

LEGAL CERTAINTY AND JUSTICE FOR NON-FISCAL CREDITORS IN TAX CONFISCATION AND BANKRUPTCY PUBLIC CONFISCATION CONFLICTS

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Abstract

Bankruptcy as a mechanism for collective debt settlement aims to realize a fair and proportionate distribution of debtors' assets based on the principle of *pari passu prorata parte*. However, the existence of the state's right of precedence in tax collection, as stipulated in Law Number 19 of 2000 concerning Tax Collection by Compulsory Letter, often causes conflicts with the principle of bankruptcy in Law Number 37 of 2004 concerning Bankruptcy and PKPU. This normative conflict creates legal uncertainty, especially for non-fiscal creditors whose rights have the potential to be marginalized. The Supreme Court Decision Number 557 K/Pdt.Sus-Pailit/2018 is important to examine because it illustrates the tension between the position of tax confiscation and general confiscation in bankruptcy, as well as the extent to which the principle of distributive justice and the principle of creditor equality can be applied. This research is a normative legal research with legislative, conceptual, and case approaches. The research data in the form of primary, secondary, and tertiary legal materials were collected through literature studies, then analyzed descriptively-analytically using the theory of legal certainty and the theory of distributive justice. The focus of the study is directed at legal certainty for non-fiscal creditors in tax seizure and public confiscation conflicts, as well as the application of the principle of distributive justice and the principle of *pari passu prorata parte* in bankruptcy practice in Indonesia. The results of the study show that Supreme Court Decision Number 557 K/Pdt.Sus-Pailit/2018 provides significant legal protection for non-fiscal creditors by rejecting the absolutism of the state's right of precedence, while reaffirming the principle of distributive justice in the distribution of bankruptcy assets. However, the legal certainty that was born was still formal because the inconsistency between the Bankruptcy Law and the Tax Law had not been fully harmonized. Therefore, regulatory reconstruction is needed to unify norms related to tax confiscation and general confiscation, as well as the consistency of Supreme Court jurisprudence in order to create fair and balanced legal certainty for all creditors.

Keywords: Bankruptcy, Tax Confiscation, Legal Certainty

INTRODUCTION

Debts and receivables are a common legal relationship in the business world. Debts and receivables can be carried out, either by the legal subject of an individual, the legal subject of a business entity, or a corporation. Problems then arise when the debt and receivables agreement is not carried out in accordance with what was agreed, especially if the debtor as the debtor does not carry out his achievements by not making payments to the creditor as the party who has the receivables. (Christiawan, 2020).

When a debtor defaults, the creditor can take several legal steps to protect his rights, including filing a lawsuit in court related to compensation and debts receivable, and of course wanting a guarantee so that if he wins, the lawsuit can be realized. Therefore, usually the plaintiff will apply for confiscation first. Confiscation is a legal action by the court on a movable or immovable object belonging to the defendant upon the plaintiff's request to be supervised or taken as collateral so that the plaintiff's demands or authority do not become hollow. (Suyuthi, 2004). With the confiscation, the plaintiff feels more assured of the fulfillment of his rights if his lawsuit is granted by the judge.

Bankruptcy essentially aims to realize a fair distribution of all debtors' assets who are unable to pay their debts. The principle used in the Indonesian bankruptcy legal system is the principle of *pari passu prorata parte*, which is that all creditors have an equal position and are entitled to a proportionate distribution of assets. This principle is a reflection of the value of distributive justice, where the rights of each creditor are accommodated according to the portion of their receivables without any discriminatory treatment. However, this basic idealism often clashes with the interests of the state, which through tax law affirms a privileged position in debt collection. (Hindrawan, 2023)

According to Law Number 19 of 2000 concerning Tax Collection by Compulsory Mail, the state has the right to precede tax bills. This right normatively places the fiscal as a preferred creditor who seems to be above other creditors. Conflict arises when the right to precede taxes is faced with a bankruptcy system that upholds the principle of creditor equality. The unclear regulation regarding the relative position between tax confiscation and general confiscation gives birth to legal uncertainty. Non-fiscal creditors, both separatists and concurrent creditors, are the most vulnerable parties to this situation. (Amin, 2019)

