

EXECUTION OF TAX DELINQUENT ASSETS AGAINST MORTGAGE RIGHTS AT STATE-OWNED ENTERPRISE BANKS

Samuel Maraja Agung, Syamsul Bachri, Achmad Ruslan

Faculty of Law, Hasanuddin University, Makassar, Indonesia
smanasution@yahoo.com, syamsulbachri@unhas.ac.id, achmadruslan@unhas.ac.id

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Abstract

This paper aims to analyze the legal aspects of the execution of tax arrears assets that have been tied to Mortgages in State-Owned Banks. This type of research is normative legal research using a statutory approach and a conceptual approach. Primary legal materials, secondary legal materials, and tertiary legal materials were obtained through library studies and supplemented by interviews. The collected legal materials are then analyzed qualitatively. The results showed that the tax office has the right to receive prepayment for the execution of the taxpayer's property due to a tax debt. State-owned banks also have the right to receive repayments first compared to other creditors for the execution of mortgage objects, as a result of default by the debtor. In this case, the Tax Office and the State-Owned Bank both have the right to receive payment first compared to other parties. Based on the applicable regulations, there is no article that specifically and in detail regulates which payment should be prioritized if the Tax Office and State-Owned Bank both have an interest in the execution of the same object for the settlement of tax debts and debts to creditors. Therefore, it is necessary to coordination between the Tax Office and State-Owned Banks to obtain solutions in solving problems, with consequences that are not detrimental to the Tax Office and State-Owned Banks.

Keywords: asset, execution, tax delinquent, state-owned enterprise bank

INTRODUCTION

The existence of State-Owned Enterprises is closely related to the explanations contained in Article 33 paragraphs (2) and (3) of the 1945 Constitution of the Republic of Indonesia, the 3rd Amendment, Article 33 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which reads, "Production branches which are important for the State and control the livelihood of the people are controlled by the State". Article 33 paragraph (3) explains that "earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people". Based on the explanation of Article 33 of the 1945 Constitution of the Republic of Indonesia, it can be said that the right of control by the state is aimed at ensuring the welfare of the people and the people can take advantage of the sources of wealth originating from the earth, water, and natural resources therein. The State in exercising its control rights then formed a State-Owned Enterprise (Badan Usaha Milik Negara/BUMN) which was formerly known as the State Company.

State-Owned Enterprises are regulated by Law Number 19 of 2003 concerning State-Owned Enterprises (BUMN Law). Article 1 point 1 of the BUMN Law provides an understanding that BUMN is a business entity whose entire or most of its capital is owned by the state through direct participation from separated state assets. BUMN activities run or are carried out together with other economic actors, namely the private sector, both foreign and domestic, both small and large, and cooperatives. The business activities carried out are the embodiment of economic democracy which will continue to be developed in a sustainable manner.

Article 2 of the BUMN Law states five objectives of State-Owned Enterprise, namely:

1. Contribute to the development of the national economy in general and in particular;
2. The pursuit of profit;
3. Organizing the public interest, in the form of providing high-quality and adequate goods and/or services for the fulfillment of the lives of many people;
4. Be a pioneer in business activities that the private sector and cooperatives cannot yet do;
5. Actively provide guidance and assistance to entrepreneurs from economically weak groups, cooperatives, and the community.

Of the many types of businesses run by State-Owned Enterprises, one of them is engaged in the banking business. State-owned enterprises engaged in banking business activities or commonly referred to as state-owned banks are generally the same as other private banks. Banks are institutions that play an important role in the movement of the country's economy. The function of the bank as an intermediary or financial intermediary between the bank and the public as customers. Banks as collectors and distributors of funds from the public are required to play an active role in the context of national development. One of the goals of banking in Indonesia is to support the implementation of national development as a form of government effort in increasing equity, economic growth, and national stability aimed at improving people's welfare.

The relationship between banks and customers is based on two elements, namely law and trust. Based on the element of trust, banks can collect funds from the public to be placed and then channeled back into the form of credit and other banking services.¹ On the other hand, banks as recipients of public funds are obliged to properly manage these funds and must channel them back to the community if at a certain time the community wants to withdraw them from the bank. One of the main activities of banks in channeling public funds is in the form of providing credit to the public.

