

JUDICIAL REVIEW OF CUSTOMS BILLING IN BANKRUPT DEBTOR

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ABSTRACT:

Research aims to determine the position privilege of Indonesian Customs and Excise to be fulfilled first than other debts, Indonesian Customs and Excise's as a Preferred Creditor for bonded zone companies that have bankrupt and define effectiveness of the confiscation process as the Commercial Court Decision on bonded zone companies that have assets outside Indonesia. Research method that is being used is juridical normative method. The results showed that Indonesian Customs and Excise position as preferred creditor remained in accordance with the Customs Regulations. However along with the breakthroughs in legal issues and legal developments, the state's position as the preferred creditor is no longer a priority. Legal issues arising related to the implementation of confiscation of debtors who have assets abroad will be constrained by the principle of state sovereignty which can impact on the portion of Indonesian Customs and Excise's debt collection obligations. Based on the results of the study it was concluded that Indonesian Customs and Excise has the preferential right to fulfill bankruptcy debtors even with the shift in priority payments by labor wages, so the effort that must be done is to mitigate risks before bankruptcy and the maximum collection. The universal principle in implementing bankruptcy decisions will make it difficult for the execution of debtor assets outside of Indonesian jurisdiction.

Keywords: *Bankrupt, Bonded Zone, Creditor, Indonesian Customs and Excise, Preferred.*

1. INTRODUCTION

Development of industry and commerce, raises public demands that the government can provide legal certainty in the business world. The government, especially Indonesian Customs and Excise which functions as trade facilitation must be able to make a customs law that can anticipate developments in order to provide services that are faster, better, and cheaper (Indonesian Government, 2006). Customs activities which are the main gate of economic activity between Indonesia and other countries in the world, still face various obstacles, both internal and external. These constraints actually affect the ability to compete in various Indonesian products in the global economic market (Nugraha, 2006).

Regarding one of the missions as Trade Facilitator, function Indonesian Customs and Excise in economic development through the provision of Bonded Zone facilities in the form of fiscal facilities which include deferment of import duties, exemption of excise, and are not levied in taxes on import given to goods imported into Bonded Zones with certain criteria. The existence of these facilities certainly does not eliminate the authority of Indonesian Customs and Excise in carrying out customs supervision as stipulated in Article 6 Paragraph (1) of the Customs Law, which states that all goods imported or exported apply all provisions as regulated in this law (Indonesian Government, 2006).

The article implies that everything related to the settlement of customs obligations on imported or exported goods must be based on the provisions in the Customs Law whose enforcement is carried out by the Indonesian Customs and Excise (Indonesian Government, 2006). The provision of these facilities does not rule out the possibility of problems in the future, one of which is the obstruction of the fulfillment of customs obligations from Bonded Zone Entrepreneurs to Indonesian Customs and Excise in the form of payment of Import Duty, Excise, or taxes on import in the event of bankruptcy. Funding to conduct import and export business through bonded zone facilities can only be obtained from various sources such as loans through banks or other financial institutions as well as through deferral tax payment schemes through facilities provided by the state. An agreement made by the business actor in conducting its business activities can be done based on an agreement or based on this Law according to Article 1233 of the Civil Law (Indonesian Government, 1847).

The bankruptcy issue that occurs because of a legal relationship in the form of an agreement between debtors (Bonded Zone Entrepreneurs) and creditors (Indonesian Customs and Excise/State) based on the law is a bankruptcy decision from the Commercial Court against Bonded Zone Entrepreneurs who still have bills to Indonesian Customs and Excise and have assets which is located abroad. As it is known that a company can be faced with the condition of having a debt, but the debt is not something that can cause negative effects if the company is still able to repay its debts. Distant the case if a company continues to incur losses to a situation where the company stops paying or is no longer able to pay its debts, thus the company as a Debtor is negligent.

Debtor negligence can be caused by deliberate factors (unwillingness) or due to compulsion (incapacity) (Asikin, 2001). Based on the foregoing, in dealing with the aforementioned problems, Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (Bankruptcy Law) has provided a way to settle debts, including through bankruptcy, or through postponement of debt payment obligations

(Indonesian Government, 2004). Problems in the case of bankruptcy, especially for Debtors who bind themselves to the state, will also arise in interpreting the elements in bankruptcy requirements, including regarding debt. The definition of Debt according to Article 1 number (6) of Bankruptcy Law and Suspension of Debt Payment Obligations is as follows debt is an obligation that is stated or can be stated in the amount of money in both Indonesian currency and foreign currency, both directly and which will arise later or contingent, which arises because the agreement or the law and that must be fulfilled by the Debtor and if not fulfilled give the creditor the right to get the fulfillment of the Debtor's assets (Indonesian Government, 2004).

Build definition, Bankruptcy Law adheres to a very broad understanding, in short is every achievement of the Debtor. The definite definition of debt is very important to hold on to, because the main requirement for a person to be declared bankrupt is the existence of debt. If an obligation or achievement does not include the definition of debt even though the party having the obligation does not carry out its obligations, the request for bankruptcy will not be granted (Sastawidjaja, 2014). In understanding aspects of bankruptcy in a Bonded Zone, it is also necessary to pay attention to the legal developments that have occurred, for example the Constitutional Court Decision Number 67/PUU-XI/2013 where labor rights are constitutional rights so labor wages are higher than all types of existing creditors which are a very influential factor in fulfilling the debt of a Bonded Zone to Indonesian Customs and Excise.

The second issue that is no less important is the existence of Debtor assets that have been declared bankrupt by the Indonesian Commercial Court where some or all of the Debtor assets are located abroad. The existence of foreign aspects/elements has the potential to cause obstacles in its implementation. Territorial principles of the implementation of decisions adopted by the Indonesian civil law system which are also adhered to by the Bankruptcy Law raise the question whether Indonesian Court decisions can be executed in other countries. Bankruptcy Law has not fully determined the bankruptcy issue across national borders, especially what if there is a bankruptcy ruling where the bankruptcy is also outside the jurisdiction of Indonesia. The aspect of bankruptcy law can also regulate relations between legal subjects on bankruptcy issues both nationally and internationally or can be said to be cross-border in nature. Where the bankruptcy across borders did not escape the theory of International Civil Law.