Article 1 number 1 of Law No. 37 of 2004, Statute Book No. 131 of 2004, Supplement to Statute Book No. 4443 concerning Bankruptcy and Delay of Debt Payment Obligations, hereinafter referred to as the PKPU Law, states that, Bankruptcy is a general confiscation of all assets of a Bankruptcy Debtor whose management and settlement are carried out by the Curator under the supervision of the Supervisory Judge as stipulated in this Law. (Sumakud, 2024)

In Indonesian bankruptcy law, the position of creditors to the assets of the bankrupt debtor is regulated based on the principle of universality, namely that all of the debtor's assets must be collected into a single unit to be distributed to all creditors through a mechanism determined by law. This principle is manifested in the principle of *pari passu prorata parte*, which guarantees that all concurrent creditors are treated equally and paid proportionately according to their receivables. (Subekti, 2006) This principle is in line with the principle of distributive justice in the settlement of debt-receivables disputes.

The civil procedure law regulates four types of confiscation: First, collateral confiscation (*conservatoir beslag*) which is the confiscation of the disputed property and the defendant's property, both movable and immovable, related to a lawsuit for compensation or debts and receivables. Second, confiscation of property rights (*revindicatoir beslag*) related to the confiscation of a movable property based on the reason of the plaintiff's property rights that are in the hands of the defendant. Third, confiscation of joint property (*marital beslag*) which is the confiscation of the joint property of a husband and wife both in the hands of the husband and wife in the event of a divorce dispute. Finally, *executoir beslag* is the confiscation of the goods listed in the judgment that have permanent legal force. (Amini, 2022)

Especially in bankruptcy cases, there is a type of confiscation, namely general confiscation. General confiscation is a confiscation carried out on all assets belonging to the debtor, both existing and in the future, with the aim that the proceeds of the sale of the confiscated assets can be distributed fairly and proportionally among fellow creditors according to the amount of receivables from each except among creditors who have a reason to take precedence. (Isfardiyana, 2016) According to Hadi M. Shubhan, general confiscation has a difference from other civil confiscations, namely general confiscation does not require a specific action or specific legal action like other confiscations in civil law. (Hadi M. Shubhan, 2012)

This general confiscation is very interesting to discuss because the Bankruptcy Law makes it the starting point for bankruptcy as stipulated in Article 1 number 1 of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy Law), bankruptcy is a general

confiscation of all assets of a bankruptcy debtor whose management and settlement are carried out by the curator under the supervision of the supervisory judge. The definition of bankruptcy describes that bankruptcy is everything related to public confiscation, although in reality the scope of bankruptcy in the Bankruptcy Law is not only related to general confiscation but also includes several other rules outside of general confiscation such as rehabilitation and the legal state of the debtor after the end of the settlement.

In practice, the *principle of pari passu* often clashes with other provisions, especially those related to the state's preference for tax receivables. Based on Law Number 19 of 2000 concerning Tax Collection by Compulsory Letter, the Directorate General of Taxes (DGT) has the authority to carry out confiscation and auction of taxpayers' assets, without the need to go through a court process (PPSP Law, Articles 21–33). This gives the DGT the right of direct execution on tax receivables, which under certain conditions creates tension with the bankruptcy settlement process. Problems arise when tax confiscation is carried out against debtor assets that have been declared bankrupt or are undergoing PKPU. In such a situation, all debtors' assets are included in bankruptcy and are under the control of the curator (Law No. 37 of 2004, Article 24). Therefore, individual executions, including by the state, should not be allowed, except through the permission of a commercial court. (Ardiansyah, 2018)

