

Legal dualism of priority rights for tax debts by the state when taxpayers go bankrupt

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Received 12 February 2025

Revised 3 April 2025

Accepted 30 May 2025

ABSTRACT

The existence of dual regulations governing the State's preferential right to tax debt repayment presents a distinct issue in resolving matters related to taxpayers who have been declared bankrupt by the court. The two domains of public law and civil law both regulate the privilege of priority in the repayment of debts by the debtor. Therefore, an in-depth analysis is necessary to address the issue of tax debt repayment when a taxpayer has been declared bankrupt. The objective of this study is to analyze and seek answers regarding the position of the state as a creditor in the repayment of tax debts, as well as to provide an analysis of the regulation concerning the State's preferential right over tax debts. The research method used is a qualitative normative approach, utilizing secondary data and descriptive-analytical techniques for data analysis. The results of this study indicate that the state holds a higher position than other types of creditors as regulated in the Bankruptcy and Suspension of Debt Payment Obligations Law (BSDPO Law), and therefore must be given priority. However, the two sets of regulations remain unreconciled in terms of harmonizing the position of creditors in fulfilling tax debt obligations. Moreover, the regulation regarding the repayment of tax debts mandates that such debts must be settled before the repayment of other types of debts owed by the debtor.

Keywords: Bankruptcy, Dualism, State's Preferential Right, Taxpayer, Tax Debt.

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1. INTRODUCTION

National development serves as a means to achieve the goals of the Indonesian state as outlined in the Preamble of the 1945 Constitution. One of the main sources of funding for national development is tax, as it is intended to finance public expenditures that benefit the people of Indonesia. Tax represents a mandatory contribution from citizens to the state treasury, based on legal provisions and enforceable by law, without any direct return or service to the taxpayer, and is used to cover general government expenses (Mardiasmo, 2004). Given the importance of tax revenue for national development, the government needs to optimize tax collection, both in terms of regulation and implementation. In terms of regulations, a number of tax laws have been issued, including Law Number 6 of 1983 concerning General Provisions and Tax Procedures, which has been amended several times, most recently through Law Number 16 of 2009 (GPTP Law), and Law Number 19 of 1997 concerning Tax Collection by Distress Warrant, which was amended through Law Number 19 of 2000 (TCP Law).

After the enactment of the Job Creation Law, tax regulations are regulated in one law, namely Law Number 7 of 2021 concerning Harmonization of Tax Regulations (HPP Law). Although in terms of regulations, tax provisions have been regulated in such a way, in reality there are still many taxpayers who are reluctant to pay taxes or pay taxes but not in accordance with the amount that should be paid, this will result in tax debts. In Indonesia, tax arrears often occur as stated by Paulus Herdianto Manurung (Manurung, 2015), who said that the value of tax arrears from year to year can increase or decrease, such as in 2010 tax receivables reached 100 trillion, however, in 2022, long-term growth began to improve, increasing the target achievement of the State Revenue and Expenditure Budget (Muhammad Adhiluhung Sosiawan, 2022). This is because taxpayers who have tax debts are still in dispute or are still in the tax court process and there are companies that have gone bankrupt.

According to Article 1 point 8 of the Tax Collection Law (TCP Law), a Tax Debt refers to tax that remains unpaid, including any administrative sanctions such as interest, fines, or penalties stated in a tax assessment or similar document as outlined in transitional tax regulations. On the other hand, the General Provisions and Tax Procedures Law (GPTP Law) uses the term Tax Payable, which is defined in Article 1 point 10 as tax that must be paid within a specific time frame either in a tax period, tax year, or part of a tax year in accordance with applicable tax laws. Therefore, when comparing both definitions, they essentially refer to the same concept: taxes that must be paid by taxpayers (Nurislamati & Citra, 2023). Tax payable is a form of material teaching where tax debt arises due to the enactment of the provisions of the law if it meets a condition or act (tatbestand) applied to the self-assessment system, while tax debt is a form of formal teaching because tax debt arises not only because of the provisions of laws and regulations and tatbestand but must be accompanied by the issuance of a Tax Assessment Letter by the tax authorities, this teaching is applied to the Official Assessment (Mardiasmo, 2004).