Based on the background that has been described, this research was conducted to determine the position privilege of Indonesian Customs and Excise to be fulfilled first than other debts, Indonesian Customs and Excise as a Preferred Creditor of Import Duty, Excise and/or taxes on import debts from bonded zone companies that went bankrupt and know the effectiveness of the confiscation due to the existence of Commercial Court Decision against the company bonded zones with assets outside Indonesia.

2. LITERATURE REVIEW

Bonded Zones are Bonded Storage Areas to store up imported goods and/or goods originating from other places in customs areas to be processed or combined before being exported or imported to be use (Ministry of Finance, 2018). Some of the facilities provided in the Bonded Zone scheme include deferral of Import Duties, exemption of Excise and/or

are not levied taxes on import for Goods imported from outside the customs area into the Bonded Zone.

Liability for state taxes with the Bonded Zone Operator, Bonded Zone Entrepreneur, and/or Entrepreneur in Bonded Zone as well as the Operator in Bonded Zone including Import Duty and/or Excise, and Taxes on Import that is owed on goods originating from outside the customs area located or should be in the Bonded Zone. The potential for bankruptcy is very possible if a bonded zone meets the elements of bankruptcy.

Bankruptcy according to Article 1 number 1 of Law Number 37 of 2004, concerning Bankruptcy and Postponement of Obligations for Debt Payment are as follows general confiscation of all the assets of the Bankrupt Debtor, which is managed and ordered by the Curator under the supervision of the Supervising Judge as regulated in this law. Bankruptcy is then often used by creditors as a means of collecting accounts receivable from debtors (Indonesian Government, 2004), from this definition, bankrupt is associated with the inability to pay from a Debtor for its debts that are due. This inability must be accompanied by a real action to submit, whether voluntarily carried out by the Debtor itself or at the request of a third party, a request for bankrupt statement to the court (Yani & Gunawan, 2004).

Meanwhile, based on Article 2 paragraph (1) of the Bankruptcy Law, the conditions to be declared bankrupt by a court decision are to have two or more creditors and not pay off at least one debt that is due and can be collected (Indonesian Government, 2004). Based on the provisions of Article 2 paragraph (2) through (5) of the Bankruptcy Law, a request for bankrupt can be submitted by the parties as follows:

- a. Debtors who have two or more creditors and do not pay off at least one debt that is past due and collectible;
- b. Creditors, both one and more;
- c. Prosecutors' Office in matters of public interest;
- d. Bank Indonesia (BI), if the Debtor is a bank and is currently transferred to the authority of the Financial Services Authority (Otoritas Jasa Keuangan/OJK) in accordance with Article 2 paragraph (3) Bankruptcy Law Jo. Article 55 paragraph (2) of Law Number 21 of 2011 concerning the Financial Services Authority (Financial Services Authority Law);
- e. Capital Market Supervisory Agency, if the Debtor is a Securities Company, Stock Exchange, Clearing Guarantee Institution, Depository and Settlement Institution which is currently transferred to the authority of the Financial Services Authority in accordance with Article 2 paragraph (4) of the Bankruptcy Law Act Jo. Article 55 paragraph (1) of the Financial Services Authority Law;
- f. The Minister of Finance, in the case of a Debtor is an Insurance Company, Reinsurance Company, Pension Fund which is now transferred to the authority of the Financial Services Authority or a State-Owned Enterprise engaged in the public interest sector, the person entitled to file for bankruptcy is the Minister of Finance in accordance with Article 2 paragraph (5) of Bankruptcy Law Jo. Article 55 paragraph (1) of the Financial Services Authority Law.

In general, bankruptcy law is related to debtors or creditors' debts. A creditor may have more than one credit or bill that is treated differently in the bankruptcy process (Sutedi,

2009). The definition of debt is an important element because it is one of the conditions for bankruptcy statements which must be proven simply in an examination session held no later than 20 (twenty) days after the date the application is registered (Indonesian Government, 2004)¹.

Sutan Remy (2008) also believes that in the period when there was no clear understanding, various court decisions had differed in providing an understanding of the purpose of debt in Law Number 4 of 1998 concerning the Establishment of Government Regulations in lieu of Law Number 1 of 1998 concerning Amendments to The Law on Bankruptcy becomes the Act. There is a decision that defines debt in the narrow sense, that is debt arising from a credit agreement only, but there is also a definition of debt in the broad sense that is all the obligations of the Debtor must be fulfilled to its creditors (Remy, 2008). Meanwhile according to the Bankruptcy Law, Debt is an obligation that is stated or can be expressed in the amount of money both in Indonesian currency and foreign currency, both directly and which will arise in the future or contingent, arising from agreements or laws and that must be fulfilled by the Debtor and if not fulfilled gives the creditor the right to obtain fulfillment from the Debtor's assets (Indonesian Government, 2004).

Based on the above understanding, thus the debt regime in the Bankruptcy Law constitutes debt in a very broad sense which is not only limited to the relationship of borrowing and lending money but to the obligations of the Debtor in the contract. In addition to the obligations in the contract, the debt also includes the obligations of the Debtor arising from the law. The existence of debts that are due and collectible is one of the requirements for a Debtor to be declared bankrupt as referred to in Article 2 paragraph (1) of the Bankruptcy Law. If all the requirements for bankruptcy statements have been fulfilled and are proven simply, the request for bankruptcy must be granted with a court ruling that can be implemented first, even if a ruling is filed against the ruling.

With the bankruptcy law expected to be able to provide legal certainty to creditors to pay off debtors' debts. Every creditor (concurrent) has the same right to get repayment from the debtor's assets. If the Debtor only has one creditor, then all Debtor assets will automatically be guaranteed for the payment of the Debtor's debt and no Pro rata and Pari Passu distribution is required (Jono, 2008). Meanwhile, the understanding of creditors based on Article 1 number 2 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations can be classified into elements of creditors, including (a) Person; (b) Who has receivables; (c) Receivables that can be collected in court; (d) Receivables arise from agreements; or (e) Receivables arise from the law.