Credit facilities provided by the bank as stated in the provisions of Article 1 number 11 of Law Number 10 Year 1998 concerning Amendments to Law Number 7 Year 1992 concerning Banking (Banking Law) is the provision of money or claims that can be equated with it, based on an agreement or loan agreement between the creditor and another party that requires the borrower to repay the debt based on a certain period of time with interest. In granting credit, the provisions apply, that in order for the credit recipient to be trusted to receive credit, the prospective debtor must first be suspected by the bank by conducting a feasibility test on the debtor. After passing the "feasibility test" from the creditor, trust arises in the debtor and then credit is given to the debtor.²

In providing credit or distributing funds to the public, in order for banks to gain confidence in providing credit to the public, guarantees or collateral are needed. Guarantees can be divided into two types, namely general guarantees (guarantees arising from the law) and special guarantees (guarantees arising from agreements). The definition of general guarantee is regulated in Book II of the Civil Code, Articles 1131 to Article 1132 of the Civil Code. Article 1131 of the Civil Code explains that

¹ Johannes Ibrahim, *Cross Default & Cross Collateral Sebagai Upaya Penyelesaian Kredit Bermasalah*, Refika Aditama, Bandung, 2004, p. 1

² Mantayborbir, *Sistem Hukum Pengurusan Piutang Negara*, Pustaka Bangsa Press, Jakarta, 2004, p. 165

"All movable and immovable property belonging to the debtor, both existing and future ones, shall become collateral for the debtor's individual engagements." Article 1132 of the Civil Code explains that "The goods are a mutual guarantee for all creditors against which the proceeds from the sale of the goods are divided according to the ratio of their respective receivables unless there are valid reasons for taking precedence among the creditors."

The existence of special guarantees as an effort to overcome the weaknesses that exist in the general guarantee. The special guarantee does not provide certainty that the bill will be paid off, but provides legal certainty and legal protection to the creditor in fulfilling the bill.³ One form of guarantee that is included in the category of special guarantee, namely material guarantee (*zakelijke zekerheidsrechten*).

The definition of material security is having a direct relationship with certain objects that provide direct power over an object that can be maintained by everyone and has inherent properties. Material rights have characteristics or characteristics, namely:⁴

1. It is an absolute right, which means that it can be defended by anyone.
2. Have a *zaak gevolg* or *Droit de suite*. Material rights have *zaak gevolg* (rights that follow) meaning that these rights continue to follow the object anywhere and in the hands of anyone.
3. Having a system, meaning that the guarantee of the object first occurs at a higher level than what happens later.
4. Give direct power to objects.
5. Can be maintained by everyone.
6. Has the nature of "sticking" to the object when it is transferred.
7. Rights that are more or always won over younger ones

One form of material security is regulated in the legislation, namely mortgage rights. Mortgage rights are regulated in Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (Undang-Undang Hak Tanggungan/UUHT). Article 1 paragraph (1) UUHT provides an explanation, that " Mortgage is a guaranteed right that is imposed on land rights including or not along with other objects on it which are an integral part of the land for the settlement of certain debts which give priority to the creditor. certain other creditors." The mortgage holder as explained in Article 1 paragraph (1) UUHT shows that the mortgage holder has a position as a preferred creditor who therefore has preferential rights over other creditors (*droit de preference*). As a result of this, the creditor obtains repayment first compared to other creditors on the results of the execution of the collateral object that has been bound by the Mortgage Rights.

Based on the explanation above regarding the properties of material rights and mortgage rights, it can be said that the mortgage holder has a priority position in repayment if the debtor defaults. This is regulated in article 6 of the UUHT, namely: "if the debtor is in breach of contract, the holder of the first Mortgage has the right to sell the object of the Mortgage on his own power through a public auction and take repayment of his receivables from the proceeds of the sale."

In this case, problems can arise if the debtor has a tax debt to the state and is unable to pay it off, and the only object owned by the debtor is being tied up with mortgage rights at a bank/financing institution. The only thing that is currently owned by the debtor is then executed by the state as a result of the debtor/taxpayer not having paid the tax debt to the state, as stipulated in the provisions of the KUP Law Article 21 paragraph (1) which states that "The state has a pre-emptive right to tax debts on goods. - property of the tax bearer. This paragraph stipulates the position of the State as a preferred creditor who is declared to have preemptive rights over goods belonging to the tax bearer to be auctioned in public. Payments to other creditors are settled after the tax debt is paid off, in addition to the provisions of Article 21 paragraph (3a) UUKUP explicitly states that the assets of the tax arrears cannot be divided before the assets of the tax arrears are used to pay the debts of the tax arrears.

Prior to the confiscation of assets against tax arrears, the tax office carried out a series of tax collection actions with several stages, such as issuing a warning letter to the tax arrears (Article 27 paragraph 5 of Government Regulation Number 80 Year 2008 concerning Procedures for the Implementation of Tax Rights and Obligations. In this case, if the taxpayer does not heed the warning letter issued by the tax office, then a forced letter will then be issued as referred to in the provisions of Article 1 number 12 of the PPSP Law. The Head of the Tax Service Office (Kantor Pelayanan Pajak/KPP) which has issued a forced letter in the event that the tax debt is not repaid within a predetermined period of time, the Head of the KPP may issue a Confiscation Letter (Surat Melakukan Penyitaan/SPMP) regarding if the tax debt and/or tax collection fees are not paid off after the event is

³ J. Satrio, *Hak Jaminan Kebendaan*, Citra Aditya Bhakti, Bandung, 2002, p. 10

⁴ Zaeni Asyhadie and Rahma Kusumawati, *Hukum Jaminan di Indonesia*, Rajawali Pers, Depok, 2018, p. 92

held. confiscation, the competent authority can carry out the sale by auction of the goods that have been confiscated (Article 25 of the PPSP Law).

