

Conflict Between Fulfillment of Tax Obligations and Fulfillment of the Rights of Dependence Holders



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ABSTRACT: Banks are institutions that have an essential role in national economic development. Banks function as institutions that store and distribute funds to the public in the form of credit. In distributing and providing credit from banks to debtors, even though a credit analysis has been carried out, there are still risks that may be borne by the bank, such as late payments and failure to pay. Therefore, banks need Credit Collateral as collateral if this risk occurs. Credit collateral is an asset from a debtor guaranteed to the bank by installing a mortgage right so that the bank has the rights to the debtor's guaranteed assets. For debtors who have tax debts, the State will take their assets to pay their tax debts, including assets handed over to the bank. The problem occurs in this case where the bank's rights as the holder of mortgage rights are faced with the State's rights to fulfill tax debts. Tax bills will be considered the highest priority in the proceeds from the sale of assets. Even though the bank has mortgage rights, tax claims are usually still prioritized over the bank's rights. So, in particular financial or legal matters, the State may have a particular claim or priority over certain payments or assets, and the State may defeat the mortgage holder.

KEYWORDS: Creditors, Bank as a mortgage holder, State Tax.

I. INTRODUCTION

Banks are institutions that have an essential role in developing the national economy. Banks act as intermediary media in distributing funds in the form of credit to parties who lack funds on the condition that they will return the borrowed funds at a particular time by the agreements and agreements made. According to Trisandini P. Usanti, quoted by Dimas Nur Arif Putra Suwandi, lending by banks is fraught with very high risks, so there must be risk management in banking to identify, measure, monitor, and control risks arising from all activities. Banking business (Usanti, 2018).

According to Law Number 10 of 1998, which amends Law Number 7 of 1992, banks are business entities that collect funds from the public in the form of savings and then channel them back to the community through providing credit and other methods to improve welfare—many people. A bank functions as a business entity that distributes funds to the public in the form of credit. This credit distribution is essential for economic development and growth, so the banking industry also has a crucial role in supporting other economic sectors, such as trade, industry, and services. By providing credit and financial products, banking institutions participate in financing the activities of these sectors and contribute to strengthening the Indonesian economy as a whole. In this case, the interests of banks are also the interests of the general public.

Banks as business entities must be actively given direction and encouragement to contribute to increasing community income and welfare. It aims to overcome economic and social inequality so that banks can play a more effective role in facilitating people's economic activities. The potential that has received attention from the government and needs to be developed is the small and medium business sector (Hermawanto, 2019).

In the process of providing credit, there are several elements, such as the party providing the loan funds being called the creditor and the party receiving the loan being called the debtor. Apart from that, it also involves the provision of funds, credit agreements, credit time limits, set interest rates, and the risks faced by creditors as a consequence of receiving funds in the future, which are related to uncertainty (Ida, Ketut, 2016).

Of course, in distributing and providing credit, there are risks borne by the bank. To protect against existing risks, in providing credit, banks need credit collateral to be guaranteed. Because credit provided by banks carries risks, its implementation must be accompanied by collateral. Apart from that, banks must also pay attention to prudential principles and healthy credit principles. Efforts to safeguard and mitigate risks involve preventive strategies to prevent potential problems arising from credit, while repressive safeguards are focused on resolving credit problems that have already occurred.

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Thomas Suyanto stated that the function of collateral in providing credit is to give the bank the right and power to obtain payment through collateral (collateral) if the debtor does not fulfill payment obligations as agreed in the agreement. The aim is to ensure the debtor's active participation in transactions to fund his business or needs so that the risk of neglect or self-harm can be prevented or at least minimized.