In the event that the Taxpayer does not pay off his/her tax debt by the due date of payment, the tax authorities can take a series of tax collection actions as stipulated in the GPTP Law and the TCP Law. However, what becomes a problem is if the taxpayer also has other debts to other parties besides tax debts. This situation usually occurs in bankruptcy cases, where a person has at least two or more debts, but the taxpayer as the debtor is unable to pay off his/her debts to the creditors, then the problem becomes quite complex because, between the obligation to pay off tax debts which are in the realm of public law and the obligation to pay off debts in general which are in the realm of civil law become one unit in the problem. This gives rise to a legal dualism that regulates the payment of tax debts by taxpayers.

The GPTP Law gives the state priority rights (preference) in terms of paying off tax debts. This is emphasized in Article 21 paragraph (1) of the GPTP Law which states that the state is a preferred creditor which has priority rights over the property of the Taxpayer which will be auctioned in public. However, problems arise because the position of the state as a preferred creditor as regulated in the GPTP Law and the Law on Tax Collection with a Distress Warrant (TCP Law) is not explicitly explained whether it is in line with the definition of "preferred creditor" in the Civil Code. In the Civil Code, there is a division of creditor types in bankruptcy cases, namely Separatist Creditors, Preferred Creditors, and Concurrent Creditors. On the other hand, several other laws and regulations also provide priority rights to certain

parties, which have the potential to cause conflict or overlap in the implementation of these preferential rights, especially in the bankruptcy process and debtor debt repayment, such as Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (BSDPO Law). There has been no research comparing the two legal regulations, so a study is needed to provide answers to the conditions as stated above. Based on the description of the background above, the problem identification can be formulated as follows: How is the position of the state as a Preferred Creditor based on the GPTP Law related to the Civil Code and the *BSDPO Law*? How is the regulation of priority rights for tax debts by the State in the case of taxpayers/debtors going bankrupt based on related laws and regulations?

This study employs a normative qualitative research method, which focuses on examining legal issues through a regulatory approach by utilizing secondary data sources. As a result, the research produces descriptive-analytical findings, expressed through narrative explanations rather than numerical data (Muhaimin, 2020). The data collection process relies on secondary data, which includes the use of primary legal materials such as laws and regulations and secondary legal materials, including legal literature, journals, and expert opinions, to support the analysis and interpretation of legal norms relevant to the study. (Prasetyo et al., 2024). The primary legal materials referenced in this study include the Civil Code, the Law on Tax Collection Based on Payment Orders (BSDPO Law), and the General Provisions and Tax Procedures Law (GPTP Law). These serve as the main sources for analyzing the legal framework relevant to the research. In addition, secondary legal materials such as textbooks, academic journals, legal commentaries, and other scholarly works that discuss related legal concepts are also utilized to support and enrich the analysis. The study applies both a statutory (regulatory) approach and a conceptual approach in its data analysis, enabling a deeper understanding of the legal principles and interpretations surrounding the issues being examined (A. R. Putri et al., 2025).

2. STATE OF THE ART

In previous research, the study of Priority Rights for Tax Debts has been discussed as follows. The study entitled "Legal Review of the Implementation of Priority Rights for Tax Debts in the Bankruptcy Case of PT Industries Badja Garuda Based on Law Number 37 of 2004 Concerning Bankruptcy and Postponement of Debt Payment Obligations" which was studied by Siti Fatimah Citra Nurisلاميati (Nurisلاميati & Citra, 2023), this study examines the taxpayer who has been declared bankrupt, then the Directorate General of Taxes still has priority rights and is special. This study is more specific to the case study of a company that is bankrupt.