If this happens, there will be an act of default by the debtor because he is unable to pay off his debt to the bank/financing institution. As a result of objects tied with mortgages that have been executed by the state for payment of tax debts and as a result of the execution there is no remaining money or insufficient to pay off debtors' debts to banks/financing institutions as a result of default by the debtor, the bank suffers losses and cannot carry out auction execution of objects that have been tied with mortgage rights. The bank/financing institution loses an amount of money that has been distributed to the public and the money is returned to the bank/financing institution whose amount is not in accordance with what has been agreed in the agreement. Based on this explanation, it can be said that the existence of a tax debt to the state borne by the debtor can cause the bank/financing institution to lose money that has been distributed to the public if the debtor defaults. This is because the payment of tax debts to the state takes precedence over repayment of debts to banks/financing institutions if the debtor defaults.

Taxes have a very important role in the life of the state, one of the reasons is because taxes are one of the sources of state income. The definition of tax is the people's contribution to the State treasury based on the law (which can be forced) by not getting reciprocal services (counter-performance) which can be directly shown and which is used to pay general expenses.⁵ In this case, the state must ensure that the taxes imposed on the community have been paid and entered into the state treasury. This applies to all parties taxpayers, including taxpayers who are unable to pay taxes to the state or tax debts to the state.

There is data for 2021 regarding national tax receipts paid by taxpayers in several Tax Regional Offices, one of which is the Large Taxpayer Regional Office, Central Jakarta Regional Office, and Bali Regional Office. Data on tax receipts by taxpayers at the DGT Regional Office for Large Taxpayers in 2021 grew by 25.41% from the previous year. In 2021 the DGT Regional Office for Large Taxpayers will receive 365,965,888, which was previously 291,809,742 in 2020.

In 2021 the Central Jakarta Regional Office will receive 56,269,529 tax revenues from taxpayers. The tax revenue grew from the previous year by 12.67%. In 2020 the Central Jakarta Regional Office received tax revenue from taxpayers of 49,943,076.

The Bali Regional Office experienced a different thing. In 2021 the Bali Regional Office received tax revenues of 7,359,833, while in 2020 it received tax revenues from taxpayers of 7,804,486. The growth of tax revenue from taxpayers at the Bali Regional Office is -5.7%. The data above illustrates that not all regions in Indonesia receive tax revenues from taxpayers optimally each year.

Article 21 of Law Number 6 of 1983 as amended with the latest amendment through Law Number 16 of 2009 concerning General Provisions and Tax Procedures (hereinafter referred to as UUKUP) explains that "The State has the right to preempt tax claims on compulsory goods. Taxes as well as on the property of their representatives, as well as persons or entities which, according to Article 32 paragraph (2) and other provisions of the tax law, are personally and/or jointly responsible". Article 21 paragraph (2) explains that "The provisions regarding the right to precede as referred to in paragraph (1) include tax principal, interest, administrative fines, increases, and collection fees." The article above explains that the state in this case is represented by the Tax Office as the executor of full authority over the tax debt of the taxpayer, and has the right to precede the settlement of the tax bill on the taxpayer's goods.

Tax collection against taxpayers is explained in Article 1 point 9 of Law Number 19 Year 1997 concerning Tax Collection by Forced Letters as amended by Law Number 19 of 2000 (UUSPP), namely "A series of actions so that the tax guarantor pays off the tax debt". and tax collection costs by admonishing or reminding, carrying out instant and simultaneous collections, notifying forced letters, proposing prevention, carrying out confiscations, carrying out hostages, selling confiscated goods."

The articles above explain that one of the ways in which tax collection can be done is by confiscation of objects that are tied up with mortgage rights in banks, including in this case state-owned banks. This is similar to the case that happened in Baubau City, Southeast Sulawesi.

The case that occurred involved the Directorate General of Taxes, in this case, the BauBau Pratama Tax Service Office, and the tax arrears in which one of the assets of the tax arrears, namely a plot of land and buildings, was tied up with mortgages at Bank BNI Baubau Branch. As a result of taxpayers who never pay their tax debts to the state, tax collection can be carried out by confiscation and executing objects that are being tied up with mortgages at Bank BNI Baubau Branch. This is based on a letter from the Ministry of Finance of the Republic of Indonesia, the Directorate General of Taxes, the Regional Office of the Directorate General of Taxes in South, West, and Southeast

⁵ Waluyo, *Perpajakan Indonesia*, Salemba Empat, Jakarta, 2017, p. 3

Sulawesi, the BauBau Pratama Tax Service Office, Number S-1258/WJP.15/KP.15/2020, dated August 5, 2020, regarding Active Billing Action Notifications. The letter also mentions the assets of the tax arrears that are being tied up with mortgages at the Bau-Bau Branch BNI Bank Office.