One of the guarantees that can be given to banks is land rights in the form of Mortgage Rights, which are regulated in Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land. Based on Law Number 4 of 1996, mortgage rights holders receive priority. However, a related problem then arises if it turns out that the debtor has a tax debt. Suppose the taxpayer's remaining assets outside those guaranteed are insufficient or unable to pay off the tax debt. In that case, the State can take precedence over the rights of the mortgage holder by the State over the existing tax bill. It I.T. is by Article 21, paragraph 1 of Law Number 6 of 1983, last amended by Law Number 16 of 2009 concerning General Provisions and Tax Procedures (KUP). The State has a particular position regarding items belonging to taxpayers, which will be auctioned openly if the taxpayer has tax debts.

In principle, by granting mortgage rights in credit agreements at financial institutions, both banks and non-banks aim to protect a creditor's rights so that they can pay off their receivables if the debtor does not fulfill their obligations. However, the provisions of Article 21 of Law Number 6 of 1983 concerning General Provisions and Tax Procedures are an obstacle. It can make it difficult for creditors as holders of mortgage rights to get their receivables paid if simultaneously the debtor has tax debts that have not been settled. This condition can cause bank losses if the credit goes wrong, especially if the bank cannot execute the guarantee because of tax debts from debtors, which then have to involve assets used as collateral. Then, the State confiscates assets pledged as collateral to the bank to pay existing tax obligations.

This problem is excellent for us to discuss because it is a common problem in developing our economy individually and in our lives together. If there is a mortgage that the bank cannot execute, then how will the public be protected, considering that the bank's loss could also be a public loss? With the theme Conflict Between Tax Obligations and Fulfillment of Rights for Mortgage Holders, we want to look further into what problems are occurring and whether solutions can be done to resolve these problems.

II. RESEARCH PROBLEM

Can resolving conflicts between dependent rights holders and fulfilling tax obligations realize the legal goal of providing legal justice?

III. RESEARCH METHODS

The research method used is normative juridical with descriptive-analytical research specifications. Legal materials are divided into two types: primary legal materials involving legal rules, legal records, law-making reports, and court decisions. Meanwhile, secondary legal materials include all unofficial legal information such as books, journals, and expert opinions. In this context, the primary reference comes from the 1945 Constitution of the Republic of Indonesia, Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related to Land, Law Number 6 of 1983, as has been done several times. Last amended by Law Number 16 of 2009 concerning General Provisions and Tax Procedures (KUP) and other related laws and regulations. Secondary legal material is in the form of creditor privilege and congruence principles to see the conflict between the public interest in tax obligations and the private interest of the rights of mortgage rights taken and the principles of justice theory from literature, journals, and expert opinions. Based on books, journals, papers, and trusted electronic data sources, legal and scientific texts relevant to the topics discussed in this paper were searched. The aim is to get an answer to the problem formulation that has been proposed by analyzing and reviewing the conflict between tax obligations and fulfilling the rights of mortgage rights holders to provide legal justice.

IV. LITERATUR REVIEW

1. John Rawls's Theory of Justice

Achieving justice in the legal system is dynamic, requiring significant effort and time. Justice can only be understood when it is considered a condition that needs to be achieved. These efforts are often influenced by competing forces within the context of the general political order to make them happen (Fuji, 2018).

John Rawls was a philosopher who lived in the 20th century. He was born in Baltimore in 1921. John Rawls' theory of justice was born from his work "A Theory of Justice." In this book, he tries to analyze problems regarding the study of political philosophy by reconnecting the principles of freedom and equality. John Rawls believes that justice is the central policy of the presence of social institutions, considering that weak people must have a higher position and justice in their social rights is not disturbed. (Wadyo, 2018). John Rawls pays attention to and protects disadvantaged parties in society (Muhammad, 2021).