The potential return of creditors' debts from the sale of boedel assets is unclear due to the glaring legal gap in the relationship between tax confiscation (tax confiscation) and general confiscation in bankruptcy arising due to the absence of explicit norms governing synchronization between Law Number 19 of 2000 concerning Tax Collection by Compulsory Letter (PPSP Law) and Law Number 37 of 2004 concerning Bankruptcy and PKPU. Under the PPSP Law, confiscation by the state can be carried out without the approval or supervision of a commercial court. Meanwhile, the Bankruptcy Law requires that all actions against the assets of the bankrupt debtor must be carried out through the curator and under the supervision of a supervisory judge. There is no article in the PPSP Law that states that tax seizures must be subject to bankruptcy, and instead, the Bankruptcy Law does not specify how the state treats its preferential rights in the bankruptcy process. (Luthvi Febryka Nola)

One of the important issues in bankruptcy practice in Indonesia is the position of tax confiscation compared to general confiscation. Based on Article 21 of Law Number 19 of 2000 concerning Tax Collection by Compulsory Letter, the state has a *preferent right* to tax debts. On the other hand, Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations affirms the principle of *pari passu prorata parte*, where the assets of the bankruptcy debtor must be distributed proportionally to all creditors, unless otherwise specified by law. The conflict between these two legal regimes creates legal uncertainty, especially for non-fiscal creditors whose rights have the potential to be marginalized when dealing with state tax bills. (Fadhli, 2024)

A concrete case that reflects this conflict is Supreme Court Decision Number 557 K/Pdt.Sus-Pailit/2018. In the bankruptcy case of PT United Coal Indonesia, the Directorate General of Taxes objected to the list of distribution of bankrupt assets because it considered that the tax bill should be placed above other creditors, including separatist and concurrent creditors. However, the Supreme Court rejected the cassation from the tax authorities on the grounds that the distribution of the bankruptcy assets that had been carried out by the curator was in accordance with the principle of justice in the Bankruptcy Law, even though the tax debt was not paid in full. This ruling shows the dilemma between legal certainty in the implementation of the law and justice in the distribution of bankruptcy assets.

This conflict of norms is not only theoretical, but has also been proven to be real in judicial practice. One important example is the Supreme Court Decision No. 557 K/Pdt.Sus-Pailit/2018, in the bankruptcy dispute of PT United Coal Indonesia. In this case, the DGT objected to the list of bankruptcy asset distributions prepared by the curator, because not all state tax bills of ±Rp43 billion were met. The curator prioritizes payments to separatist creditors, namely PT Bank Mandiri. The DGT demands that its tax bills be prioritized according to its preferential rights. However, the Supreme Court rejected the DGT's cassation application and stated that the DGT's preferential position is not automatically valid, and can only be recognized if it is submitted and proven in a timely and valid manner in the bankruptcy forum.

The rejection shows that the Supreme Court prioritizes the principle of proportional justice in the distribution of bankruptcy assets, rather than the DGT's unilateral execution right based on the PPSP Law. In the case of PT United Coal Indonesia, the DGT only received 5.88% of its total tax bill, and Bank Mandiri as a separatist creditor received 4.99%. The court considered this distribution fair because the value of the bankrupt assets was only around IDR 30 billion, while the total bill reached more than IDR 488 billion. This shows that the rights of the state remain subject to the principle of verification in bankruptcy, and cannot immediately get rid of other creditors.

On the other hand, in the case of PT Artika Optima Inti, the Supreme Court actually granted the DGT's request to carry out tax confiscation even though the company was in the PKPU process. This difference gives rise to inconsistencies in jurisprudence, reflecting the absence of uniform standards of legal interpretation in the resolution of conflicts between tax seizures and general seizures. This lack of certainty confuses curators, supervisory judges, and other creditors, and creates real legal uncertainty.

Theoretically, this problem can be analyzed using the theory of legal certainty from Gustav Radbruch, which emphasizes that law must guarantee clarity, consistency, and predictability in its application. When two laws run parallel but are not harmonious, the value of legal certainty is threatened. In addition, according to the theory of distributive justice developed by John Rawls, no one party, including the state, should be granted absolute privileges without going through fair and transparent procedures.

