



**THE CONSTITUTIONAL COURT
REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
ON CASE NUMBER 41/PUU-XVIII/2020**

Concerning

**The Taxpayer Identification Number Elimination does not eliminate the Tax Payment
Obligation by the Taxpayer**

Petitioner : Taufik Surya Dharma

Case : Judicial Review Number 6 of 1983 concerning General Provisions and Tax Procedures as last amended by Law Number 16 of 2009 concerning Stipulation of Government Regulations in Lieu of Law Number 5 of 2008 concerning the Fourth Amendment to Law Number 6 of 1983 concerning General Provisions and Procedures Taxation (KUP Law) against the 1945 Constitution of the Republic of Indonesia (UUD 1945)

Case of Lawsuit : Article 32 paragraph (2) of the KUP Law which regulates exceptions to the obligation of representatives of a legal entity to pay the tax debt of such legal entities, according to the Petitioners, is contrary to the 1945 Constitution if it is not interpreted to include exceptions for representatives of legal entities whose legal entities are bankrupt.

Article 2 paragraph (6) of the KUP Law which regulates the terms/conditions for the abolition of NPWP by the Director General of Taxes is considered by the Petitioner to be contrary to the 1945 Constitution if it is not interpreted to include bankrupt legal entities.

Injunction : Rejected the petitioner's petition for all

Date of Decision : Thursday, January 14, 2021.

Decision overview :

Whereas the Petitioner is an Indonesian citizen. The Petitioner is the Management (director of) a legal entity that has been declared bankrupt but still receives a bill for payment of tax debt from the Directorate General (Dirjen) of Taxes.

Whereas the Petitioner's petition is an application to examine the constitutionality of legal norms, *in casu* Article 32 paragraph (2) and Article 2 paragraph (6) of the KUP (General Tax Provisions) Law against the 1945 Constitution, the Court has the authority to hear the a quo petition.

Regarding the legal position of the Petitioner, according to the Petitioner Article 32 paragraph (2) and Article 2 paragraph (6) of the KUP Law, the Petitioner is factually charged by the Director General of Taxes to pay PT UCI's taxes because the Petitioner is the Director and Person in Charge of Taxes at PT UCI, even though PT UCI has been declared bankrupt based on a court decision that has permanent legal force, where the curation process has been completed by the curator. The Court considers the Petitioner to have been able to explain the existence of a causal relationship (causality) between the alleged loss of constitutionality described and the application of the norm requested for review. Therefore, the Petitioner has the legal position to act as the Petitioner in a quo case.

The Petitioner filed a petition for review of the constitutionality of Article 32 paragraph

(2) and Article 2 paragraph (6) of the KUP Law. Article 32 paragraph (2) basically stipulates the conditions under which a representative of a legal entity can be exempted from the obligation to be personally and/or jointly responsible for paying the tax debt of a legal entity. Article 2 paragraph (6) regulates the terms/conditions for the abolition of NPWP by the Director General of Taxes.

In accordance with the Petitioners, the exceptions regulated in Article 32 paragraph (2) should also cover the management of legal entities whose legal entities have been declared bankrupt. As for Article 2 paragraph (6), according to the Petitioner, it should also stipulate that for the management of a legal entity whose legal entity has been bankrupt, the Tax ID number shall be deleted immediately by the Director General of Taxes.

With respect to the petition, the Court is of the opinion that basically the Taxpayer Identification Number (NPWP) is the registration number or identity number issued by the Director General of Taxes on behalf of the State. Hence, the abolition of Tax ID number, regardless of whether the abolition is due to bankruptcy or otherwise, does not eliminate the status of a citizen as a taxpayer. This is because tax obligations arise because of economic activities that generate profits or profits. In other words, the status of a Taxpayer arises when a certain person or legal entity meets the requirements as a tax subject, and there is a tax object in the form of profits or profits due to certain economic actions.

As for the collection of legal entity tax to the Petitioner as the tax guarantor, the Court is of the opinion that basically a legal entity still needs a person/human to carry out its daily activities, including carrying out the obligations of the company. This is because a legal entity is a legal entity but can't do something independently (think, behave, or act) without being represented by humans. Thus, the management of a legal entity should be responsible for the actions of the legal entity that he represents or carries out on a daily basis, including paying off tax debts.

Regarding tax debt, based on the Court, the tax can be paid logically, considering that tax is a levy on the profits or profits of a legal entity. Taxes are levied on profits and will not be levied in their absence. Even in the Limited Liability Company Law, it is regulated that taxes must be paid before profits or profits are distributed as dividends to shareholders. Therefore, according to the Court, non-payment or non-payment of taxes is the negligence or intentional act of the management. Thus, it becomes the responsibility of the company management.

In the event that certain events occur that prevent the management of the agency from paying off the tax debt, the management can apply for an exception to the Director General of Taxes as stipulated in Article 32 paragraph (2) of the KUP Law. The responsibility that must be borne by the management of the agency depends on the extent to which the losses arise due to negligence or intentional elements of the management while still actively carrying out the management of the agency concerned.

Based on such legal considerations, the Court is of the opinion that the Petitioners' petition has no legal basis. Hence, in the decision, the Court rejected the Petitioner's petition in its entirety.