John Rawls's thoughts on justice state that the concept of justice can be seen from 2 (two) elements, namely: first, original position and veil of ignorance. John Rawls's view of the original position means that every level of society living in society has the same position; there is no difference in status or rank, strength, or ability; this causes everyone to be able to express or agree in

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a balanced manner (Adlhiyati et al, 2019). The thought of a veil of ignorance is any person who has an attitude of ignorance regarding the facts and circumstances about himself towards certain social positions and doctrines, which results in ignorance about developing justice. (Yalid. et al, 2023)

According to John Rawls, justice is a measure that must be given to achieve a balance between personal interests and shared interests. He stated that there are 3 (three) principles of justice, namely (Dahlan, 2017)

1. The principle of equal liberty (equal liberty of principle)
2. The principle of differences (differences principle)
3. The principle of equal opportunity (equal opportunity principle)

The principles of justice expressed by John Rawls cannot be realized simultaneously because they conflict with one another. According to John Rawls, if there is a clash (conflict) in its implementation, then the equal liberty principle must be prioritized first over other principles. The equal opportunity principle is second, which is prioritized, and finally, there is the differences principle. (Dahlan, 2017).

Of these three principles, John Rawls then divided them into 2 (two) main principles in defining and interpreting justice, namely: First, everyone has the same rights to the broadest fundamental liberties, as broad as the same freedom for everyone (equal liberty of principles). Second, social and economic inequality must be regulated so that it can be expected to benefit everyone and all positions are open to everyone. In the first principle, the freedoms exercised must be equal because a society is considered fair if it has the same fundamental rights in a social system. Freedom here means freedom of thought, politics, and freedom to defend one's rights. (John, 2019)

The second principle demands that everyone benefit or gain equality from conflict or inequality in the basic structure. Applying the basic structure will influence the implementation of the utility principle, and the utility will maximize the number of expectations of as many people as possible. (John, 2019). The second principle pays more attention to justice and collective welfare by paying attention to the rights of the weak and those experiencing inequality. John Rawls emphasizes social justice more because he contrasts individual interests with the State's interests at that time. John Rawls sees the primary importance of justice as guaranteeing the stability of human life and balance between personal and communal life (Muhammad, 2013).

John Rawls developed a theory of justice in his famous work, "A Theory of Justice." The theory is "fairness as procedural justice" and has two primary principles. Everyone has equal rights to a basic system of political and social freedoms, which must be guaranteed to all. All economic and social inequalities must be regulated to provide the most significant benefit to the most disadvantaged in society.

Rawls introduced the concept of the "veil of ignorance," in which individuals devise principles of justice without knowing their social position, economics, or personal characteristics. It is intended to ensure that the proposed principles of justice are fair to all without providing undue advantages to specific groups. In short, John Rawls's theory of justice emphasizes the equality of fundamental rights. It seeks ways to overcome inequality by paying attention to the most significant benefits for society's disadvantaged.

Thus, according to John Rawls, justice provides welfare for all groups in society. Justice is the goodness of social institutions. Kindness in society must not violate the fundamental rights of individuals, especially for the weak (Adlhiyati et al, 2019). John Rawls's thoughts on justice build society so that it can obtain equal and fair principles or what is known as "justice as fairness," this is realized in freedom over the fundamental structural rights of society.

2. State Authority Over Taxpayers and the Nature of the Laws That Regulate It

Tax is a mandatory contribution to the State that must be submitted by individuals or entities based on law without receiving direct compensation. It is used to increase people's prosperity, referred to as tax. The Indonesian tax system's primary basis is Article 23A of the 1945 Constitution, which states, "Taxes and other levies of a coercive nature for state needs are regulated by law." The majority of tax collection or payment is carried out using a self-assessment system, which means that the taxpayer has the authority to calculate the tax owed himself based on the income he earns at one time and then report it according to the applicable rules and procedures so that what the taxpayer pays and reports will be considered correct by the taxpayer. Tax authorities or, in this case, the Directorate General of Taxes or DJP. Taxes are mandatory and coercive, so there are legal consequences for those who violate them.