Thus, the issue of the relative position between tax confiscation and general confiscation in the bankruptcy process does not only concern the interpretation of laws and regulations, but also touches on philosophical and practical aspects in the implementation of justice. This legal disharmony needs to be studied in depth, both through normative, theoretical, and jurisprudential approaches. This research is important to answer whether the state's preferential right to taxes can be exercised immediately, or whether it must still be subject to the collective and procedural principles of bankruptcy that protect all creditors fairly.

This situation is exacerbated by the absence of a *conflict rule* or *lex specialis* that governs which is preferred: execution by the DGT or a collective process in bankruptcy. As a result, both the DGT and the curator claim legal authority over the debtor's assets, and when the case reaches the Supreme Court, the results are not uniform. In the case of PT United Coal Indonesia, the Supreme Court rejected the tax seizure because the DGT did not file a claim according to the curator's procedure. However, in the case of PT Artika Optima Inti, the Supreme Court actually accepted the request for confiscation by the DGT, without paying attention to the ongoing PKPU process. These inconsistencies create unpredictable practices that fundamentally violate the principle of legal certainty.

In the context of legal theory, this conflict touches on the basic values put forward by Gustav Radbruch, namely legal certainty, justice, and utility. When two legal norms (the PPSP Law and the Bankruptcy Law) contradict each other and are not bridged with consistent interpretive guidelines by the judiciary, then the value of legal certainty is threatened. This also has a direct impact on creditors other than the state who have to face uncertainty in the debt settlement process and potential injustice in asset distribution. (Siahaan, 2016)

In addition, this tension also poses a risk of abusing authority practices if the DGT carries out unilateral confiscation outside the bankruptcy mechanism. Other creditors who are not involved in the tax seizure process will lose access to assets that should be included in the bankruptcy case, which should be managed openly and collectively by the curator. Without a harmonious legal framework, curators are also stuck in a dilemma between submitting to the orders of the PPSP Law and their obligations under the Bankruptcy Law. (Sosiawan, 2022)

In the national legal system, the principle of legal certainty is the main foundation in arranging legal relations between legal subjects, including in the context of bankruptcy disputes. Bankruptcy as a collective debt settlement mechanism must ensure legal protection for all creditors in a fair manner, including tax creditors (*fiscus*) and non-fiscal creditors. However, in practice, there is still a clash between tax confiscation based on tax regulations and general confiscation determined by the curator in the bankruptcy process, as illustrated in the Supreme Court Decision No. 557 K/Pdt.Sus-Pailit/2018.

Philosophically, the conflict between tax confiscation and public confiscation raises fundamental questions about the nature of justice in the distribution of the assets of bankrupt debtors. The principle of distributive justice, which requires proportional distribution to all creditors, should be a normative reference. However, when the fiscal authorities are given absolute preferential status over the debtor's assets, this creates inequality and potential discrimination against other creditors who should be treated equally, especially if there is no solid philosophical basis for prioritizing tax claims across the board in every bankruptcy case.

Sociologically, the prioritization of tax confiscation over general confiscation has caused unrest and uncertainty among business actors, investors, and non-fiscal creditors who see inequality in legal protection. If non-fiscal creditors continue to be harmed by the prioritization of fiscal rights in the bankruptcy process, then this has the potential to reduce confidence in Indonesia's bankruptcy legal system. In the long run, this imbalance will negatively impact the business climate and the stability of the national financial sector, which should be protected through a fair and proportionate legal framework.

Juridically, the problem arises when there is a duality of the confiscation mechanism, namely public confiscation based on Law No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, and tax confiscation based on Law No. 19 of 2000 concerning Tax Collection by Forced Letter. General confiscation is a consequence of the bankruptcy declaration decision, where all debtors' assets become bankruptcy bonds managed by the curator and then distributed to creditors in accordance with *The principle of pari passu prorata parte*. However, the existence of tax confiscation carried out by the fiscal authorities (Directorate General of Taxes) against taxpayers who have arrears, is often carried out without paying attention to the stages of bankruptcy that are ongoing, thus causing a conflict of norms and authority. (Nola, 2019)

The Supreme Court Decision No. 557 K/Pdt.Sus-Pailit/2018 reflects the complexity of these legal problems. In the ruling, the Supreme Court still prioritized the interests of other creditors, even in the context of bankruptcy which should be subject to the principles of collective and equitable distribution. This ruling raises fundamental questions about the extent to which the state can exercise its *privileges* without ignoring the principles of justice, legal certainty, and other creditor protections that are also legally valid.

