expiration

Tax Office as creditor of IBG Inc. has filed a bill in the form of tax debt as Letter Number: S-458/WPJ.01/KP.0404/2013. In bankruptcy cases, debt can arise because of the agreement or the law. In this case, the tax debt belongs to the debt that was born as stipulated in Law Number 16 Year 2009 regarding General Provisions and Tax Procedures (the Law 16/2009). The Law 16/2009 is a special rule (lex specialist) in Bankruptcy Law.

IBG Inc. has tax due from 1998 to 2008 amounting to Rp 12,273,221,260.00. Judex Facti and Judex Juris consider that tax debt owned by Tax Office has lost its predecessor right. The loss of such prior rights is due to the right to collect taxes, including interest, penalties, increment and expense of tax billing expiration after exceeding 5 (five) years since the issuance of Tax Collection Letter (Article 22 Paragraph (1) the Law 16/2009).

Based on the above explanation, the consideration of the Supreme Court Judge in the review examination (PK) did not find any new evidence (novum) proposed by Tax Office. Tax debt has the right of preference (preferen) compared to other debts that make Tax Office as Creditor with Privileges as Article 21 the Law 16/2009. The provisions of such article are

void as judged by Judex Facti and Judex Juris stated that the tax liability in bankruptcy of IBG Inc. has lost its preemptive rights because the tax invoice has exceeded 5 (five) years as the Tax Collection Letter from 1998 to 2008. Over time since the issuance of the Verdict The Commercial Court on the application of renvoi Tax Office procedure by 2015. The consideration of the Supreme Court Assembly in Verdict Number 45 PK/Pdt.Sus/Pailit/2016 strengthens Judex Facti and Judex Juris' consideration that the request for renvoi procedure is unacceptable (N.O.). The request for renvoi of Tax Office procedure should be submitted to the Temporary Billing List (TBL) which the curator recognizes/refutes not to the Phase II Permanent Phase List (PPL II) which is a list of both sharing and closing in the bankruptcy of IBG Inc.

## Implementation of Pre-existing Right (Preferent) on Tax Collection of Debt in Bankruptcy Dispute

Bankruptcy is a common confiscation of all the wealth of the Bankrupt Debtor whose management and ordering is done by the Curator under the supervision of the Supervisory Judge (Article 1 Number (1) of the Law 37/2004). Bankruptcy Law has determined creditors based on the nature of the receivables of Preferential Creditor (Creditor with Privilege and Separatist Creditors) and Concurrent Creditors.<sup>7</sup> Bankruptcy of a business entity that still has tax payable becomes an obligation that must be paid even if it has been declared bankrupt.

Tax liabilities arise due to legal events which are in public law whereas in the dispute of bankruptcy arising from the existence of legal events arranged under civil law (agreement). According to formal teachings, tax debt can arise because of the deed of a tax subject. The tax subject as Article 2 Paragraph (1) of Law Number 36 Year 2008 concerning Income Tax (hereinafter referred to as the Law 36/2008) states that the tax subject is an individual, a body and a permanent establishment.

From the civil law aspect, the tax debt in its collection has the preceding character as stipulated in Article 1137 Civil Code which states that the right of the State Treasury, auction Office and other public bodies formed by the Government to take precedence, the orderly exercise of that right and the duration of the rights is governed by various specific laws concerning such matters. In this case, the position of tax debt as the holder of the privilege that refers to the regulation of special law that is Law No. 16 of 2009 on General Provisions and Procedures of Taxation (the Law 16/2009). To that end, the preceding rights over tax collection of debts in the bankruptcy dispute are as follows:

### 1. Preferential Right (Preferent) on Tax Collection of Taxes Under the Taxation Law

Tax Payable is an accrued tax including administrative sanctions in the form of interest, penalty or increment stipulated in the tax assessment letters or similar letters pursuant to the provisions of the tax laws and regulations as Article 1 Number (8) of Law Number 19 Year 2000 regarding Tax Collection by Distress Warrant (hereinafter referred to as the Law 19/2000). The provisions concerning the tax debt are stipulated in Article 12 Paragraph (1) of the Law 16/2009 which states that every taxpayer shall pay the tax payable in accordance with the provisions of the tax laws and regulations, not subject to the existence of tax assessment letters. Tax liability arises when there is

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a cause of obedience and which consists of (circumstances, events or actions) that cause the person is taxed according to the law of taxation.<sup>8</sup>

The Directorate General of Taxation which is a state representation has the prior right to collect the goods of the Taxpayer as Article 21 of the Law 16/2009. The purpose of the

<sup>7</sup> Sutan Remy Sjahdeni, *Sejarah, Asas, dan Teori Hukum Kepailitan, Loc. Cit.*

<sup>8</sup> Bohari, *Pengantar Hukum Pajak*, PT. Raja Grafindo Persada, Jakarta, 2008, p. 112.

existence of the preceding rights of this country is further explained in the Elucidation of Article 21 of the Law 16/2009 which is to determine the position of the state as Preferred Creditors who have the right of prior to the goods of the Taxpayer to be auctioned in public.