Even though the State has significant authority, the administrative, legal framework, and tax regulations allow taxpayers to submit objections to the tax burden imposed on them in connection with alleged errors in calculating the amount of tax they must pay. If these differences cannot be resolved, the dispute regarding the tax calculation is referred to as a tax dispute and can be disputed in the Tax Court. In Law Number 14 of 2002 concerning the Tax Court, Article 1 number 5 explains that tax disputes are differences of opinion in taxation. The Tax Court, which is tasked with resolving tax disputes, has the following roles, among others.

1. Prevent and monitor potential abuse of authority in tax calculations.
2. Guarantee legal certainty for taxpayers regarding tax payments.
3. Increase taxpayer awareness regarding the tax obligations they must fulfill.

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The right of appeal can be interpreted as a legal effort to challenge all decisions taken by the tax administration against taxpayers. This right of appeal is exercised through the litigation process in the judiciary. Legal action can be taken against certain decisions (beschikking) taken by the tax administration, especially when the taxpayer does not agree with the improvements made during the tax audit. Initially, taxpayers were allowed to resolve problems internally within the tax administration; however, if they are unsatisfied with the internal decision, they have the right to appeal to the judiciary (L.Y. Hari, 2018).

Legal recognition and protection of the right to appeal is confirmed in the KUP Law. In this context, the KUP Law regulates the fulfillment of the right to appeal through two forms of protection. Preventive legal protection allows taxpayers to express opinions before the government's decision becomes definitive, and taxpayers also have the right to submit objections (inspraak) to tax decisions. If the results of preventive legal protection do not satisfy taxpayers, they can use the rights regulated in the articles related to repressive legal protection to resolve disputes. (L.Y. Hari, 2018).

Criminal sanctions in tax law, included in state administrative law, guide administrative and legal resolution regarding violations of tax regulations and law enforcement. Even though it is classified as administrative law, tax regulations have unique characteristics because they give the state broad authority to impose taxes on taxpayers. The State has the authority to determine the status of taxpayers and force them to fulfill their tax obligations.

Public law refers to the legal system that manages interactions between the State and individuals or citizens regarding the interests of society as a whole. One of the distinctive characteristics of public law is the presence of a significant political element. One part of public law is criminal law. In taxation, there are criminal penalties for certain violations, for example, tax evasion and tax collection.

3. Rights of Mortgage Holders as Creditors in Debt and Receivable Agreements (Private Law)

Law Number 4 of 1996 concerning Mortgage Rights, Article 1 number 1, explains that Mortgage Rights refer to land rights by definition in Law Number 5 of 1960 concerning Basic Agrarian Regulations. This right covers land and related items, whether separately or as an integral part of the land. Mortgage rights are used as collateral to pay off certain debts, giving the creditor a priority position compared to other creditors.

Some of the critical aspects of mortgage rights involve:

1. Application of Security Rights to land rights, by Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA).
2. Use or not to use other objects as collateral, which are an integral part of the land.
3. Intended to pay off certain debts.
4. Giving priority to certain creditors over other creditors.

Land that can be used as collateral for material goods is land that is used as collateral for an item. However, execution through public auction can only be carried out for land registered as a Mortgage with a Mortgage Rights Certificate. The land auction can only be carried out by creditors who hold a Mortgage Rights Certificate. Beyond that, creditors do not receive legal protection. (Wiedtriana, 2020).

Mortgage rights aim to provide collateral for credit provided by banks or creditors to debtors. If there is a problem with the credit provided, the bank can execute the collateral after stating that the debtor has broken his promise or is in default. The law provides two options for resolving problem loans: public auction or direct (underhand) settlement (Mukhidin, 2021).

Creditors claim rights that receive priority are rights recognized by law as part of a privilege. Claims that fall under this right are referred to as claims with priority over other or preference claims, while the party who owns these claims is called the preference creditor. Mortgage rights cannot stand alone without the support of an agreement, namely a credit agreement between the debtor and the creditor. In this agreement, various aspects of the legal relationship between the debtor and the creditor are regulated, such as the amount of credit the debtor receives, the credit repayment period, and the type of collateral tied to the Mortgage. Because the Mortgage Rights cannot be separated from the credit agreement, they are referred to as accessories that follow the main agreement.