The state, in this case, through the Tax Office, makes the notification of active collection actions through notification letters to tax arrears, who in this case are also debtors at BNI Baubau Branch. The actions taken by the Tax Office cannot be separated from the form of implementation of UUKUP, but this causes a conflict between the state represented by the tax office and a BUMN Bank (Bank BNI Branch Baubau) as the holder of the mortgage. This is because BUMN Bank as the holder of the mortgage also has the right to prioritize the repayment of the debtor's property if the debtor defaults.

In principle, the imposition of mortgage rights in credit agreements aims to protect the bank as creditor in terms of money that has been given to the public through credit. This can be done by executing an auction on objects that are collateral and have been bound by mortgage rights at a bank/financing institution. Based on Article 21 paragraph (1) of the UUKUP and also on the debtor's tax debt to the state, it makes it difficult for creditors to get repayment of their receivables if the debtor defaults.

Based on the article above, the collateral object owned by the debtor and has been tied to the mortgage will be executed first by the state to pay off the debt owned by the taxpayer/debtor. The object is then used to pay off the debtor's debt to the bank/financing institution. Problems arise when objects tied with mortgages have been executed by the state for payment of tax debts and as a result of the execution there is no remaining money or insufficient to pay off the debtor's debt to the bank/financing institution as a result of default by the debtor, the bank suffers a loss and does not can carry out auction execution of objects that have been tied with mortgage rights.

The inability of the debtor to pay off his credit can cause losses for the bank/financing institution, in this case, it can be referred to as bad credit. Especially if the problem occurs in a state-owned bank. The existence of a loss to state-owned banks can also be said to be a loss to state finances. Based on this description, the problem that will be discussed in this paper is what are the legal aspects of the execution of tax arrears assets that have been tied to Mortgages in State-Owned Banks?

METHOD

This type of research is normative legal research⁶ by using a statutory approach and a conceptual approach. Primary legal materials, secondary legal materials,⁷ and tertiary legal materials⁸ were obtained through literature study and equipped with interviews. The collected legal materials are then analyzed qualitatively.

DISCUSSION

Legal Aspects of Executing Tax Arrears Assets That Have Secured Mortgages at State-Owned Banks

Every object of credit guarantee that has been approved by the bank, is sometimes followed by a binding guarantee. The binding of the credit guarantee should be done before the debtor disburses loan funds from the creditor, but the practice is not always in accordance with the explanation above. The obligation to bind is actually part of the administrative requirements that must be fulfilled before the credit is distributed by the creditor to the debtor. Regarding the administrative requirements, it is an internal regulation of each bank. The regulation is made to prevent and aims so that if the debtor defaults, the object of the credit guarantee that has been tied to the mortgage can be executed immediately.⁹

Article 1238 of the Civil Code explains that: "the debtor is negligent if he with a warrant exists with a deed of this kind has been declared negligent, or for the sake of his own engagement, if this stipulates, that the debtor must be considered negligent with the passage of the specified time". The article explains that the existence of a breach of contract can be identified in the following ways:¹⁰

1. Notification or subpoena. This can be done if the agreement does not specify a certain time,

⁶ Kadarudin, *Penelitian di Bidang Ilmu Hukum (Sebuah Pemahaman Awal)*, Formaci Press, Semarang, 2021, p. 257

⁷ Bambang Waluyo, *Penelitian Hukum Dalam Praktek*, Sinar Grafika, Jakarta, 1991, p. 7

⁸ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, PT Raja Grafindo, Jakarta, 2003, p. 13

⁹ Interview with Resource Person (State Owned Enterprise Bank Employee).

¹⁰ Ahmadi Miru and Sakka Pati, *Hukum Perikatan Penjelasan Makna Pasal 1233 sampai 1456 BW*, PT. Rajagrafindo Persada, Jakarta, 2008, p. 8

a person can be declared to have defaulted. There must be prior notification to the debtor about his negligence or default. In essence, there is a warning or prior notification to the debtor so that he knows whether he is in a state of default or not.

2. In accordance with the agreement, if in the agreement the period of fulfillment of the agreement is determined. The existence of an agreed period of time, the debtor is unable to fulfill his obligations. The existence of these actions can be said that the debtor has committed an act of default.

The binding of credit guarantees is an *accessoir* agreement made based on and related to the main agreement (credit agreement or debt acknowledgment letter). The binding of credit guarantees is carried out by making a Mortgage Deed (Akta Pembebanan Hak Tanggungan/APHT). APHT is a debt and receivable agreement whose existence is due to another agreement (principal agreement). In general provisions point 8 Elucidation of UUHT, it is stated: "because mortgage rights by nature are a follow-up or *accessoir* to a certain receivable, which is based on a debt agreement or other agreement, the birth and existence of which is determined by the existence of a receivable whose repayment is guaranteed".