From the perspective of legal certainty theory, this conflict shows that there is a disharmonization of regulations that cause ambiguity in determining creditor priorities. Non-fiscal creditors do not get a definitive picture of the certainty of their rights due to the threat of the state's privileged position in tax collection. Meanwhile, from the perspective of justice theory, especially Aristotle's distributive justice and the principle of *pari passu prorata parte*, the distribution of bankruptcy assets should pay attention to proportionality so that there are no structural injustices that always benefit fiscal creditors and harm other creditors.

This situation underscores the importance of a more in-depth academic study of the relative position of tax confiscation and general confiscation in bankruptcy. The study is not only oriented towards a normative analysis of conflicts between laws, but must also assess whether the application of the law through court decisions has reflected the value of legal certainty and justice. Thus, this research is expected to make a theoretical contribution in strengthening the harmonization of bankruptcy law in Indonesia, as well as providing practical recommendations for lawmakers and law enforcers to create a fair and certain legal system.

Through an analysis of Decision No. 557 K/Pdt.Sus-Pailit/2018 and other related decisions. This research is expected to contribute to the development of fair and harmonious bankruptcy procedural law, as well as provide input in the reconstruction of the Supreme Court's regulations and jurisprudence so that there are no inconsistencies that harm non-state creditors and the integrity of the bankruptcy legal system itself.

RESEARCH METHODS

The normative legal research method (*Normative Legal Research*) is a scientific research procedure to find the truth based on the logic of legal science from the normative side. (Ibrahim, 2007) This research is qualitative related to analyzing a research that has problems by collecting data as research material. The source of legal materials used in a research can be in the form of data obtained through literature materials and/or directly from the community. Data obtained directly from the community is called primary data, while data obtained through literature and documentation materials is called secondary data. (Soemitro, 1990)

RESULTS AND DISCUSSION

Legal certainty for non-fiscal creditors in conflicts of tax confiscation and public confiscation in Indonesia

In Indonesia's bankruptcy legal system, there is a fundamental conflict that has long haunted creditors, especially non-fiscal creditors. This conflict stems from the clash of two different legal regimes: bankruptcy law that adheres to the principle of equality and tax law that gives special privileges to the state.

Bankruptcy is, in essence, a legal mechanism designed to resolve debt-receivables disputes collectively and fairly. When a debtor is no longer able to meet his financial obligations, bankruptcy becomes a forum where all creditors gather to divide the debtor's assets proportionately. This principle is known as the principle of *pari passu prorata parte*. (Jayadi, 2021) Which means that all creditors have an equal position and get a share according to the amount of their respective receivables. (Sutan Remy Sjahdeini, 2016)

However, the harmony of this principle is disturbed when the state is present as a fiscal creditor. Based on Article 21 of the KUP Law, the state has the right to precede tax receivables, which means

that the debtor's tax obligations must be paid off first before other creditors get a share. This provision creates a hierarchy that puts the state in a superior position, while non-fiscal creditors—including banks, investors, and business actors—are in a particularly vulnerable position.

Non-fiscal creditors, especially concurrent creditors who do not have special guarantees, are at their weakest in the bankruptcy constellation. They do not have the privileges of the state, nor do they have material guarantees like separatist creditors. When the right of state precedence is exercised absolutely, non-fiscal creditors often lose their rights altogether. (Herawati)

This situation creates fundamental injustice. Banks that have provided credit with a certain risk calculation, suddenly find that their receivables will not be paid off because all of the debtor's assets have been exhausted to pay tax debts. Investors who have invested in the hope of equal legal protection, will finally have to accept the fact that the state's fiscal interests trump any form of commercial agreement.