4. Working Power of Public Law and Private Law

The classification of law according to its content is divided into public law and private law. Public law is the law that regulates the relationship between the State and its citizens. Meanwhile, private law regulates relationships between individuals or society. Public law is a tool of power used by the government to regulate society. Private law regulates agreements relating to interests between individuals in society. Characteristics of public law include:

- a) Acting for group or societal goals
- b) Regulated by the ruler
- c) The relationship between the State and its citizens
- d) Strong political elements

Examples of public law include:

- a) Constitutional Law;
- b) State Administrative Law;
- c) International Law; And

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d) Criminal Law.

Meanwhile, the characteristics of private law are:

- a) Tends to focus on personal or individual problems;
- b) There remains monitoring from the authorized body, And
- c) Arrangement of Contractual Obligations.

Examples of private law include:

- a) Civil Law concerning Personality;
- b) Civil Law regarding Assets;
- c) Commercial Law; And
- d) Civil Law concerning Immaterial Rights.

The working power of public law refers to the strength or effectiveness of public legal norms in regulating relations and behavior between citizens and the government. It includes the ability of public law to provide binding regulations, determine government action, and confer rights and obligations on citizens. The working power of public law also includes the ability of the public legal system to enforce these rules through judicial and law enforcement institutions. In other words, the working power of public law describes the extent to which the law can be applied and influences the structure and function of government and the relationship between government and citizens.

The working power of private law refers to the effectiveness or strength of private law norms in regulating relationships between individuals or private entities. It involves private law's ability to provide a clear legal basis for contracts, property rights, civil liability, and other legal issues related to private relationships. The working power of private law includes the success of these norms in providing protection, determining rights and obligations, and resolving disputes between private parties. In other words, the working power of private law describes the extent to which the law is effective in regulating private aspects of life and business.

Public Law regulates the relationship between citizens in a country and their relationship with the State and the equipment that governs the State. Private law regulates relationships between one individual and another, with a focus on individual interests. Public law focuses on public benefit or benefits, while private law focuses on issues of personal or individual relationships. For public law, the prosecutor will make the claim, and for private law, the claim will be made by the party suing or the plaintiff.

It cannot be said that public law is higher or lower than private law because both have different roles and objectives. These two types of law complement each other to create a balanced legal system. However, this "high and low" comparison can depend on the particular context or perspective. It is important to remember that both types of law are critical in maintaining societal balance and justice. Both should support each other to create a compelling and fair legal system.

In Indonesia, the government agency responsible for tax collection is the Directorate General of Taxes. This institution is an authority that obtains wealth from individuals in society by paying taxes. The substance of tax law, which regulates the relationship between taxpayers and the government as tax collectors, makes tax law fall into the category of public law (Salsa, 2021).

Tax law is public law because tax law regulates the relationship between government and society. Apart from that, taxes are also a source of state income, ultimately aiming to benefit Indonesian society. So, indirectly, taxes are a common interest of the Indonesian government and society. The Tax Law was also formed by the authorities, in this case, the government. Meanwhile, the legal relationship between banks and debtors is included in private law, which only arises from an agreement between the parties.

5. Privilege and Concurrent Creditor Principles

The principles of Privilege Creditors and Concurrent Creditors refer to two types of creditors in a financial and legal context. Privilege rights refer to special protection that originates from law. Article 1134 of the Civil Code confirms that special privileges are granted based on law, which means that certain receivables are regulated automatically by law. Has priority. These privileges are additional and cannot stand alone. The parties cannot promise to provide privileged rights, which means they cannot commit that the bills of their agreement have privileged rights. All privileged rights are determined by law and are even prohibited from being expanded by interpreting agreements not expressly regulated by law as privileged rights.