The existence of an object of credit guarantee that is tied to a mortgage, gives the position of the bank as the creditor and the holder of the object of the mortgage as the preferred creditor. The bank as the preferred creditor, gives the position for the bank to be prepaid from other creditors from the proceeds of the sale and/or disbursement of the object of credit guarantee if the debtor defaults or defaults.¹¹ Article 1132 of the Civil Code emphasizes the explanation above, namely that the preferred creditor has the privilege of prioritizing repayment in the execution of the debtor's collateral. Based on this explanation, it can be said that the creditor obtains repayment first compared to other creditors on the object of collateral that has registered mortgage rights if the debtor defaults.

The privileges owned by creditors holding mortgage rights as described above will lose their preferential rights when it comes to state receivables. Preferred rights of creditors holding mortgages will be set aside, while tax debts to the state take precedence.¹² The elaboration of state receivables as explained in Article 8 of Law Number 49 Prp of 1960, State receivables are debts directly payable to the state and also payable to entities whose assets and capital are partly or wholly owned by the state. Therefore, state receivables must be paid to the central government or local governments.

On April 25, 1996, in a meeting between the State Receivables and Auctions Agency (Badan Urusan Piutang dan Lelang Negara/BUPLN) the directors of state banks, it was stated in the meeting that BUPLN's view regarding state receivables is not only on taxes. The view of BUPLN in this regard also includes all state receivables as described in Law Number 46 Prp of 1960 concerning the Committee for State Receivable Affairs. The explanation does not prioritize between tax debts and other state receivables, in this case including bad loans at state-owned banks and the collection is submitted to BUPLN.¹³

This is in accordance with what is stated in Article 1137 of the Civil Code. Article 137 of the Criminal Code states that "the rights of the State treasury, the auction office, and other public bodies established by the government take precedence over other creditors." Based on the explanation above, it can be said that the state has the right to obtain repayment in advance even though in the credit agreement a special guarantee is made by the debtor whose object is in the form of land/building rights. The payment of state receivables, followed by payment of creditors' receivables which are special guarantees such as pledges, mortgages, and mortgages.

Article 1137 of the Civil Code is a provision that essentially regulates private law, but the definition of state rights can be categorized in public law. The State Treasury, auction office, and others such as public bodies formed by the government, are matters that are related between the state and its people. Based on this, it can be said that state rights are the implementation of state control rights in the realm of public finance. Article 1137 of the Civil Code explains that the state has the right to take precedence in repayment of the settlement of other creditors. This is because taxes relate to society or the public. This explanation is also included in the payment of tax bills to the state.

Based on the results of the author's search by observing the contents of the provisions of several laws and regulations related to this subject matter, in the Taxation Law there are also provisions that explain that the state has the right to preempt tax bills over all other precedent rights such as mortgages and mortgages. . Article 21 paragraph (3) of the Taxation Law, that there are things

¹¹ Interview with Resource Person (State Owned Enterprise Bank Employee).

¹² Interview with Resource Person (Tax Office Employee)

¹³ Remy Sjahdeni, *Hak Tanggungan, Asas-Asas, Ketentuan-Ketentuan Pokok dan Masalah yang Dihadapi Perbankan*, Alumni, Bandung, 1999, p. 16

that are excluded from the right to precede the settlement of tax bills, namely:

- a. Court costs as a result of the penalty for conducting an auction of an item;
- b. Costs incurred to save an item;
- c. Court fees as a result of an auction and settlement of an inheritance.

Therefore, it can be said that the tax bill is one type of receivables to the state that has a higher position than pawns, mortgages and mortgages. In this case, the payment of the tax bill must also be prioritized from pawning, mortgages and mortgage rights. The explanation is contained in the explanation of Article 1137 of the Criminal Code and UUHT. The right of prioritizing the settlement of tax debts also applies if the object of the mortgage guarantee, which is the sole asset of the debtor, is executed by the tax office as a result of the tax owed to the State by the debtor.

According to the author, in this case the tax office cannot directly execute without notification to the bank as the holder of the mortgage of the object of the guarantee which will be executed by the Tax Office. The tax office must first notify the bank that the tax office will execute the object of the debtor's mortgage as a result of the debtor's tax debt. The Tax Office also has to make calculations with the bank in advance, whether the object of guarantee that has been tied to the mortgage can pay off the tax debt to the state and the debt to the bank. In the event that the object of the guarantee at the bank is of sufficient value to pay off the tax debt to the state and the debt to the bank, the two parties shall coordinate and make an agreement that the auction proceeds shall be prioritized to pay the tax debt to the state and the remainder to pay the debt to the bank. The Tax Office submits an auction application through the State Assets and Auction Service Office (Kantor Pelayanan Kekayaan Negara Dan Lelang/KPKNL) and the bank also issues an auction approval letter. The results of the auction that have been carried out by the KPKNL, KPKNL is obliged to share the results of the auction according to the agreement between the bank and the Tax Office.