The impact is not only felt by creditors individually, but also by the economic system as a whole. This legal uncertainty lowers the confidence of the banking sector to provide credit, reduces investor interest in investing, and ultimately disrupts macroeconomic stability. Bankruptcy, which was supposed to be a fair distribution mechanism, turned into a tax collection instrument that harmed other creditors.

The Supreme Court Decision Number 557 K/Pdt.Sus-Pailit/2018 in the case of PT United Coal Indonesia became a historic moment in the development of Indonesian bankruptcy law. This case not only presents hope for non-fiscal creditors, but also demonstrates the courage of the judiciary to balance the fiscal interests of the state with the principle of distributive justice.

PT United Coal Indonesia was declared bankrupt with various obligations to different creditors. The Directorate General of Taxes claimed receivables of IDR 43.3 billion, while PT Bank Mandiri had a claim of IDR 280.6 billion. However, the total bankruptcy assets that the curator managed to collect only reached Rp 30.9 billion, a figure that is clearly insufficient to pay off all debtors' obligations.

Faced with this situation of lack of assets, the curator made a controversial but fair decision. Instead of giving absolute priority to the DGT as required in Article 21 of the KUP Law, the curator applies the principle of proportional distribution. The DGT received IDR 2.54 billion or 5.88% of its total claims, Bank Mandiri received IDR 14 billion or 4.99% of its claims, and other creditors received their share according to their respective proportions. (Jufriyadi, 2025)

This curator's decision was of course opposed by the DGT who felt entitled to absolute priority. The DGT filed an appeal with the argument that Article 21 of the KUP Law gives a superior position to the state in all situations, including bankruptcy. However, the Supreme Court has a different view.

The Supreme Court in its ruling showed a deep understanding of the essence of bankruptcy as a collective mechanism. The panel of judges rejected the DGT's appeal and maintained the list of distributions that had been made by the curator. This decision is based on the consideration that bankruptcy is essentially a forum to settle debts of debtors to all creditors in a fair and proportionate manner.

The Supreme Court affirmed that although the state has the right of preemption under the KUP Law, this right should not be applied absolutely, thus necessitating the rights of other creditors. If state tax receivables take absolute precedence, then non-fiscal creditors will lose their rights altogether, and this is contrary to the purpose of bankruptcy as a collective distribution mechanism.

This ruling reflects the Supreme Court's efforts to maintain the integrity of the collective principle in bankruptcy. By rejecting the claims of state absolutism, the Supreme Court emphasized that bankruptcy law should not lose its main essence, which is to put all creditors in a relatively balanced position. This decision is also a signal that legal certainty is not only determined by the text of the law, but also by the courage of judges in interpreting the law according to the principle of distributive justice.

Although the Supreme Court's Decision Number 557 K/Pdt.Sus-Pailit/2018 provides hope for non-fiscal creditors, this protection is still casuistic and does not guarantee consistency in the future. In fact, the Supreme Court in several other decisions actually showed a different, even contradictory, attitude.

The Supreme Court Decision Number 070 PK/Pdt.Sus/2009 is a clear example of this inconsistency. In this case, the Supreme Court actually granted the state's claim and emphasized that tax receivables must take precedence over the receivables of other creditors. The state acquires the absolute right to pay off its debts in advance from the bankrupt's available assets, even if that means non-fiscal creditors get almost no share at all.

This inconsistency of jurisprudence creates a highly uncertain situation for non-fiscal creditors. They cannot predict whether in a case they will get protection as in the case of PT United Coal Indonesia, or will be marginalized as in other decisions. Legal certainty shifts from what should be

prospective to retrospective, because creditors only know their legal position after the judgment is rendered, not from the beginning of the legal relationship.