In the legal substance of guarantees, some rights have superiority, namely privileges or privilege rights. This particular right refers to Articles 1139 and 1149 BW, where this right gives priority to property owned by the debtor. Privilege rights, like material rights, are rights that provide a guarantee of being given priority. Even though they have characteristics similar to material rights, privileged rights are not material rights. This situation can lead to the possibility of a conflict between property rights or other rights. The rules regarding this privilege right are regulated in Articles 316 and 318 of the Criminal Code (Fani, 2013).

The privilege rights of Mortgage, pledge, and fiduciary rights are not ownership rights over objects. Owners of special claim rights do not have greater rights than other parties. The main advantage is that they have priority in receiving payment from the sale of certain items or all items owned by the debtor. Details of this privilege right can be found in Article 1139 and Article 1149

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of the Civil Code. It is found that the principle that *droit de preference* is the creditor's priority right to certain goods guaranteed to them as creditors. When the goods are sold, the creditor has the right to receive payment of the debtor's debt first. Meanwhile, privilege rights are not the right to get debt payment first from the sale of specific goods that are guaranteed but rather the right to get payment first from the proceeds from the sale of all the debtor's goods.

Privileged creditors have guarantees or collateral for certain assets of the borrower as a form of protection if the borrower cannot fulfill their obligations. In a situation of payment failure, the privileged creditor has the right to the collateralized assets to obtain payment. This principle provides a higher level of security for these creditors compared to concurrent creditors.

Concurrent creditors are parties who have claims without the support of material collateral, such as pawns or mortgage rights. In this context, these creditors are also known as unsecured creditors. Concurrent creditors refer to creditors who do not have material collateral and do not receive priority according to legal provisions. Thus, when the debtor experiences bankruptcy, the creditor becomes the party who suffers losses.

Concurrent creditors refer to creditors who do not have material collateral and do not receive priority based on statutory regulations. So, when a debtor experiences bankruptcy, the creditor suffers losses (Kale & Dharmakusuma, 2015). Concurrent creditors do not have collateral or collateral for the borrower's assets. They occupy a riskier position because if the borrower defaults, the concurrent creditor does not have a direct claim on the particular asset to obtain payment. These creditors must compete with other creditors to obtain payment from the assets available after going through the liquidation or financial settlement process. Thus, the principle of privileged creditors provides higher security because they have collateral for assets. In contrast, concurrent creditors rely on general claims and compete to get a share of existing assets.

V. RESULT AND DISCUSSION

In distributing and providing credit from banks to debtors, even though credit analysis has been carried out on debtors and the precautionary principle has been applied, there are still risks that may be borne by the bank, such as late payments and failure to pay. Therefore, banks require Credit Collateral as collateral if there is a risk. Like it happened. Banks, in their credit distribution mechanisms, also have preventive security to prevent risks and repressive security to resolve risks if they occur. The credit guarantee given by the debtor to the creditor is basically to give the bank the right and power to obtain repayment or replacement of the goods guaranteed when the risk of default occurs.

Problems arise when the bank, as the holder of mortgage rights, has a priority position, but at the same time, the debtor also has a tax debt that must be paid. If we look at the law regulating it, the relationship between debtors and creditors, in this case, is regulated by private law. Private law prioritizes individual interests, while public law prioritizes public interests, so it can be understood that if taxpayers do not pay their taxes to the State, this will impact the public interest, in this case, the state and Indonesian society. Meanwhile, default between debtors, in this case, the person who receives credit from the bank, and the debtor, in this case, the bank that provides credit to the debtor, is understood as a relationship between individuals so that the losses that arise impact only the individual and are not widespread.