The research entitled "Efforts to Collect Tax Debts from Taxpayers Who Have Been Declared Bankrupt" researched by Talitha Belvarini Candraningrum (Candraningrum, 2022), discusses misconceptions related to debt collection procedures for Debtors by Creditors who are unwilling to follow bankruptcy legal procedures on the basis of differences in responsibility for certain types of debts regulated in other laws and regulations, for example tax debts. The research entitled "The Existence of the State's Priority Rights Over Debtors' Tax Debts in Bankruptcy Processes" conducted by Muhammad Adhiluhung Sosiawan (Muhammad Adhiluhung Sosiawan, 2022), discusses the legal certainty of the position of the state's prioritization rights in Article 21 of the GPTP Law, which does not provide. The research entitled "The Right to Prioritize Tax Debts by Taxpayers Declared Bankrupt" researched by Albert Lodewyk Sentosa Siahaan (Siahaan, 2016), discusses the procedures or mechanisms for determining the right to prioritize tax debts by taxpayers declared bankrupt by the court.

Based on several previous studies only discussing the legal certainty of the GPTP Law and the mechanism of priority rights for tax debts, there has been no discussion regarding the comparison between priority rights for tax debts and special rights regulated in the Civil Code. Therefore, this study will discuss the existence of legal dualism related to debt payments in the case of taxpayers or bankrupt debtors.

3. DISCUSSION

3.1. The Position of the State as a Creditor Based on the GPTP Law Linked to the Civil Code and the BSDPO Law

According to Article 1 number 2 of the Bankruptcy and Suspension of Debt Payment Obligations Law (UU KPKPU), a creditor is a party who has receivables based on an agreement or law that can be collected through the court, while a debtor is a party who has debts that can be demanded for repayment before the court. The discussion regarding the types of creditors is closely related to bankruptcy, namely the general confiscation of all assets of the bankrupt debtor which is resolved by the Curator under the supervision of the Supervisory Judge. Etymologically, the term "bankrupt" comes from the Dutch *failliet*, which is rooted in the French "*faillite*", which means failure or cessation of payment, and in Indonesian is translated as "bankrupt", namely a condition in which the debtor is unable to pay his debts that have matured (Zaeny, 2005).

Bankruptcy has a condition that the debtor has two or more creditors and does not pay at least one debt that is due and collectible, and those who can file a bankruptcy petition are creditors or debtors as regulated in Article 2 Paragraph (1) of the BSDPO Law (Sentosa, 2008). The explanation of Article 2 paragraph (1) of the BSDPO Law states that the term creditor in this paragraph includes concurrent creditors, separatist creditors, and preferred creditors. However, the BSDPO Law does not explicitly provide a definition of each type of creditor. Therefore, an understanding of the various types of creditors refers to the provisions regulated in the Civil Code.

Concurrent creditors are governed by Article 1132 of the Indonesian Civil Code, which stipulates that a debtor's assets serve as a collective guarantee for all creditors. This means that the proceeds from the sale of those assets will be distributed proportionally among the creditors based on the amount of each creditor's claim. However, this equal distribution is subject to exceptions in cases where certain creditors have lawful grounds to receive priority in payment. In essence, unless a creditor holds a legally recognized right of preference, all creditors share the same rank in claiming repayment from the debtor's assets. This principle reflects the general rule of *pari passu* treatment among concurrent creditors in insolvency or debt settlement situations.

This provision can be interpreted to mean that concurrent creditors have an equal position in terms of debt repayment from the debtor's assets, unless there is a basis that causes priority based on statutory provisions or previously made agreements.

A preferred creditor is a party with special rights to the repayment of receivables as regulated by law, which gives them a higher status than other creditors, solely because of the nature of their receivables. This privilege can apply to both specific assets and all of the debtor's assets, including movable and immovable property. The types of receivables that receive this privilege are regulated in Articles 1139 and 1149 of the Civil Code. Article 1139 mentions several examples of preferential receivables for specific objects, including:

- 1) Legal costs resulting from an auction order for an item, with priority given to the proceeds from the sale;
- 2) Rent receivables on the property and the tenant's obligations, such as repair costs;
- 3) Payments for movable property that have not been paid for;
- 4) Costs of salvaging the item;
- 5) Laborers' wages for unpaid work;
- 6) Goods left by guests at lodgings;
- 7) Transportation and other additional costs;
- 8) Laborers' wages for construction or repairs to the property within the last three years, as long as the property remains the debtor's property;
- 9) Compensation owed by officials due to negligence or violations in carrying out their duties