The legal uncertainty faced by non-fiscal creditors not only impacts on an individual level, but also has far-reaching systemic consequences. The banking sector has become more cautious in providing credit due to unpredictable legal risks. Foreign investors are starting to reconsider investment decisions in Indonesia due to inconsistent legal protections. Ultimately, this uncertainty can disrupt the investment climate and national economic growth. (<https://corporatefinanceinstitute.com/resources/career-map/sell-side/risk-management/major-risks-for-banks/#:~:text=Risiko%20kredit%20merupakan%20risiko%20terbesar>)

The root of the problem actually lies in the disharmony of norms between the KUP Law and the Bankruptcy Law. The KUP Law gives the state an absolute right of precedence, becoming wishful thinking. (Syarif, 2023)

The Supreme Court Decision Number 557 K/Pdt.Sus-Pailit/2018 is indeed a bright spot for the protection of non-fiscal creditors, but it is not the final solution. The legal certainty born from this decision is still situational and depends on the discretion of the judge in each case. To achieve true legal certainty, more fundamental structural measures are needed.

Harmonization of legislation is the main key to resolving this conflict. The KUP Law needs to be revised to emphasize that the state's right of precedence is relative, not absolute, especially in the context of bankruptcy. Alternatively, the Bankruptcy Law can be amended to explicitly regulate the position of tax receivables in the bankruptcy process, so that there is no longer room for different interpretations. (<https://www.hukumonline.com/berita/a/hak-mendahulu-dalam-pelunasan-utang-pajak-untuk-wajib-pajak-dinyatakan-pailit-lt5f854600746fd/>)

In addition, the Supreme Court can also take an active role by issuing guidelines in the form of a Supreme Court Circular Letter (SEMA) to ensure uniformity of decisions. These guidelines can provide guidance to lower-level judges on how to balance the fiscal interests of the state with the rights of other creditors.

The long journey of seeking legal certainty for non-fiscal creditors in Indonesia's bankruptcy system reflects the complexity of the relationship between law, economics, and politics. On the one hand, the state has a legitimate interest in ensuring tax revenue as a source of development financing. On the other hand, non-fiscal creditors also have a constitutionally protected right to fair and proportionate treatment. (Putri, 2025)

The Supreme Court Decision Number 557 K/Pdt.Sus-Pailit/2018 has paved the way for a better balance between these two interests. The ruling shows that Indonesian law still has room to develop and adapt to the needs of society. However, achieving consistent and sustainable legal certainty requires commitment from all parties—legislative, executive, and judicial—to create a fair, effective, and predictable bankruptcy legal system.

In the end, legal certainty for non-fiscal creditors is not only a matter of legal technicalities, but also of public trust in the Indonesian legal system. When the legal system is able to provide equal protection for all parties, trust will grow, investment will increase, and the national economy will be stronger. Conversely, if uncertainty continues, not only creditors will be harmed, but also the wider community will bear the consequences in the form of slow economic growth and a less conducive investment climate.

The principle of distributive justice and the principle of *pari passu prorata parte* can be applied in Indonesian bankruptcy law to ensure a fair distribution of bankruptcy assets

Indonesian bankruptcy law is built on two fundamental principles: distributive justice and the principle of *pari passu prorata parte*. Distributive justice, as stated by Aristotle, requires the distribution of bankruptcy assets in a balanced and proportionate manner to all creditors according to their respective receivables. John Rawls reinforced this concept by emphasizing the protection of the weakest parties, in this case concurrent creditors who do not have special collateral. (Murtadho, 2024)

The principle of *pari passu prorata parte*, which has its roots in Articles 1131-1132 of the Civil Code, is the "heart of bankruptcy" which contains two meanings: all creditors have an equal position with respect to the debtor's assets, and the distribution is carried out proportionally based on the amount of receivables. This principle is manifested in the concept of general confiscation where all the debtor's property is confiscated for the collective benefit of all creditors.