Meanwhile, Elucidation of Article 2 paragraph (1) of the Bankruptcy Law referred to as "Creditors" means both concurrent creditors, separatist creditors and preferred creditors. Specially for separatist creditors and preferred creditors, they can submit bankruptcy statements without losing the collateral rights over material possessions to the debtor's assets and their right to take precedence. Therefore, the Elucidation of Article 2 paragraph (1) of the Bankruptcy Law is intended to accommodate all creditors who can act as applicants for bankrupt statements. If you look again at the understanding of creditors in

¹ Based on Article 6 paragraph (6) and paragraph (7) of Law Number 37 Year 2004 Concerning Bankruptcy and Delaying Obligations for Debt Payment, that the hearing can be postponed at the request of the Debtor and based on sufficient reasons. According to the Elucidation of Article 6 paragraph (7) UUK and PKPU that meant "sufficient reasons" include a certificate of illness from a doctor

Article 1 Number 2 of the Bankruptcy Law as the elements described above, it can be seen that a receivable recognized in bankruptcy is a debt arising from an agreement and law and the definition of receivables in the creditor's understanding. synchronous with the definition of debt in Article 1 number 6 of the same law. Related to the type of creditor, level of bankruptcy can be divided into 3 (three) types, namely (a) Creditors Separatis; (b) Preferred Creditors; and (c) Concurrent Creditors (Sastawidjaja, 2014). Separatist creditors are creditors who can exercise their rights as if bankruptcy did not occur. Including Separatist Creditors, such as pawning holders, fiduciary security holders, mortgage rights, mortgages, other material collateral. Whereas the Preferred Creditors are creditors with special rights as referred to in Article 1139 of the Civil Code and Article 1149 of the Civil Code (Indonesian Government, 1847).

Privileges according to Article 1134 of the Civil Code are rights granted by law to a person who is in debt so that the level is higher than other people who are in debt, solely based on the nature of their receivables (Indonesian Government, 1847). Mortgages and mortgages are higher than privileges, except in cases where the law determines otherwise. Then in Article 1135 of the Civil Code it is stated that among the privileged debtors, the level is regulated according to the various characteristics of their special rights (Indonesian Government, 1847). From the provisions of Article 1134 and 1135 of the Civil Code, the position of the special creditor is under the separatist creditor, unless stated otherwise by law.

The Concurrent Creditors or competing creditors are creditors who do not have any privileges so that the position of one another is the same (Sastawidjaja, 2014). Meanwhile creditor's privileges can arise from special rights to certain objects, as stated in Article 1149 of the Civil Code. Based on this understanding, it can be said that the priority order of creditors with these privileges according to Article 1138 of the Civil Code that the special rights can be regarding certain goods, or can also be about all movable and immovable property, in general, the first take precedence over the second (Indonesian Government, 1847).

Regarding debt that is given a special position or precedence is not only regulated in the Civil Code, but in other legislation which is a *lex specialis* of the provisions in the Civil Code that are open for example law in the field of taxation one of which is the Customs Law or even Labor Laws.

Meanwhile according to Article 1 number 4 of the Bankruptcy Law, a Bankrupt Debtor is a Debtor who has been declared bankrupt by a Court decision. With the bankruptcy of the Debtor or the Debtor having been declared bankrupt, the Court will then settle the Debtor's debt or Creditors' debts, which in principle all creditors have the same rights to the Debtor's assets. Equality in debt repayment by the Debtor in accordance with Article 1131 of the Civil Code, which contains general guarantees for debt repayment as follows all material debt, both movable and immovable, both existing and new will be in the future, becomes dependents for all individual engagements (Indonesian Government, 1847).

Pursuant to Article 1131 of the Civil Code, the assets of the Debtor are not only to guarantee the obligation to pay off debts to creditors obtained by the debt agreement between them, but to guarantee all obligations arising from the debtor's engagement (Remy, 2008). Engagement according to Article 1233 of the Civil Code can arise or be born because

of an agreement between the Debtor and creditors or arise or be born because of the provisions of the law. The principle in Article 1131 of the Civil Code guarantees that if the Debtor turns out for some reason at the time of not paying off the debt, the Debtor's assets, both movable and immovable, both existing and future will become collateral for debts that can be sold to be a source of repayment of the debt (Remy, 2008). Based on the above understanding that the bankruptcy has legal consequences, one of which is the general confiscation of all the assets of the Bankrupt Debtor which will then be used to pay off debts and obligations of the bankrupt Debtor.

The main principles in bankruptcy law regarding paying off debts to creditors include:

a. Principles of Creditorum Parity

The principle which determines that creditors have the same rights to all Debtor's assets, which means that all Debtor's assets, whether owned or not currently tied to the settlement of Debtor obligations. This principle creates injustice, namely that creditors are equal to one another, so this principle must be coupled with other principles, namely *pari passu prorata parte* and structured creditors (Subhan, 2001).

b. *Pari Passu Prorata Parte* Principle

This means that these assets are joint collateral for the creditors and the results must be distributed proportionally between them unless there are creditors who according to the law must take precedence in receiving bill payments. This principle emphasizes the distribution of Debtor assets to repay debts to creditors in a more just manner in accordance with the proportions (*ponds gewijs*) and not in an equal manner (Subhan, 2001).

That the author feels it is also necessary to understand some of the notions of tax that are still relevant to this day both by experts and applicable laws and regulations, including:

- a. provides a tax definition in terms of the law, tax is an engagement that arises because of a law that requires a person who fulfills the conditions specified by the Law (Tatbestand) to pay a sum of money to the state (cash), which can be forced, without getting a reward that can be directly appointed, which is used to finance state expenditures (routine and development) and is used as a tool (driving, hindering) to achieve goals outside the financial sector (Soemitro, 1965).
- b. The definition of tax based on Article 1 of Law Number 14 of 2002 states that Taxes are all types of taxes levied by the central government, including import duties and excise, and taxes levied by local governments based on applicable laws (Indonesian Government, 2002).
- c. The Definition of Tax Based on Law Number 19 of 1997 as amended by Law Number 19 of 2000 is all Types of Taxes Charged by the Central Government, Including Import Duties and Excise, and Taxes Charged by Local Governments, According to Legislation (Indonesian Government, 2000).