This problem is also because banks, as creditors, even though they have implemented prudential principles in providing credit, still need to learn or anticipate whether someone has tax debt. The State does not see this as a problem of equality of rights and justice because it feels that the fulfillment of tax debts is higher than that of debts owed to creditors. Suppose we refer to Article 21, paragraph 1 of Law Number 6 of 1983, which has recently changed, most recently with Law Number 16 of 2009 concerning General Provisions and Tax Procedures (KUP). In that case, it is explained that the State has priority rights for claims—a tax on goods owned by the tax bearer. The State holds a unique position regarding items belonging to taxpayers that will be auctioned openly, so this stronger state position must take priority over individual interests.

Banks are entities that collect wealth in the form of cash from the public and channel it to the public using a credit mechanism. In the context of being a Mortgage right holder, the bank has prior rights as a separatist creditor because it contributes to the distribution of credit flows. The Civil Code explains in Articles 1131 and 1132 about objects used as collateral in a credit agreement. An agreement itself is a legal relationship that arises from an agreement between two or more parties, which involves rights and obligations. As a creditor, the bank has a role as a provider of obligations and has the right to claim rights to the credit that has been given. In an agreement, creditor rights should be balanced unless there are reasons that give priority, such as privilege rights, pledges, and mortgages.

By having privilege, pledge, and mortgage rights, the bank obtains a guarantee to occupy a priority position in the repayment of debts or obligations owned by the debtor. We can see the right of privilege in Article 1134 of the Civil Code: "A thing that is given by law to a person who is receivable so that his level is higher than other people who are receivable, solely based on the nature of his receivables." J. Satrio, in his work, states that privileges must be pursued and fought for, which means that if the owner of a privileged claim does not take action, his claim will be considered an ordinary claim or a concurrent creditor (Fani, 2013).

This privileged creditor does not explicitly refer to the State but can include various parties with special rights over certain obligations. In some contexts, a state may be a privileged creditor because it has a particular preferential or priority claim to

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certain payments or assets in certain financial or legal situations. Examples of this may include tax claims being given specific priorities or privileges in the distribution of assets in bankruptcy cases.

However, please note that the legal and financial context can vary greatly across jurisdictions, and the use of these terms may depend on the applicable laws of a country. In the context of tax bills, the State often acts as a privileged creditor. This is because tax bills have a special status or priority in financial situations, especially in the event of bankruptcy. In bankruptcy or liquidation proceedings, tax bill claims are often prioritized in asset distribution.

In general, tax claims are often given a higher status compared to other creditors. The government may be privileged to obtain pending or unpaid tax payments before other creditors. This could include income tax bills, property taxes, or other taxes the government imposes. In some jurisdictions, this principle is set out in bankruptcy law or tax legislation that prioritizes tax claims. As a result, in the distribution of assets during the bankruptcy process, payment of the tax bill will take priority before other creditors receive payment.

When assets have been pledged as collateral, the mortgage holder has collateral, security, or priority over the asset. However, mortgage rights do not always provide complete protection against all types of claims or debts. Sometimes, tax claims may have higher priority, even against the mortgage holder. In many cases, tax claims are often given the highest priority in the order of payment of claims on the debtor's assets. This means that when an asset is sold or liquidated, payment of the tax bill may take priority before mortgage holders or other creditors receive payment.

Looking at the problem of the conflict between fulfilling tax obligations and fulfilling the rights of mortgage holders, John Rawls' theory of justice, commonly known as "A Theory of Justice," is very relevant in explaining this matter. John Rawls' theory of justice aims that justice must provide welfare for all groups in society. John Rawls argues that justice is an important policy that comes from a social institution. He believes that what is good in society must not ignore or put aside the justice that weak communities have (Oktaviano et al., 2023).

John Rawls' thinking about justice as fairness states that it is unfair if the majority experiences benefits or benefits. However, some people have to be sacrificed, and it is unfair if many people experience prosperity while others experience deprivation (Samuel, 2023). The issue between the bank as the holder of mortgage rights and state taxes as a public right is that the bank must be able to agree and have legal supremacy that is right on target to achieve justice. According to John Rawls, justice has the same rights to freedom and prosperity as freedom, without a single person being sacrificed or feeling deprived.