The application of the preceding right to the collection of tax payable may be made by a Distress Warrant as stipulated in the Law 19/2000 Taxpayer shall be a series of measures to allow the Taxpayer to pay off taxes and tax collection fees by reprimanding or warning, to execute billing at once and to simultaneously, notify the Distress Warrant, to propose prevention, to carry out foreclosures, to carry hostages, to sell goods which have been seized as Article 1 Numbers (9) in the Law 19/2000.

The procedure of collection of tax debt until the due date of payment has not been settled, the following collection actions are taken:<sup>9</sup>

## Warning Letter

Tax collection is done by first issuing warning letter by the official. An unpublished warning letter against an approved taxpayer to repay or delay the payment of taxes.

## Distress Warrant

A distress warrant is issued by an official and directly informed by the tax bailer to the tax payer, if the amount of the tax debt is not paid by the insurer after the expiry of 21 (twenty-one) days since the date of warning letter.

## Letter of Order Conducting Foreclosure

Official shall issue Letter of Order Conducting Foreclosure if after 2 x 24 hours after the forced letter is notified to the taxpayer and the tax debt is not paid by the taxpayer. Based on Letter of Order Conducting Foreclosure, the tax authorities execute confiscation of property of the taxpayer.

## Announcement of Auction

The auction announcement shall be made by the official if after the expiry of 14 (fourteen) days after the date of the foreclosure, the taxpayer shall not settle the tax debt and the tax collection fee. Announcement of auction for moving goods is done 1 (one) time and for goods is not done 2 (two) times.

## Sale of Confiscated Goods

Sale of Printed Consumers' Assets shall be made by an official through a state auction office if after 14 (fourteen) days after the announcement of the auction, the taxpayer shall not settle the tax debt and the tax collection fee.

Based on the above tax collection procedure, tax debt can be collected first. Implementation of the country's precedent over the tax debt is with the payment of the tax debt in advance, payments to other creditors are settled after the tax debt is settled. The provisions on the preceding rights include the principal taxes, administrative sanctions in the form of interest, penalties, increases and tax collection fees as Article 1 Paragraph (8) in the Law 19/2000.

right to exercise control and management of his property. Furthermore, the handling of debtor's assets (taxpayers) bankrupt and the settlement of all debts will be done by a curator under the supervision of a supervisory judge. In bankruptcy law, the position of the creditor is classified into 3 (three) kinds: Separatist Creditors (secured creditors), Preferred Creditor

<sup>9</sup> Billy Ivan Tansuria, *Pokok-pokok Ketentuan Umum Perpajakan*, Graha Ilmu, Yogyakarta, 2010, p 294-296.

(preferred creditors) and Unsecured Creditors. Tax debt is a Preferred Creditor which must be prioritized first of its payments rather than other debts.<sup>10</sup>

If the taxpayer is declared bankrupt, dissolved or liquidated, the curator, liquidator or person or entity assigned to perform the order is prohibited from distributing the taxpayer's property in bankruptcy, dissolution or liquidation to

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the shareholders or other creditors before using the property to pay the tax debt from The taxpayer concerned.<sup>11</sup> Therefore, there are 2 (two) ways that Tax Office can undertake to collect tax subjects in the bankruptcy dispute as follows:

## Prior to the existence of the Bankruptcy Statement

Bankruptcy law has provided legal certainty to protect the interests of creditors of its borrowers in bankruptcy disputes. Another creditor who is not a bankruptcy applicant may request the cancellation of any legal act of the debtor that will harm the interests of the creditor. The bankruptcy process experienced by the debtor is a legal act that can harm the creditor. To that end, creditors who feel they will be disadvantaged by a bankruptcy statement against the debtor may file a request for termination of a bankruptcy hearing to the Commercial Court Judges. This is done to avoid losses to other creditors with a bankruptcy statement against the insolvent petitioner. The provisions have been stipulated in the Elucidation of Article 41 Paragraph (3) of Law Number 37 Year 2004 concerning Bankruptcy and Postponement of Debt Payment Obligation (the Law 37/2004) stating the actions that must be done due to the Act, for example the obligation of payment of tax. Under this provision, the settlement of tax debt is outside the bankruptcy proceeding process because it has the privilege of completion.

After the taxpayer has been given a bankruptcy verdict then the collection of tax by a forced letter in accordance with Article 7 Paragraph (1) of the Law 19/2000 can not be applied in the bankruptcy process because with this forced letter can not be justified to foreclose and sell the property of bankrupt debtors (taxpayers). Fiskus or General Directorate of Taxation must follow the provisions in the bankruptcy process because the taxpayer has been terminated bankrupt. Thus, when the taxpayer is terminated in bankruptcy then the law that must be applied is Article 3 Paragraph (1) of the Law 37/2004 based on the principle of *lex specialis derogat legem generalis*.