Based on the definitions, a conclusion can be drawn that the Import Duty, Excise and/or Taxes on Import are included in the definition of Tax, so that in carrying out the collection, other than applying the Customs Law (Indonesian Government, 2006), also applies the Law Number 19 of 1997 as amended by Law Number 19 of 2000 (Tax Collection Law) (Indonesian Government, 2000). Thus, it can be concluded that the tax debt arises under the

law which gives an engagement to citizens to pay taxes, so that the tax debt can be categorized in the scope of debt in a very broad bankruptcy, namely debt arising from the law. So in the event of a bankruptcy situation for taxpayers such as Bonded Zone companies, the Bankruptcy Law will also apply in settling its tax debt payments.

Moving on to the nature of prioritizing tax payments in the event of bankruptcy, it will be related to the understanding of prior rights. Public treasury in general has prior rights to tax bills unless in the relevant laws are given other provisions (Soemitro, 1987). Tax debts after being billed by force letter, but do not produce results, can be invoiced for both permanent and non-permanent goods from the taxpayer. If tax debts are not paid, these goods can be confiscated and sold publicly, which income will be used to pay off their tax debts (Soemitro, 1965).

The state needs a fiscal instrument that can bridge the needs of state revenue as well as a means of encouraging investment in the country. One such fiscal instrument is Import Duty, Excise and/or Taxes on Import. Thus it is very important to understand the position of the State as the holder of the right to overtake (preferential) in the case of bankruptcy is as important as understanding the role of tax revenue as a source of state revenue. The position of tax debt is different from other debts, as explained according to the understanding of Soemitro above. Tax debt arises from the law and does not arise as a result of a legal relationship between citizens, tax debt can be forced because it involves obligations of citizens to the state.

Tax debt has an important position so that its position cannot be written off, including in a state of bankruptcy. This is even confirmed in the Bankruptcy Law which gives the main position of tax as an obligation that must take precedence. This can be seen in Article 41 paragraph (3) states that exempted from the provisions in paragraph (1) are legal actions of the Debtor which must be done based on the agreement and/or due to the Law (Indonesian Government, 2004).

Then in the explanation stated that acts that must be done because of the Act for example, the position to pay taxes (Indonesian Government, 2004).

In addition, Article 19 paragraph (6) of the Law Number 19 of 1997 as amended by Law Number 19 of 2000 states that the advance right to a tax bill exceeds all other preceding rights, except for (Indonesian Government, 2000):

- a. case costs solely caused by a penalty for auctioning movable or immovable property;
- b. costs incurred to save the goods in question; and
- c. court fees solely caused by the auction and settlement of an inheritance.

The Customs Law in article 39 which is the parent of the Indonesian Customs and Excise's duties also states that (Indonesian Government, 2006):

- (1) The State has the prior right to claim for goods owed.
- (2) Provisions regarding preliminary rights as referred to in paragraph (1) include import duties, administrative fines, interest and billing fees.

The purpose of the article is to establish the state's position as a creditor of preference which is stated to have prior rights to the goods owed. After customs bills are settled, payments are only settled to other parties and provide an opportunity for the Government to obtain a share in advance from other parties for assets owed to settle customs bills. Tax debt

position is often faced with conflicting matters. On the one hand the government as the holder of the right to tax debt has full authority over the income derived from taxes. On the other hand, the existence of bankruptcy arrangements is expected to create justice among the creditors. The various cases that occur often indicate a conflict between the position of tax debt which should be higher when compared with other creditors. This is partly due to the fact that Article 1137 of the Civil Code has placed tax debts as a priority for other creditors as follows The rights of the State Treasury, Auction Offices, and other public bodies established by the Government, to take precedence, the orderliness in exercising those rights, and the duration of such rights, are regulated in various special laws regarding these matters (Subekti, R & Tjitrosudibio, R., 2009).

Based on the definition of Article 1137 of the Civil Code it is clear the position of the tax debt as a holder of privileges with prior rights that refer to the regulations in special laws, namely the Taxation Law one of which is the Customs Law. If you look closely at the sound of the article, it can be seen that the Civil Code gives authority to tax bills to be able to get payment in advance. This very important tax position as a source of state income has resulted in taxes having a priority position. Based on the above understanding it is evident that there is a need for legal certainty in resolving bankruptcy cases against taxpayers who have tax debt, based on what the law should be able to do.

Bankruptcy Bonded Zone will be closely related to international civil law theory when in the event there are foreign elements, for example citizenship, legal entity, domicile or even where the object is located. Bankruptcy arising from an international business transaction, which contains elements of foreign business actors (foreign elements) in it, which does not originate from the country where the bankruptcy process was carried out is called cross-border insolvency (Suryana, 2007). If we have to examine an International Civil Law event, after we find the Primary, differentiator or identifier link, the next step is to look for where the kinds of events or relationships that we are facing in the classification system of events or legal relations held by national law we. In other word classifying the relationship that is being faced into the system of international civil law and our material law called qualifications (Hartono, 1975). The primary linkage theory is used to determine the presence or absence of a foreign element in an engagement. Primary linkages are the factors and circumstances that create that a relationship becomes the inter-legal legal relationship (Hartono, 1975). As for those included in the primary linkages for international civil engagement are (Sudargo, 1986) (1) Nationality; (2) Ship flags; (3) Domicile; (4) Place of residence; (5) Legal domicile; (6) Choice of law. In addition, there is also a secondary linking point or also called a defining link point, which is a link point that determines which laws must be applied in resolving cases that contain foreign elements. Which includes secondary links in International Civil Law, including (Sudargo, :1986):

1. Nationality;
2. Ship flags;
3. Domicile;
4. Place of residence;
5. Legal domicile;
6. Choice of law;
7. The location of the object;

8. Where legal proceedings take place;
9. Place of Unlawful Acts;
10. The place of official action (Hartono, 1975).

3. RESEARCH METHODS

The research method used in this study is the normative juridical approach/library law research (Soerjono & Sri, 2003) based on secondary data by emphasizing the science of law that looks at the purpose of law, the values of justice, the validity of the rule of law, legal concepts, and legal norms (Marzuki, 2007). Secondary data relating to the object of research include primary legal materials, namely to the laws relating to the object of research, including:

- a. Constitution of the Republic of Indonesia;
- b. Civil Procedure Code;
- c. Law Number 10 of 1995 Concerning Customs as Amended by Act Number 17 of 2006;
- d. Law Number 19 of 1997 concerning Tax Collection by Forced Letter as amended by Act Number 19 of 2000;
- e. Law Number 37 of 2004 Concerning Bankruptcy and Postponement of Debt Payment Obligations;
- f. Law Number 13 of 2003 concerning Labor.