In the event that the value of the bank collateral is insufficient to pay the tax bill and bank debt, an agreement must be made between the Tax Office and the bank. The agreement is regarding the distribution of the auction proceeds which is divided proportionally based on the amount of each claim or for the bank a maximum of the value of the mortgage. The agreement must also be made with consideration, namely:¹⁴

- a. The remaining invoices from the Tax Office can be paid from the assets of the taxpayer and the tax guarantor (excluding collateral).
- b. Banks need to get protection as preferred creditors to get payments because loan funds are public/customer funds.
- c. Banks cannot confiscate/release collateral as long as the debt has not been paid.

In the case of executions carried out by KPKNL that must also be considered regarding the interests of the buyer of the executed guarantee object. This is done so that buyers can feel safe and protect because it is related to the intersection between the implementation of the Tax execution auction and the execution auction of Article 6 of the Mortgage Law. In principle, in this case, the execution of collateral for the object of the mortgage can be carried out, but it is necessary to mitigate risk by taking into account the agreement between the Tax Office and the bank, as well as protection for the interests of the buyer. In this case, it can be said that coordination between interested parties is the most appropriate way to resolve problems in terms of debt to banks and tax debt to the state.

Based on the research that the author did, the research data obtained regarding tax revenues from taxpayers in 2021 at the Central Jakarta Regional Office amounted to 56,269,529. The tax revenue grew by 12.67% from 2020 which was previously 49,943,076. Based on the tax revenue data, it was found that the percentage of achievement of the confiscation of taxpayer objects was 98% with a total of 452 points. The data on the achievement of confiscation actions in 2021 was less than the target of confiscation actions in 2021 which was 461 points. The data on the achievement of confiscation actions in 2021 increased by 177 points or by 64% from the data on the achievement of confiscation actions carried out by the Central Jakarta Regional Office in 2020, which previously had 275 points.¹⁵

Other data regarding tax receipts from taxpayers in 2021 for the West Java I DJP Regional Office is 26,058,395. The tax revenue grew by 10.57% from 2020 which was previously 23,567,455. Based on the tax revenue data, it was found that data regarding the percentage of achievement of confiscation of taxpayer objects was 111% with a total of 746 points. The data on the achievement of confiscation actions in 2021 exceeded the target of confiscation actions in 2021 which was 672 points.

¹⁴ Interview with Resource Person (State Owned Enterprise Bank Employee).

¹⁵ 2021 Tax Revenue Data Obtained Through the Tax Office.

Data on the achievement of confiscation actions in 2021, but the percentage decreased by 5% compared to data on the achievement of confiscation actions in 2020 which amounted to 788 points.¹⁶

Other data regarding tax receipts from taxpayers in 2021 for the Central Java Regional Tax Office I amounted to 28,434,614. The tax revenue grew by 4.19% from 2020 which was previously 27,290,647. Based on the tax revenue data, it was found that the percentage of achievement of the confiscation of taxpayer objects was 139% with a total of 606 points. The data on the achievement of confiscation actions in 2021 exceeds the target for confiscation actions in 2021 which is 435 points. The data on the achievement of confiscation actions in 2021 increased by 33 points or by 6% from the data on the achievement of confiscation actions carried out by the Central Java I Regional Office in 2020, which previously had 573 points.¹⁷

Other data regarding tax receipts from taxpayers in 2021 for the Regional Office of the DJP East Java I amounted to 44,917,667. The tax revenue grew by 18.75% from 2020 which was previously 37,823,919. Based on the tax revenue data, it was found that the percentage of achievement of the confiscation of taxpayer objects was 138% with a total of 742 points. The data on the achievement of confiscation actions in 2021 exceeded the target of confiscation actions in 2021 which was 536 points. The data on the achievement of confiscation actions in 2021 increased by 269 points or by 57% from the data on the achievement of confiscation actions carried out by the East Java I Regional Office in 2020, which previously had 473 points.¹⁸

There are other data in the areas of South, West, Southeast and North Sulawesi, namely data on tax revenue from taxpayers of 13,700,667. The tax revenue data grew by 10.98% from 2020 of 12,345,414.¹⁹ Based on the tax revenue data, it can be concluded that not all taxpayers pay taxes directly without having to pay taxes from taxpayers to the state. This is because there is data on tax debt from taxpayers to the state.