## After the Declaration of Bankruptcy

With the bankruptcy statement to the business entity which has the tax payable, Fiscus conducts verification meetings as matching or testing of debts of the insolvent or creditors receivables that must be entered into the curator. In this verification meeting, examination, matching and testing of creditor bills with debtor bank accounts are held. To determine the bills filed by the creditor will be accepted or rejected by the curator based on the evidence presented by the creditor. To that end the creditor must include the calculations and statements he had at the time he put his bill to the curator.<sup>12</sup>

Jurisprudence for the same problem can be found in Supreme Court Verdict No. 13.74 PK/Pdt.Sus/2011 in a bankruptcy case between PT. Koryo International Indonesia (Debitor- Respondent Bankrupt) with PT. Lemindo Jaya Abadi (Creditor-Applicant for Bankruptcy) involving Tax Office Madya Tangerang and Foreign Investment Service Offices of Region Four in tax debt matters. The legal reason stated by the Supreme Court Assembly is that Tax Office does not include creditors in the scope of bankruptcy because the form of tax debt is a

<sup>10</sup> Man Suparman Sastrawidjaja, *Hukum Kepailitan dan Penundaan Kewajiban Pembayaran Utang*,

Alumni, Bandung, 2006, p. 34.

<sup>11</sup> Billy Ivan Tansuria, *Op.Cit*, p.303.

<sup>12</sup> Sunarmi, *Hukum Kepailitan Cet-2*, PT. Sofmedia, Jakarta, 2010, p. 151.

bill that was born from the Law on the Law 16/2009 not because of the relationship of accounts payable. The Law 16/2009 gives special authority to tax officials to conduct direct execution of tax debt outside the intervention of judicial authority. Therefore, the tax bill should be applied to the provisions of the the Law 37/2004 which places the settlement of tax debt collection outside the path of bankruptcy process as it has a privileged position in the settlement.

It is in accordance with the Verdict of the Supreme Court of the Republic of Indonesia Number 017K/N/2005 dated August 15, 2005 stating that taxes payable are payable under public law and must be paid in advance of other debts, impossible to be resolved in bankruptcy proceedings. Therefore, it can be understood if the process of debt repayment of the company in the bankruptcy process is not specifically regulated in the Law 37/2004.

Based on the above description, the taxpayer declared bankrupt, dissolved or liquidated, the curator, liquidator or person or entity assigned to perform the order is prohibited from distributing taxpayer's assets in bankruptcy, dissolution or liquidation to shareholders or other creditors before using the property for pay the tax debt of the taxpayer concerned (Article 21 Paragraph (4) Letter (a) of the Law 16/2009). If the exception to Article 1139 and Article 1149 of the Civil Code is logical as it is reserved for the cost of the case and the execution fee which is the first action to rescue the debtor's or the Taxpayer's property.

Legal considerations in the settlement of tax debt should be settled outside the bankruptcy proceedings (Article 41 Paragraph (3) of the Law 37/2004) and grant special powers to the tax authorities to execute direct execution of taxes payable without court intervention. Prior to the decision of bankruptcy declaration in this case the country

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represented by the Tax Office may request the cancellation of any legal act of the debtor that may harm his party. Thus, the settlement of tax debt is outside the path of bankruptcy proceedings because it has the privilege of completion.

## Conclusion

In the process of verification of receivables in bankruptcy of IBG Inc., Tax Office of Medan Belawan (Tax Office) declared as a concurrent creditor by the curator associated with tax debt IBG Inc. To that end, Tax Office made an effort to renovate the procedure to the Commercial Court on the status of the concurrent creditor for receivables of IBG Inc. from 1998 to 2008 based on notification letter No. S-458/WPJ.01/KP.0404/2013 dated 31 October 2014. The application of the renvoi is declared not accepted by the Panel of Judges of Commercial Court on the legal grounds that the tax debt bill must be made within 5 (five) years since the issuance of Annual Tax Return. Supposedly, Tax Office will collect at the time of issuance of Annual Tax Return until the maximum of 5 (five) years, the billing done by Tax Office to IBG Inc. has been past (expired). In addition, the reason is unacceptable because the objection filed by Tax Office is incorrect because it was done on the Phase II Permanent Phase List (PPL II) which is a list of divisions as well as bankruptcy closure of IBG Inc. Supposedly, Tax Office filed an objection to the Temporary Admission Bill (TBL) recognized/denied by the Curator as stipulated in Article 193 Paragraph (1) of the Law 37/2004 which is in the list of bills prior to the issuance of the Permanent Phase List (PPL). To that end, Tax Office filed a cassation appeal (Number 406 K/Pdt.Sus-Pailit/2015) and Review (Number 45 PK/Pdt.Sus/Pailit/2016), with the same verdict that is to strengthen the decision of the Commercial Court. Thus, the status of tax debt in the bankruptcy of IBG Inc. becomes expired because tax collection of taxes is done after exceeding the period of 5 (five) years since the stipulation of Annual Tax Return so that Tax Office loses the right of preference and status as concurrent creditor.

Tax debt is prior and privileged so that the Tax Office is located as a preferred creditor in whose collection must take precedence (Article 21 Paragraph (1) of the Law 16/2009). To

that end, the Tax Office may collect tax debt outside the bankruptcy proceedings against the taxpayer being filed for bankruptcy through the Commercial Court as provided for in Article 41 Paragraph (3) of the Law 37/2004.

## References