Meanwhile secondary legal materials used include literature related to research objects, research results, as well as scientific work of scholars and tertiary legal materials, such as encyclopedias, dictionaries, magazines or newspapers, writings and articles especially through official websites belonging to related institutions that can support understanding of the material regarding the object of research. The research specification used in this study is descriptive analysis, which connects the applicable laws and regulations with legal theories and the practice of implementing positive law concerning the above problems. For drawing conclusions from the results of research that has been collected conducted normatively qualitative. Analysis of all data that has been collected is done qualitatively juridical, namely an analysis without using numbers (mathematics or statistics), but arranged in the form of sentence descriptions (Rasidji & Liza, 2005). This research focuses on providing fiscal facilities by Indonesian Customs and Excise to bonded zone companies which include deferral of import duties, exemption from excise, and are free of taxes on import.

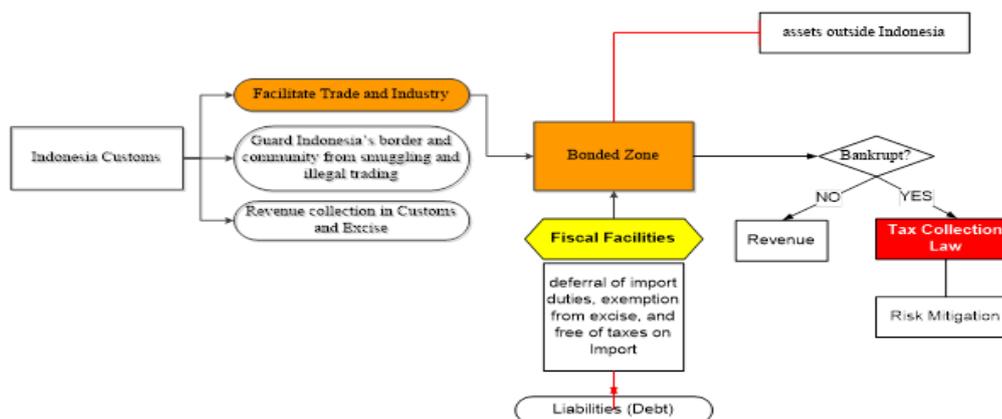


Figure: Research Framework

4. ANALYSIS AND DISCUSSION

A. Prioritizes Position the Indonesian Customs and Excise for Debt Bonded Zone Companies That Are in Bankruptcy.

Customs activities are based on the 1995 Law on Customs as Amended by Law Number 17 of 2006 (Customs Law) as part of tax law which is public law. Import duty payable arising from the existence of citizens' obligations to the state based on unpaid law, is due and can be collected by administrative legal principles as regulated in Act Number 19 of 1997 concerning Tax Collection by Forced Letter as has been amended by Law Number 19 Year 2000 (Tax Collection Law). Some of the schemes that Indonesian Customs and Excise can carry out in fulfilling debts to Debtors are through a collection mechanism that can take the form of instant and simultaneous billing, forced letters, confiscation of goods under the tax guarantor, based on the order to carry out a seizure or carry out a hostage based on a hostage warrant. As explained previously under Article 1131 of the Civil Code, it is determined that the Debtor's assets guarantee the obligation to pay off debt to Indonesian Customs and Excise. The Customs Law is a special law so that article 39 (1) of the Customs Law which states that the State has a pre-emptive right to customs bills for assets owed overrides Article 1139 and Article 1149 of the Civil Code and its juridical consequences. If the Debtor is unable or unwilling to pay the Import Duty debt, the state has the right to confiscate and/or auction off the Debtor's assets, both movable and immovable property, even if they are burdened with mortgages, mortgages or liens.

The collection mechanism based on the Tax Collection Law is actually an effective means of fulfilling debt, especially Article 14 which accommodates confiscation of movable and immovable property even if it is on another party or is guaranteed as a payment of certain debts. However, if the problem arises, the Debtor is a Bonded Zone company that gets facilities in the fiscal sector, especially the suspension of import duties for its import activities or billing that is not optimal or has even expired. The problem of Bonded Zone which is bankrupt based on the decision of the Commercial Court will be related to the fulfillment of its customs obligations because the imported goods still have customs liabilities in the form of Import Duty or even Tax in the framework of their import. The consequence is based on bankruptcy law that the Bonded Zone Company no longer has the

right to control and manage its assets from the date the bankruptcy verdict is pronounced by the judge and his property becomes a bankruptcy controlled by the Debtor under the supervision of a supervisory judge. The position of customs debt in bankruptcy is basically always faced with two opposing things. On the one hand Indonesian Customs and Excise as a debt holder has full authority over the income obtained for example from import duties and taxes on import but on the other hand with bankruptcy is expected to create justice among creditors.

The emergence of bankruptcy experienced by bonded zones should have been identified by Indonesian Customs and Excise in this case Customs and Excise officials who are tasked with overseeing and providing services to bonded zone companies. Profiling of bonded zones is mandatory because it will impact the preparation of bill calculation and collection of bill evidence if one day the bonded zone experiences bankruptcy. Monitoring of bankruptcy decisions is also mandatory, lest a Bonded Zone still uses its facilities but on the other hand it turns out that the bonded zone has been declared bankrupt by the Commercial Court. In addition, ignorance or delays in bankruptcy information as well as delays in information from the curator can result in the closure of the possibility of debt that will be obtained in the matching process of receivables.