Article 1149 of the Civil Code stipulates that certain types of receivables have privileges over all of the debtor's assets, both movable and immovable. These receivables include:

- 1) Legal costs arising from the auction process and inheritance settlement, which take priority over pawns and mortgages;

- 2) Funeral costs, although the judge has the authority to adjust them if deemed excessive;
- 3) Costs of care and treatment during the debtor's final illness;
- 4) Labor wages for the previous year and those paid in the current year, including salary increases;
- 5) Receivables from providing food for the debtor and their family in the last six months;
- 6) Receivables from boarding school organizers for the last year;
- 7) Receivables owed by minors and persons under guardianship to their guardians or custodians.

Article 1134 paragraph (2) of the Civil Code states that Pawns and Mortgages have higher provisions to be given priority than privileges, except in cases where the law determines otherwise. These provisions are provisions for separatist creditors who are creditors holding collateral rights to property, so that their position is higher than those who receive privileges (preferred creditors).

Based on the provisions above, regarding the types of creditors, it can be concluded that the highest order of creditor positions is in Separatist creditors, then at the next level are preferred creditors for certain objects, as well as objects in general, and the last are concurrent creditors. Unlike the provisions in the Civil Code, the BSDPO Law does not provide a clear definition of the types of creditors. In the explanation of Article 2 paragraph (1) it is only stated that in bankruptcy cases there are three types of creditors, namely separatist, preferential, and concurrent creditors. In addition, the BSDPO Law also introduces other terms such as "privileged creditors" as stated in Article 60 and its explanation, as well as new terms such as "priority creditors" in the explanations of Article 222 paragraph (2) and Article 228 paragraph (4). There is also the term "rights-holding creditors" in Article 55 paragraph (1) and the explanation of Article 60 paragraph (2). These terms are not accompanied by clear explanations, and types of creditors such as separatist and preferential only appear in the explanation, not in the body of the article. This creates ambiguity regarding the position of each type of creditor as stated in the Explanation of Article 2 paragraph (1) of the BSDPO Law.

Article 60 of the BSDPO Law stipulates that creditors holding rights as referred to in Article 55 paragraph (1) who exercise their rights over collateral are required to report the proceeds of their sale to the Curator and hand over the excess funds after deducting the principal, interest and costs. If there is an objection from the Curator or other creditors who have privileges with a higher position, then the creditor holding rights is required to hand over a portion of the proceeds of the sale in accordance with the amount of the privileged claim. If the value of the proceeds from the sale is insufficient to pay off all of their receivables, then the creditor holding rights can submit a claim for the shortfall as a concurrent creditor, by first submitting a request for receivables verification.

The above provisions, if viewed, show that the position of the privileged creditor (can be said to be a preferred creditor) can be higher than the creditor holding the rights (can be said to be a separatist creditor). In addition, there is a discrepancy between the provisions stipulated in paragraph (1) which states that the creditor holding the rights is a creditor. Creditors holding pledges, fiduciary guarantees, mortgages, or collateral rights on other objects can execute their rights as if there was no bankruptcy (Putra & Joesoef, 2020). Based on these provisions, the term "rights-holding creditor" in the BSDPO Law has the same meaning as "separate creditor" as known in the Civil Code. However, in the explanation of Article 60 paragraph (2) of the BSDPO Law, it is stated that what is meant by "privileged creditor" refers to creditors as regulated in Articles 1139 and 1149 of the Civil Code. Therefore, the author believes that the provisions regarding the position of creditors in the BSDPO Law are still not regulated clearly and give rise to ambiguity.

The explanation of Article 21 of the GPTP Law stipulates that the state has the status of a preferred creditor with priority rights over assets belonging to the Taxpayer that will be auctioned, and that tax debt must be paid before paying other creditors. The additional provisions in paragraph (3a) further emphasize that the state's position as a preferred creditor is above that of a separatist creditor as regulated in the Civil Code. This shows a fundamental difference between the concept of preferred creditors in the GPTP Law and the TCP Law and that contained in the Civil Code and the BSDPO Law. If preferred creditors in the GPTP Law are equated with parties who have special rights in Article 1134 of the Civil Code, the state

should not occupy the primary position because in the Civil Code, holders of collateral such as pawns and mortgages have higher priority, while the state does not have collateral for tax debts. Although Article 21 paragraph (1) of the GPTP Law does not explicitly define the term preferred creditor, the existing provisions show that the state occupies a higher position than creditors in the Civil Code and the BSDPO Law.