Indonesia's bankruptcy system recognizes three categories of creditors: separatist creditors (holders of material guarantees), preferential creditors (having privileges under the law, including the state for tax receivables), and concurrent creditors (without guarantees or privileges). This hierarchy

creates a fundamental conflict between the fiscal interests of the state that demand absolute right of precedence based on the KUP Law and the collective principle in the Bankruptcy Law. (Sularto, 2017)

This juridical conflict is not just a technical problem, but a conceptual clash between the fiscal interests of the state and the protection of the private rights of non-fiscal creditors. Without a proper settlement, bankruptcy risks losing its meaning as a forum for equitable collective distribution.

The Supreme Court Decision Number 557 K/Pdt.Sus-Pailit/2018 is an important milestone in resolving this conflict. The Supreme Court rejected the state's absolute claim to tax receivables, asserting that although the state has a right of precedence as a preferred creditor, its implementation must not negate the collective principle of bankruptcy.

In the case of PT United Coal Indonesia, the distribution was carried out proportionally: the DGT received 5.88% of the bill, Bank Mandiri as a separatist creditor received 4.99%, and the concurrent creditors got the share according to the remainder. This distribution shows the application of distributive justice that balances the fiscal interests of the state with the rights of non-fiscal creditors.

This decision succeeded in applying the principle of distributive justice by giving priority to the state without completely abolishing the rights of other creditors. The principle of *pari passu prorata parte* is also enforced because all creditors are still included in the collective distribution mechanism.

This ruling provides legal certainty for non-fiscal creditors and reinforces the doctrine of bankruptcy as a "collective legal process". For the business world, this increases investor confidence because there is a guarantee that private creditors will continue to receive legal protection.

However, this ruling still has its drawbacks: its casuistic nature, the absence of a definite formula for the division of proportions, and only formally fulfilling distributive justice. Without clearer regulatory support, the implementation of this principle risks inconsistency.

To overcome ongoing conflicts, synchronization between the KUP Law and the Bankruptcy Law is needed. One practical solution is to improve Article 1 paragraph (3) of PMK 68/2012 concerning the elimination of tax receivables, by adding a clause that the elimination can be done after the settlement of assets for more than 5 years.

This harmonization is important because both tax and bankruptcy regulations basically adhere to the principle of justice. Legal synchronization will ensure that regulations complement each other to achieve the true goal of justice, not conflict.

The Supreme Court Decision Number 557 K/Pdt.Sus-Pailit/2018 is an important breakthrough that has succeeded in applying the principle of distributive justice and the principle of *pari passu prorata parte* in a balanced manner. This ruling provides legal protection for non-fiscal creditors without disregarding the fiscal interests of the state.

Long-term success will depend on consistency of implementation and harmonization of regulations. The challenge ahead is to make these principles a consistent norm, not just an optional precedent, to realize a truly fair bankruptcy system for all parties.

CONCLUSION

Supreme Court Decision Number 557 K/Pdt.Sus-Pailit/2018 provides significant legal protection for non-fiscal creditors by rejecting the absolutism of the state's right of precedence. The judge stated that the distribution made by the curator, with the approval of the supervisory judge, was "appropriate and correct, because it is in accordance with the principles of justice". This consideration means that the state's right of precedence in bankruptcy cannot be interpreted absolutely, but must be placed within the framework of general confiscation that applies to all creditors. Thus, even though the state is positioned as a preferred creditor, non-fiscal creditors are still recognized and get a proportionate share of the bankruptcy estate.

Supreme Court Decision Number 557 K/Pdt.Sus-Pailit/2018 applies distributive justice by rejecting the absolute right of precedence of the state and ensuring that non-fiscal creditors continue to receive a share of the bankruptcy assets. This decision affirms the principle of *pari passu prorata parte* where all creditors are entitled to a share according to their receivables, placing the state as a preferred creditor without removing the rights of other creditors.

The judge emphasized that public confiscation must guarantee access to all creditors to the debtor's assets, not just the state. This ruling is in line with Aristotle's and Rawls' theory of justice which provides proportional protection and protects the weakest parties. Thus, this ruling embodies two fundamental principles of bankruptcy and rejects excessive state domination.

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