In determining the foregoing argumentation of the right to customs debt, it needs to be said that there are priority payments in bankruptcy debt, namely material security. Guarantees can be distinguished in general guarantees and Special guarantees (Hasbullah, 2005). General guarantees are reflected in the provisions of Article 1131 of the Civil Code, perfected by the provisions of Article 1132 of the Civil Code, which emphasizes the equal position of creditors, also allows for a special guarantee if there are valid reasons among creditors to take precedence, due to statutory provisions and due to agreements (Hasbullah, 2005). Based on 1132 Civil Code is as follows The material is a joint guarantee for all those who condemn it, the sales income of the objects is divided according to balance, that is, according to the size of the receivables respectively, except if among the debtors there are valid reasons to come first (Indonesian Government, 1847), then it is necessary to pay attention to Article 1134 of the Civil Code stating that Privileges are rights which are legally granted to a person who is in debt so that the level is higher than other debtors, based solely on the nature of their receivables. Pawn and mortgages are higher than rights special, except in cases where the Law is determined otherwise (Indonesian Government, 1847). No less important is Article 1135 of the Civil Code which states that Among privileged debtors, the levels are regulated according to the various characteristics of their privileges (Indonesian Government, 1847).

The difference between a separatist creditor and a concurrent creditor lies in that the separatist creditor has the right to execute the object of collateral as if without bankruptcy and obtain a debt payment earlier than the concurrent creditor. The distribution of proceeds from the sale of bankrupt assets, is carried out based on priority order in which the creditors of higher position get the prior share of other creditors of lower position, and between creditors who have the same level obtain payment with the principle of *Pari Passu Prorata Parte* between them, except if among the creditors there are those that according to the law must take precedence in receiving bill payments.

The state's position related to tax debt according to the law is as a preferred creditor who has advance rights to the goods owned by the Taxpayer to be auctioned in public. This condition makes payments to other creditors will certainly be settled after the tax debt is paid off first. The emphasis on preferred creditors in customs bills is more meaningful in prior rights than other creditors. Very different from the meaning of preferred creditors in bankruptcy. Especially if it is seen that the position of preferred creditors in bankruptcy is ranked next after creditors *Separatis*. The result, of course, is the distribution of the proceeds of the sale of bankrupt assets to be carried out in the order of their priority. Thus the creditor with a higher position gets a share earlier than other creditors whose position is lower. Even if among the creditors have the same level, the division can use the principle of *prorata*, i.e. the distribution of sales proceeds proportionally between them. This means that even though both tax collection and bankruptcy use preferred creditors in terms of debt settlement owned by the Taxpayer/Tax Insurer (debtor in the case of bankruptcy), both explicitly have different meanings, even though Indonesian Customs and Excise's preference rights are guaranteed in the laws and regulations and they have the right to prioritize their fulfillment as described above, but with the development of the law namely the Constitutional Court Decision Number. 67/PUU-XI/2013 causes the creditor hierarchy map to change. Broadly speaking, the Constitutional Court's Decision made labor wages as stipulated in Article 1149 of the Civil Code and Article 95 of Law Number 13 Year 2003 concerning labor to be paid first of all types of bills and other creditors, including those of separatist creditors and state tax bills (customs taxes entry) as well as other labor rights are paid in advance of all sorts of bills from other creditors, unless the Debtor has a separatist creditor. Whereas bankruptcy is a path that can be taken to fulfill debts from debtors to the state in the case of other legal channels in the form of billing based on the Tax Collection Law, which is not optimal or is hampered by the billing expiration stipulated in the said law or the Customs Law. The constitutionality of workers' wages is certainly put forward in accordance with the hierarchy of norms in Law Number 12 of 2011 concerning the Establishment of Legislation, where the 1945 Constitution of the Republic of Indonesia occupies the top hierarchy.

The development of the law, it is possible to fulfill the obligations of a Bonded Zone for the whole in the event of a bankruptcy if the portion of customs bills and labor costs is greater than the bankruptcy budget. For this reason, the Indonesian Customs and Excise should anticipate the bankruptcy of a Bonded Zone to maximize the portion that will be submitted to the curator at the credit matching meeting. Anticipations of Bonded Areas that have the potential to become bankrupt are important because there is a Judicial Review Number 116 PK/Pdt.Sus-Bankrupt/2013 that rejects Serang Tax Office review with the consideration that billing/notification to the curator is late being requested ie 2 (two) have passed years after verification and the invoice can no longer be included as a bill to be paid from bankrupt assets. In addition, based on Article 1131 of the Civil Code as mentioned above and Article 204 of the Bankruptcy Law which reads as follows After the closing distribution list becomes binding, the creditor regains the right to execute the debtor's assets regarding their unpaid debts and the opinion expressed by Prof. Dr. Sunarmi, SH.M.Hum that bankruptcy does not stop or write off debts from debtors that have not been sufficient to

pay². Based on the idea that in the distribution of bankruptcy to Indonesian Customs and Excise for customs debt is not sufficient, Indonesian Customs and Excise can re-enter the bankruptcy mechanism for material that is likely to be owned by the new Debtor in the future. In addition, Article 1131 of the Civil Code and Article 204 of the Bankruptcy Law indirectly make the principle of *nebis in idem* known in Indonesian civil and criminal law, where if a case has been decided, then an application for an examination of the same case may not be applied to become invalid in the mechanism bankruptcy. This can also accommodate billing that cannot be done maximally and is hampered by Article 41 paragraph (1) of the Tax Collection Law and Article 40 paragraph (1) of the Customs Law which limits the billing period of 10 (ten) years from the arising of the payment obligation. However, to go through the mechanism of bankruptcy, the State represented by customs agencies in handling customs debt, has not been explicitly considered a creditor who can file for bankruptcy. This can be analyzed based on Article 1 number 2,3,6 and 11 Bankruptcy Law with the following reasons:

1. Number 2:

Creditors are people who have credit because of agreements or laws that can be collected in court.

2. Number 3:

Debtor is a person who has a debt due to an agreement or law whose repayment can be collected in court.

3. Number 6:

Debt is a liability that is stated or can be stated in the amount of money both in Indonesian currency and foreign currency, both directly and will arise in the future or contingent, arising from agreements or laws and which must be fulfilled by the Debtor and if not fulfilled grants the creditor the right to obtain fulfillment from the Debtor's assets.

4. Number 11:

Every person is an individual or corporation including corporation in the form of legal entity or non-legal entity in liquidation.