John Rawls' opinion leads to Satjipto Rahardjo's statement as quoted by Raden Mas Try, who said that the relationship between the law of justice is two things that cannot be separated; justice is not only limited to discussing something formal but is part of the expression of society's ideals. , in outline or comprehensively (Satjipto, 2021). Although the State has priority rights for tax claims on goods owned by the tax bearer, as explained in Law Number 16 of 2009 concerning General Provisions and Tax Procedures (KUP). As the holder of power, the State must also consider the goodness and benefits of upholding justice. As the holder of mortgage rights, the bank must also be taken into account because the bank is an asset through which financial assistance flows in developing the national economy. If there is a problem with the bank, the impact will be on economic growth and other activities related to the bank.

Justice as fairness, proposed by John Rawls, is applied to the basic structure of society—justice in social and political aspects. Economics and law must be based on rights and not on benefits. If expediency is seen as a justice procedure, it will ignore the principle of fairness. Justice must be created from the principle of rights because it is based on fair procedures. After all, individual rights must not be violated (Riski, 2020). John Rawls' theory of justice is relevant in overcoming this problem because, according to him, justice is related to the principle of freedom, namely equality and equality for every human being, and everyone has the same rights as each other's freedom. The government as a regulator must have appropriate and targeted legal supremacy so that conflicts and problems like this are separate from one another in decision-making. Justice and legal certainty must be achieved, and the goal of law, namely justice, must be achieved.

VI. CONCLUSION

Resolving conflicts between liability rights holders and fulfilling tax obligations can realize the legal objectives: providing legal justice. Thus, the rights given to the State as a creditor precede other special rights held by holders of security rights or mortgage rights over goods secured by debts from debtors, including the proceeds from the sale of these goods when the debtor fails to pay his obligations. Even though the State has the highest priority rights, the next problem is upholding justice if there is a conflict between the State's right to receive tax payments and the bank's rights as the mortgage holder.

Banks face risks such as late payments and failure to pay, so credit collateral is needed to pay off debtors' debts. Banks have preventive and repressive security in the form of mortgage rights. The mortgage holder is the priority, but if the debtor still has tax debts, his tax obligations are prioritized for settlement. Debtor-creditor relationships are regulated by private law, emphasizing individuals, while public law emphasizes public interests, especially tax payments. Article 21, paragraph 1 of Law Number 6 of 1983, gives the State the right to claim priority over tax debts.

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The relationship between creditors and debtors is indeed private law. However, if we look more broadly at the relationship with banks, the interests of banks are also the interests of the general public. Banks manage money from the public and distribute credit to the community. Banks must have guarantees that the money received from the public is used appropriately and safely without prejudice to the State's interests in tax management. This means that these two interests cannot be defeated by each other.

A tax bill considered more priority and can defeat the bank as the holder of mortgage rights in fulfilling its rights from the proceeds of assets used as collateral by the debtor shows that there is injustice in the implementation process. Because in the process of granting credit, banks cannot know or anticipate whether a debtor will become a tax delinquent or not, banks do not have the ability or are given the ability to predict someone's tax debt. Banks, as creditors, only carry out their duties in distributing credit by applying the principle of prudence but are threatened by things they cannot know beforehand.

Banks and the State have the right to fulfill their respective rights, so they cannot simply overrule the rights of banks to fulfill the State's rights to fulfill taxes. Seeing this, legal justice here does not side with banks; that law is justice that provides welfare for all groups in society. Justice is the goodness of social institutions; goodness in society must not violate the fundamental rights of individuals, especially for the weak, and the principles of justice should be fair to all without giving excessive advantages to specific groups. There must be legal justice where banks can make efforts to prevent tax debts from their debtors, or banks should also have the right to receive the same rights as paying taxes.

STATEMENT

Thank you to Atma Jaya University Yogyakarta.

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