3.2. Regulation of Priority Rights for Tax Debts by the State in Case of Bankruptcy of Taxpayers/Debtors

According to civil law, debt is an obligation that contains an obligation for one party (either an individual or a legal entity) to do something (performance) or not to do something that is the right of the other party. This means that if the party who is obliged to perform a performance does not do it or if the party who is obliged does not do something, then a "contact break" will occur so that the injured party can sue the other party in court (Rochmat, 1987).

According to Article 1233 of the Civil Code, obligations can be born either by agreement or by law. Obligations arising from law are divided into two groups, namely, obligations arising from law alone and obligations arising from law and human actions. Civil debt arises if a performance is not fulfilled and is based on an obligation that originates from an agreement or originates from law. Meanwhile, according to Prof. Dr. Rochmat Soemitro, tax is actually a debt, namely a debt of community members to the community so that tax debt is an obligation that arises from law which causes the state to have an obligation to deposit a certain amount of income to the state, where the state has the power to force and the tax debt must be used for the implementation of government (Rochmat & Dewi Kania, 2004). In addition, Rochmat Soemitro tax debt is a debt that arises specifically because the state (creditor) is bound and cannot freely choose who will be its debtor, as in civil law. This happens considering that tax debt arises because of the law (Y Sri, 2008). So between Civil Contracts and Tax Contracts are different, in civil contracts the emergence of contracts can occur due to agreements and can also be due to laws, while tax contracts are contracts that arise due to laws. Civil contracts are covered by the atmosphere of private law that regulates the legal relationship of equal legal subjects. Meanwhile, tax contracts are covered by public law where one of the parties is the state which has the authority to enforce (Hadi, 2007). This is in line with how tax debts arise, there are two types of ways, in essence both types of ways of arising tax debts are based on the law, there are 2 teachings on the emergence of tax debts, namely:

1. Formal Doctrine, namely tax debt arises because of the issuance of a Tax Assessment Letter by the tax authorities. Thus, even though the requirements for a tatbestand have been met, there is no tax debt before there is a tax assessment letter.
2. Material Doctrine, namely tax debt arises if there is something that causes (tatbestand), namely a series of actions, conditions, and events that can give rise to tax debt, as follows:
 - a. Actions, for example: a businessman imports goods
 - b. Circumstances, for example: having movable and immovable assets
 - c. Events, for example: winning a lottery prize.

The existence of tax debt is one of the bases for the State in obtaining Preferential Rights, namely the right to prioritize in distributing tax debts if the taxpayer/debtor goes bankrupt and does not only have tax debts (Siburian et al., 2017). Rochmat Soemitro said that the priority right arises because at the same time there is a bill between tax debt and ordinary debt and the debtor is not sufficient or unable to pay his debts. If this happens, tax debt is given a more important position than ordinary debt other than tax debt considering that the resulting taxes are used for the public interest, to sustain the life of the State and nation of Indonesia and so on to achieve a prosperous, just, and prosperous society for all Indonesian people. Based on this thinking, it is clear that the public interest must be won over the personal/individual interests of each (Muhammad Djafar, 2011).

The TCP Law regulates the priority rights for tax debts as regulated in Article 19 paragraph (6), which explains that this paragraph establishes the position of the State as a preferred creditor which is stated to have priority rights over the Taxpayer's goods which will be sold except for the legal costs as

mentioned above and the proceeds from the sale of the Taxpayer's goods are used first to pay the costs mentioned above and the remainder is used to pay off the tax debt.