Based on the description above it is determined that the creditor is a person, that is an individual or corporation including a corporation that is a legal entity or not a legal entity in liquidation, not including the state in this case the Customs Office which only runs formal provisions in the Bankruptcy Law. However, the notion of debt adhered to in the law adheres to a very broad understanding, so it should be able to accommodate the country as a creditor who can file for bankruptcy not limited to the state can apply for its right to get repayment of the debt through the process of filing a customs bill at the matching stage of receivables. Settlement of customs debts in bankruptcy begins with the filing of a bill to the curator no later than 14 (fourteen) days after the verdict of the bankruptcy statement is pronounced for later verification of the tax bill. This verification stage is regulated in article 113 paragraph (1) of the Bankruptcy Law.

It should be if the legislators think of the juridical aspects related to bankruptcy filed by the state by considering the broad understanding of debt and state revenue. Things like this

² Prof. Dr. Sunarmi, SH.M.Hum, presented at the Bankruptcy and BMN Management workshop, Medan on 19-21 September 2018..

are very important because of the billing constraints that are not optimal as well as the existence of billing expiration provisions, then another thing is bankruptcy does not write off debtors' debts that have not been paid enough should be the moment for the legislators to think about it. Moment of changing the law, especially to be able to accommodate customs agencies representing the state in collecting taxes, must be done, including adjustments to norms in Article Article 2 paragraph (2) through (5) of the Bankruptcy Law where the existence of the Financial Services Authority Law governing the transition of functions, duties and authority of regulation and supervision to Financial Services Authority from the Minister of finance, Bapepam and Bank Indonesia to Financial Services Authority becomes a moment in adjusting creditor norms that can file for bankruptcy including customs (state) agencies and bearing in mind the very broad debt understanding regime in the Bankruptcy Law.

Obstacles to the fulfillment of Indonesian Customs and Excise Debt on Debtors in the form of Bonded Zone do not stop at the position of state preference rights or have not accommodated the position of the state as a creditor who can file for bankruptcy but also several different opinions of judges regarding the portion of the position of state rights. The Supreme Court has also not been matched in resolving bankruptcy issues involving state creditors, on the one hand, for example in the Supreme Court's decision number 070 PK/Pdt. Sus/2009 ruled that Tax Service Office Tanah Abang II is entitled to get tax debt fulfillment with consideration of having prior rights to tax bill in accordance with Article 21 paragraph (1) of the Tax Law (Indonesian Government, 2007). Meanwhile another Supreme Court ruling No. 015/K/N/1999 ruled that the Tax Service Office is not included in creditors within the scope of bankruptcy, the form of tax debt is a bill that was born from the Tax Law and based on that law gave special authority to officials tax to carry out direct execution of tax debt outside the interference of court authority.

Based on the existing conditions, if it is analogous to a tax debt in the form of import duty or Indonesian Customs and Excise's taxes on import, there are two possible judges' views that on one side of the import duty is a component of state revenue so that if there is debt to it, it must take precedence because the state has preferential rights. However, on the other hand, bankruptcy is not appropriate for the fulfillment of import duty debts but through the mechanism of billing by force based on the Tax Collection Law. The problem is if the bonded company is a Bonded Zone company, which in fact is an import duty and taxes on import bill for the importation of new capital goods in the event of a bankruptcy decision from the Commercial Court, not for periodic bills under the Tax Collection mechanism for a certain period but rather bills arising as a result of legal events in the form of bankruptcy.

B. Effectiveness of the execution of the execution of the Commercial Court Decision Against Bonded Zone Companies that have Assets Outside Indonesia

Article 21 of the Bankruptcy Law states that Bankruptcy covers all the assets of the Debtor at the time the verdict of the bankruptcy statement is pronounced as well as everything that is obtained during the bankruptcy, so that the bankruptcy of the bankruptcy can be on the existing assets both in Indonesian jurisdiction and outside Indonesian jurisdiction. Meanwhile, the Bankruptcy Law functions to protect the interests of the parties

concerned in this case are creditors and debtors, or also the public. The protection provided must be balanced, not too biased by paying attention to the principle of balance, the principle of business continuity, the principle of justice, and the principle of integration (Sastawidjaja, 2014). Based on the opinion that the protection is carried out not only to the creditor but the debtor, so that if it is connected with cross-border bankruptcy issues then it is possible that the protection must also be applied to foreign subjects in this case the assets of the debtor abroad. If the assets of bankrupt debtors also consist of assets located abroad, bankruptcy will be in contact with international civil law principles.

Whereas in the case of bankruptcy in a Bonded Zone there may be legal facts relating to or becoming a study of international civil law and bankruptcy. The relationship between a bankrupt applicant (a foreign financial institution) and a bankrupt respondent (an individual/company Bonded Zone) is as a Debtor and creditor bound by a debt and debt relationship, it can also occur between creditors and non-foreign Debtors but Debtor assets include assets that are in overseas.

For example, if a bonded area has a legal relationship with a foreign element, for example a foreign financial institution or a foreign creditor, it is necessary to determine the primary link point obtained by the domicile differences between creditors and Debtors that are cross-border in nature, so there are also differences in the legal system from where the Debtor or creditor is located. Then it must be determined which jurisdiction has the right to handle bankruptcy that is cross-border in nature and will deal with relevant laws and regulations covering HIR or RBG, Civil Code, and/or Kitab Undang-Undang Hukum Dagang (KUHD) or Bankruptcy Law. Pursuant to Article 118 of the HIR, it is regulated regarding court competence, that in principle, the court authorized to examine a lawsuit is a district court located in the jurisdiction of the defendant (*Actor Sequitur Forum Rei*).

In addition, article 3 AB (*Algemene Bepaligen van Wetgeving*) states that in the field of civil and commercial law, there is no distinction between foreigners and Indonesian citizens, except for matters that have been specifically regulated by statutory regulations. In the provisions of article 100 Rv (*Reglement of de Burgelijke Rechtsvordering*) applies, that in essence foreigners who are not residents, and who do not have a place to live in Indonesia can be sued in the Indonesian Court of trade agreements in Indonesia in relation to Indonesian citizens, so for cases the presence of foreign creditors can then file a lawsuit in Indonesia.