In the areas of South, West, Southeast and North Sulawesi, it was found that the 2021 data showed that there was a percentage of achievement of the confiscation of taxpayer objects of 150% with a total of 1052 points. The data on the achievement of confiscation actions in 2021 also increased by 18 points from the data on the achievement of confiscation actions carried out by the South, West, Southeast and North Sulawesi Tax Offices in 2020, which previously had 1034 points.²⁰

The data above explains that in the areas of South, West, Southeast, and North Sulawesi there are still many taxpayers who have tax debts to the state. As a result of this, the object belonging to the taxpayer is executed or confiscated to pay off the tax debt to the state. The data described above, however, does not explain in detail the percentage of objects belonging to taxpayers that have been confiscated, in this case including tax objects that are currently tied with mortgage rights to banks or state-owned banks.

One of the cases related to the confiscation of mortgage objects carried out by the tax office was a case that had occurred in the KPP Pratama Baubau area, Southeast Sulawesi Province.²¹ CV ABCD is a taxpayer as well as a Taxable Entrepreneur. Taxable entrepreneur (Pengusaha Kena Pajak/ PKP) is an entrepreneur who delivers taxable goods and/or delivery of taxable services subject to tax based on Law Number 8 of 1983 concerning Value Added Tax as amended several times, most recently by Law Number 11 Year 2020 concerning Job Creation (the VAT Law).

The requirement for an entrepreneur to be categorized as a PKP is if the business has a turnover of up to Rp. 4,800,000,000,- (four billion eight hundred million rupiah) in 1 (one) financial year.²² CV ABCD in addition to its position as PKP also includes customers / debtors at one of the state-owned banks in Baubau city. CV ABCD has also made a credit agreement with collateral in the form of a land certificate in Baubau City with one of the state-owned banks. In 2020 the Baubau City Tax Office based on the confiscation number: BA-00019; 00020; 00021; 00022; 00023; 00024; 00025; 00026; 00027; 00028/SITA/WPJ.15/KP.1504/2020 dated July 30, 2020, took active collection actions by confiscation of CV ABCD assets, which assets are also collateral in one of the state-owned banks.

Based on the results of the examination by the KPP Pratama Baubau City, it was found that CV ABCD did not fulfill its obligations as a PKP by not reporting and depositing its taxes to the KPP Pratama. As a result of CV ABCD having a tax debt, the Baubau City KPP Pratama issues a Tax Assessment Letter (Surat Ketetapan Pajak/SKP). The issuance of this SKP is used as the basis for tax collection by the Baubau City KPP Pratama. This is in accordance with the explanation of Article 18

¹⁶ 2021 Tax Revenue Data Obtained Through the Tax Office.

¹⁷ 2021 Tax Revenue Data Obtained Through the Tax Office.

¹⁸ 2021 Tax Revenue Data Obtained Through the Tax Office.

¹⁹ 2021 Tax Revenue Data Obtained Through the Tax Office.

²⁰ 2021 Tax Revenue Data Obtained Through the Tax Office.

²¹ Interview with Resource Person (Tax Office Employee)

²² *Ibid.*

paragraph (1) of the Taxation Law, that "Tax collection letter, tax underpayment assessment letter, additional tax underpayment assessment letter, and corrections decision letter, objection decision letter, appeal decision, which causes the amount of tax to be reduced. must be paid in increments, is the basis of tax collection"

Prior to the confiscation, the Baubau City KPP Pratama had carried out a series of collection activities up to the confiscation of all CV ABCD's property because it did not fulfill its obligations.²³ One of the assets confiscated by the tax office was a collateral belonging to CV ABCD which had been tied to a mortgage in one of the state-owned banks. In this case, the Baubau City KPP has notified the BUMN Bank through an Active Billing Action Notice with Number: S-1258/WPJ.15/KP.15/2020 dated 5 August 2020. Based on the notification letter, Baubau KPP Pratama has confiscated on July 30, 2020 without coordinating with the bank in advance or notifying the bank prior to the confiscation of the CV ABCD assets.

That on the Notice of Active Billing Action Number: S-1258/WPJ.15/KP.15/2020 dated August 5, 2020, KPP Pratama Baubau requested coordination from the bank as the holder of the mortgage object in relation to the settlement/settlement of the tax underwriter. KPP Pratama Baubau City requested that the land certificate located at one of the state-owned banks be given to KPP Pratama Baubau City. In the implementation of collection actions that occur without coordination with the bank first. Article 21 of the Taxation Law is used as the basis for the actions taken by the Baubau KPP Pratama in the confiscation of the object of collateral that is tied to mortgage rights.

The state represented by the Baubau City KPP Pratama has the right to preempt the tax bill from CV ABCD's assets. The tax bailiff of the Baubau City KPP Pratama has also confiscated the assets belonging to CV ABCD. Therefore, it can be said that the physical and juridical control of land and buildings from CV ABCD has been taken over by KPP Pratama Bau-Bau City.

In the explanation of Article 21 paragraph (1) of the Taxation Law, it is explained that the state is the preferred creditor who has the right to precede the goods belonging to the taxpayer. The basis for prioritizing tax debt is the importance of taxes for the state, which is the main source of state revenue to be used as a national development and expenditure budget. This state revenue sourced from taxes is used by the state in building public interest facilities and infrastructure with the aim of improving people's welfare.