In addition, because the provision of priority rights arises due to the existence of tax debts with other ordinary debts that cause many creditors to be involved, this is closely related to the problem of bankruptcy where the requirements for bankruptcy are the same as priority rights, namely, the debtor has two or more creditors, is unable to pay the debt, and at least one of his debts has matured and can be collected (Sheva Ardiansyah, 2024). Furthermore, priority rights to the settlement of tax debts are also regulated in the GPTP Law contained in Article 21 which also regulates the conditions if the taxpayer/debtor is faced with bankruptcy problems, then, based on the provisions of Article 21 of the GPTP Law, the State as a Preferred Creditor has priority rights to the settlement of tax debts in the form of principal tax, administrative sanctions in the form of interest, fines, increases, and tax collection costs, and curators, liquidators, or persons or bodies assigned to carry out the settlement are prohibited from distributing the assets of Taxpayers in bankruptcy, dissolution or liquidation to shareholders or other creditors before using the assets to pay tax debts (Harahap, 2022).

The problem that arises is when the position of the State contained in the GPTP Law and the TCP Law places the State as a Preferred Creditor, which based on the previous discussion (Sub Chapter A) explains that the preferred creditors regulated in the GPTP Law and the preferred creditors regulated in the Civil Code are different. In addition, the BSDPO Law also does not explain the definitions of the creditors in question and also creates new terms that are also not explained, so this has an impact on the procedures for settling tax debts in bankruptcy cases (Murniati, 2020).

In the Civil Code, the state's priority rights are regulated in Article 1137 of the Civil Code which states:

"The rights of the State Treasury, Auction Office, and other public bodies established by the Government to be given priority in the orderly implementation of these matters, and the duration of these rights are regulated in various special laws concerning these matters. The same matters concerning associations or associations that have the right or will later obtain the right to collect duties, are regulated in regulations that already exist or will be made concerning this matter."

With the enactment of the GPTP Law and the TCP Law, the implementation of the state's priority rights in the settlement of tax debts must comply with the provisions of Article 21 of the GPTP Law in conjunction with Article 19 of the TCP Law. In this case, the state's priority rights over tax debts are above all other priority rights, except for the costs mentioned in Article 21 paragraph (3) of the GPTP Law in conjunction with Article 19 paragraph (6) of the TCP Law. This view is in line with the opinion of Prof. Dr. Sutan Remy Sjahdeini who stated that based on Article 1137 paragraph (1) of the Civil Code in conjunction with Article 21 paragraphs (1) and (3) of the GPTP Law, tax bills are a special right that has priority over receivables from secured creditors. In the event that the assets of the bankrupt debtor are liquidated, then the tax bills, duties and auction office fees are privileges that must be paid in advance of the bills guaranteed by the security rights (Najib et al., 2019), so that the priority rights for tax debts are regulated in the Civil Code as separate provisions from the provisions of the privileges in Article 1134 (Preferred Creditors).

Article 41 paragraph (3) of the BSDPO Law explains that acts that must be carried out by law, for example, the obligation to pay taxes. Therefore, tax payments made by the debtor before the bankruptcy declaration decision is pronounced cannot be canceled. This provision reflects that the Bankruptcy Law recognizes the obligation to pay off the debtor's tax debts which must be prioritized. In addition, Article 60 (2) of the BSDPO Law states that there is a higher level of position than the creditor holding the collateral rights for the object, so that this provision provides an opportunity as referred to in Article 21 paragraph (3a) of the GPTP Law that the position of the State is prioritized over other creditors. However, again in the BSDPO Law, the position of the state in obtaining tax debt settlement from Taxpayers who have been declared bankrupt is not expressly regulated so that in its implementation there will be differences.

Thus, the author agrees with Prof. Dr. Rochmat Soemitro that tax debt is a special debt in the field of public law, and therefore is not the same as debt (receivables) that occur in the field of civil law. State receivables must be given a more important position than civil receivables, considering that the results of

taxes are used for the public interest, to sustain the life of the Indonesian state and nation and so on to achieve a prosperous, just and prosperous society for all Indonesian people. Based on this thinking, it is clear that the public interest must be won over the personal or individual interests of each (Najib et al., 2019).