Another problem is what if in a bankruptcy decision is decided by an Indonesian Commercial Court and it turns out the Debtor has assets that are abroad. Of course, the rules of international civil law will also be in contact with the principle of bankruptcy and whether the Bankruptcy Law has accommodated this. Then how does the Bankruptcy Law regulate the implementation of a Commercial Court decision which contains foreign elements, namely the objects/assets of the Debtor, wholly or partly located abroad.

According to the Dutch International Civil Law system, bankruptcy decisions use the territoriality principle. Basically, a bankruptcy decision pronounced abroad has no legal consequences at home. This is also the case with Indonesian International Civil Law (Sudargo, 1987). If this principle is followed, then someone who has been declared bankrupt abroad, can be declared bankrupt again in Indonesia. If it is analogous then this also means the bankruptcy verdict that has been pronounced in Indonesia, only has an effect on objects

contained within the territory of the Republic of Indonesia. However, it should be noted that the Article regarding the provisions of international law, especially in Article 212 of the Bankruptcy Law, is stated as follows Creditors who, after the verdict of the bankruptcy statement is pronounced, take full or part of their accounts receivable from debts belonging to bankrupt assets located outside the territory of the Republic of Indonesia, which are not bound to them with the right to be prioritized, must replace all bankruptcy assets (Indonesian Government, 2004).

Based on this article, the enactment of law on bankrupt Debtor assets against assets of bankrupt Debtors includes assets located in Indonesia and assets outside Indonesia, thus based on Article 212, the Bankruptcy Law adheres to the universal principle specifically for Debtor assets that crosses Indonesian territory. Therefore, even though the Bankruptcy Law adheres to the civil procedural law as referred to in Article 299 of the Bankruptcy Law, Article 212 of the same law provides a basis that applies the principle of *lex specialist derogate lex generalis* so that the general provisions of the Dutch international civil law according to Sudargo in particular regarding the principle of territoriality of court decisions is ruled out. Thus for Debtor assets, the universal principle applies where the decision of the Indonesian commercial court can be carried out wherever the existence of these assets both at home and abroad.

Apart from the abovementioned matters, on the other hand the Bankruptcy Law actually accommodates the execution of Debtor assets wherever they are (universal principle), but problems will arise because they will intersect with the sovereignty of a country in executing foreign court decisions. Although the Bankruptcy Law does not specifically regulate whether foreign decisions can be executed, the Bankruptcy Act indirectly adheres to territorial decisions because based on Article 229 of the Bankruptcy Law the proceedings at the Commercial Court apply to civil procedural law that does not recognize foreign court decisions. The analogy is the decision of a commercial court in one country cannot be executed by a court in another country. The potential impact of state revenue from debtors/bonded zones that are bankrupt and have assets abroad will be hampered by problems regarding the principle of the decision of the commercial court against foreign elements in this case the assets of Debtors who are abroad.

Constraints in general will raise the question of whether the legal system adopted by many countries allows their courts to execute foreign decisions. The tendency of these countries does not allow foreign court decisions to be implemented not only applies in countries that follow the Civil Law system but also applies in countries that follow the Common Law legal system. As explained by Paul J. Omar, traditional common-law doctrine is that a foreign order, although creating an obligation that is actionable within the jurisdiction, cannot be enforced without the institution of fresh legal proceedings (Maharany, 2002).

In addition to elaborating the problem of the execution of the foreign court's ruling, to standardize the rules of international civil law among participating countries, also in order to expedite international traffic relations, especially in solving civil law cases and commercial law there is one international convention namely The Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters 1971 (The Hague Convention on the Recognition and Implementation of Foreign Judge Decisions in Civil and

Trade cases, 1971), this Convention according to D. Kokkini-Iatridou & JP Verheul, "... has entered into force between the Netherlands and several other countries but has not become operative since there are no complementary bilateral treaties in the sense of its article 21. The intention is, that in order to obtain recognition and implementation of judges' decisions from fellow participating countries in The Hague Convention, it is still required to have bilateral agreements between the participating countries, as determined in article 21 of the convention (Suparman, 2012).

Based on this thinking, to be able to accommodate the execution of the Indonesian Commercial Court on a Bonded Zone that is bankrupt and has assets outside Indonesian jurisdiction, it can be carried out by ratifying various relevant international treaties or by making bilateral agreements between countries so that the problem can be resolved.

5. CONCLUSION

Indonesian Customs and Excise has preferential rights to Bonded Zone Companies that have experienced bankruptcy on the existence of import duty, excise, and/or taxes on import obligations under the Customs Law, but the preference is shifting in line with the Constitutional Court's ruling that makes labor wages the top priority overriding the rights of country preferred. However, bankruptcy does not write off debtors' debts that have not yet been paid or underpaid, so that bankruptcy can be carried out in the future for debtor's assets in the future.

The Bankruptcy Law provides broad coverage of bankrupt Debtor assets, that is, assets that are outside the territory of Indonesia, so that it is possible for these assets to become bankrupt. However, in its implementation, it can be constrained by the sovereignty of each country which may not necessarily allow its authority to execute the decision of the Indonesian Commercial Court which can affect the portion of debt repayment to the Indonesian Customs and Excise for a Bonded Zone which is bankrupt and has assets abroad.

LIMITATIONS AND SUGGESTIONS.

Indonesian Customs and Excise must be able to identify the signs of a Bonded Zone that will go bankrupt, for example, profiling a company through IT Inventory, analyzing the intensity of revenue and expenditure documents, and conducting effective communication with companies related to company conditions. In terms of regulation, the Bankruptcy Law should be amended specifically related to creditors who can file for bankruptcy, in addition to adjusting to the Financial Services Authority Law, it is advisable for the state in this case customs agencies to be able to file for bankruptcy to maximize the fulfillment of Debtor debt.

At a concrete level, the implementation of the decision of the Indonesian Commercial Court over the existence of the assets of a Bonded Zone that is outside the territory of Indonesia is not only supported by the regime of a universal decision in the Bankruptcy Law, it is also necessary for the state to conduct the verification of several international agreements that can solve the problem of execution decisions of foreign courts in their countries or countries can enter into bilateral agreements relating to the implementation of decisions of foreign Commercial Courts, especially the execution of assets of bankrupt Debtors.

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