The explanation of Article 19 paragraphs (1) to (3) of the TCP Law states that goods that have been confiscated by the District Court or other authorized agencies cannot be confiscated again by the Tax Bailiff. The other agencies referred to, for example, are the State Receivables Affairs Committee which also has the authority to carry out confiscations. The submission of a copy of the Compulsion Letter by the Tax Bailiff to the Court or said agency aims to ensure that the confiscation that has been carried out is also considered as a guarantee for the payment of the tax debt stated in the Compulsion Letter. (Z. M. Putri et al., 2025). After receiving a copy of the Compulsory Order, the District Court in the next hearing will determine that the confiscated goods also function as collateral for the payment of tax debts. (Candraningrum, 2022).

4. CONCLUSION

The state's position as a preferred creditor in the GPTP Law differs from that of a preferred creditor under the Civil Code, where in the latter, preferred creditors do not have the highest priority because they are still below the separatist creditors. Conversely, based on Article 21 paragraph (3a) of the GPTP Law, the state has a higher position than all other creditors in the Civil Code. Meanwhile, in the BSDPO Law, the state's position as a preferred creditor regarding priority rights over tax debts in the event of a debtor's bankruptcy is not regulated clearly or explicitly. The regulation of priority rights in the settlement of tax debts is stated in Article 21 of the GPTP Law and Article 19 of the TCP Law, which stipulates that in the event that a Taxpayer is declared bankrupt, dissolved, or liquidated, the proceeds from the sale of his assets must first be used to settle tax debts to the state before being distributed to other creditors as stipulated in the Civil Code and the Bankruptcy Law. Article 1137 of the Civil Code regulates priority rights separately from the privileged rights (preferred creditors) regulated in Articles 1134, 1139, and 1149. On the other hand, the BSDPO Law recognizes that tax debts must be prioritized as stated in Article 41 paragraph (3). In addition, Article 60 paragraph (2) of the BSDPO Law mentions the existence of privileged creditors with a higher position than holders of material collateral. Although this may refer to the provisions in Article 21 of the GPTP Law, the BSDPO Law still does not explain explicitly who these creditors are and how the position of the state's priority rights is regulated with certainty.

Ethical Approval

Ethical approval was not required for this study.

Informed Consent Statement

Informed consent was not obtained for this study.

Authors' Contributions

Zahra Malinda Putri conceptualized the research framework, conducted the primary legal analysis related to state and administrative law, and led the drafting of the manuscript. Mhd Panca Prana Mustaqim Sinaga contributed expertise in Islamic law and Islamic economic law, particularly in integrating aspects of halal products and the sharia financial system into the discussion and analysis. La Ode Mbunai provided significant input in the areas of business and investment law, ensuring the research framework aligned with legal perspectives on state investment and business development, and contributed to reviewing and refining the manuscript.

Disclosure Statement

The authors report no potential conflicts of interest was reported by the author(s).

Data Availability Statement

The data presented in this study are available upon request from the corresponding author for privacy reasons.

Funding

No external funding was received for this study.

Notes on Contributors

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Zahra Malinda Putri earned a bachelor's degree in civil law from Bandung Islamic University and a master's degree from Padjadjaran University, concentrating in state administrative law. She is particularly interested in discussing the state and government bodies, including their relationships with each other, their relationship with the public, and other legal fields that intersect with the state.

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REFERENCES

- Candraningrum, T. B. (2022). Upaya Penagihan Utang Pajak Terhadap Wajib Pajak yang Telah diputus Pailit. *Jurist-Diction*, 5(2), 781–796. <https://doi.org/10.20473/jd.v5i2.34913>
- Hadi, S. (2007). *Hukum Kepailitan*. PT. Kencana.
- Harahap, N. D. (2022). Hak Mendahului Negara Atas Utang Pajak Untuk Wajib Pajak Dinyatakan Pailit Ditinjau Dari Undang Undang Republik Indonesia Nomor 28 Tahun 2007 Tentang Ketentuan Umum Dan Tata Cara Perpajakan. *Jurnal Ilmiah Kobesi*, 6(3), 16–24.
- Manurung, P. H. (2015). Hak Mendahului Tagihan Utang Pajak Untuk Wajib Pajak Yang Dinyatakan Pailit. *Premise Law Journal*, 11.
- Mardiasmo. (2004). *Perpajakan* (Revisi). Andi.
- Muhaimin. (2020). *Metode Penelitian Hukum* (Vol. 1). Mataram University Press .
- Muhammad Adhiluhung Sosiawan. (2022). Eksistensi Hak Mendahului Negara Atas Hutang Pajak Debitor Dalam Proses Kepailitan. *Jurnal Ilmu Pendidikan Dan Sosial*, 1(3), 227–239. <https://doi.org/10.58540/jipsi.v1i3.36>
- Muhammad Djafar, S. (2011). *Pembaruan Hukum Pajak*. Raja Grafindo Persada.
- Murniati, R. (2020). Gugurnya Hak Mendahului Negara Atas Piutang Pajak dalam Kepailitan Perusahaan. *JATISWARA*, 35(3). <https://doi.org/10.29303/jtsw.v35i3.265>
- Najib, M., Sari, E. K., & Magister,). (2019). Kepastian Hukum Hak Mendahului Negara Dalam Memperoleh Pelunasan Utang Pajak Dari Debitur Pailit. In *Seminar Nasional Cendekiawan ke* (Vol. 5).
- Nurislamiati, & Citra, S. F. (2023). Tinjauan Hukum Penerapan Hak Mendahului Utang Pajak Dalam Perkara Kepailitan Pt Industries Badja Garuda Berdasarkan Undang Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang. *Dharmasisya Jurnal Program*

- Prasetyo, H. L., Ahmad, S., & Lutfi, A. (2024). Pengawasan KPPU Pada Pelaku Usaha Mikro, Kecil dan Menengah Dalam Persaingan Usaha Tidak Sehat di Era Digital. *Binamulia Hukum*, 13(1), 225–237. <https://doi.org/10.37893/jbh.v13i1.646>
- Putra, S. C. K., & Joesoef, I. E. (2020). Hak Mendahului Penerimaan Negara Bukan Pajak Dalam Memperoleh Pelunasan Utang Dalam Penundaan Kewajiban Pembayaran Utang Pt Internux. *Proceeding Conference National Conference on Law Studies: Legal Development Towards A Digital Society Era*.
- Putri, A. R., Machmud, A., & Sadino, S. (2025). Analisis Hukum Terhadap Penolakan Tagihan Pajak dalam Proses Kepailitan PT Swissindo Marine. *Binamulia Hukum*, 14(1), 131–140. <https://doi.org/10.37893/jbh.v14i1.942>
- Putri, Z. M., Panca, M., Mustaqim Sinaga, P., & Mbunai, L. O. (2025). Dualisme Hukum Penyelesaian Sengketa Tata Usaha Negara Mengenai Sengketa Proses Pemilihan Umum. In *JUSTLAW: Journal Science and Theory of Law* (Vol. 2, Issue 1).
- Rochmat, S. (1987). *Asas dan Dasar Perpajakan*. PT. Eresco.
- Rochmat, Soemitro., & Dewi Kania, Sugiharti. (2004). *Asas-Asas dan Dasar Perpajakan*. Refika Aditama.
- Sentosa, S. (2008). *Hukum Dagang*. PT Citra Aditya Bakti.
- Sheva Ardiansyah, R. (2024). Tinjauan Prinsip Efisiensi Terhadap Hak Mendahulu Negara Atas Piutang Pajak Dalam Kepailitan. *Law And Taxation*, 1(1).
- Siahaan, A. L. S. (2016). Hak Mendahului Utang Pajak Oleh Wajib Pajak Yang Dinyatakan Pailit. *Law Pro Justitia*, 2(1), 71–75.
- Siburian, R. Y., Susilowati, E., & Ispriyarso, B. (2017). Tanggung Jawab Kurator Terhadap Pemulihan Hak Negara Atas Utang Pajak Perseroan Terbatas Pada Kepailitan. In *DIPONEGORO LAW JOURNAL* (Vol. 6, Issue 1).
- Y Sri, Pudyatmoko. (2008). *Pengantar Hukum Pajak (Edisi Revisi)*. Andi.
- Zaeny, A. (2005). *Hukum Bisnis Proses dan Pelaksanaannya di Indonesia*. PT. Raja Grafindo Persada.