According to the author, the regulation is easier to implement in the case when the object of the mortgage guarantee is tied to a private bank or company in the financial sector based on private capital, not capital from the state such as state-owned banks. The object of the guarantee that is tied with mortgage rights to the BUMN will be more difficult to execute because the BUMN Bank is a state-owned bank whose capital is through the state.²⁴ This is because the two related parties, namely the Pratama Tax Office and BUMN Bank, are both entities that have the same goal for the benefit of the state.

The tax office aims to obtain tax payments from the public aimed at protecting or fulfilling the rights of the community in terms of improving the welfare of the community.²⁵ State-owned banks also have a goal of realizing a prosperous society in various fields. Another general objective of state-owned banks is to contribute to the movement of the national economy. In particular, the purpose of state-owned banks is to provide additional income for the state, therefore, a healthy state-owned bank is a state-owned bank that benefits the state instead of burdening the state with its operations and debts.²⁶

Based on the explanation above, it can be said that the Tax Office and State-Owned Bank both have goals related to the welfare of society and the country's economy. Therefore, according to the author, in the event of a tax debt owned by the taxpayer and continued with the execution of the object belonging to the taxpayer who is bound by rights with mortgage rights at a state-owned bank, it requires prior coordination between the tax office and the state-owned bank before execution. The coordination is carried out with the aim of finding a common solution so that the interests of the Tax Office and State-Owned Banks can be met. With this coordination, it is hoped that the Tax Office will be able to receive payments from tax debts owned by taxpayers through the execution of mortgage objects, while BUMN Banks are expected to receive debt payments from debtors who are also taxpayers who have tax debts to the state.

Based on the coordination carried out, it is also expected that the Tax Office and State-Owned Banks will obtain an agreement regarding the distribution of proceeds from the execution of the object

²³ *ibid.*

²⁴ Interview with Resource Person (State Owned Enterprise Bank Employee).

²⁵ Interview with Resource Person (Tax Office Employee)

²⁶ Interview with Resource Person (State Owned Enterprise Bank Employee).

belonging to the taxpayer/debtor which is divided proportionally based on the amount of each claim or for State-owned Banks a maximum of the value of the mortgage. The agreement made must consider, the remaining invoices at the Tax Office can be paid from the assets of the taxpayer and the tax guarantor (outside the collateral) and BUMN Banks need to get protection as preferred creditors to get payments because the loan funds are public/customer funds.²⁷ This must be done because if the State-Owned Bank in this case does not receive reimbursement of payments from money for debt applications issued to the debtor, then the loss in this case is not only the State-Owned Bank itself, but also the state. This is because one of the financiers of state-owned banks is the state.

Based on the explanation above, if it is related to the right to precede the state, and it is also related to the Lex Systematische Specialiteit principle, the meaning of this principle is that if an act is charged with two special laws (*lex specialis*) it must be carefully considered which law is used. is systematic, it can be said that the Tax Office can be given in advance to pay off the debt of the taxpayer to the state. Regulations related to the right to precede the state on the tax bill of the insurer are sequentially regulated through Article 1132, Article 1134, and Article 1137 of the Civil Code. The Civil Code is then specifically regulated through Article 4 UUHT, Law Number 46 Prp 1960, the Taxation Law and its derivative regulations. Thus, based on the Lex Systematische Specialiteit principle, the state has a higher position or takes precedence.

According to the author, the application of this principle can be carried out if the interested party or object is bound by mortgage rights to a bank that is not state-owned or other than a state-owned bank. This is because the explanation of the regulations mentioned above does not explain explicitly and in detail, the case that if the right to precede the state in paying off tax debts to the state through execution is faced with the execution of tax objects that have been bound by mortgage rights at state-owned banks. Both parties have goals that are of interest to the state. There are different interests, in this case, the tax office must confiscate so that it can be used as state revenue and on the other hand BUMN Banks are also interested in paying off debtors' credit debts because bad loans experienced by debtors cause losses for BUMN Banks.

Roscoe Pound in his theory, that the law must be functioned according to certain functions to achieve its goals. The function of law is to protect the interests that exist in society so that it can bring order, regulate and resolve problems that occur. In this case, the existence of tax collection by confiscation of goods that are being tied up with mortgages is one of the methods used to achieve one of the legal functions, namely protecting the interests that exist in the community. This is because in taxes there are rights owned by the community, which with taxes are expected to protect or fulfill the rights of the people by the state.

Achmad Ali argues that among legal practitioners, there is a tendency to always see the judicial system as merely a legal institution, which is full of normative content, followed by a number of judicial principles which are very ideal and normative, which in reality are completely different. with the use of moral studies and legal studies (normative).²⁸ In this case, based on the theory of Roscoe Pound and related to the problems discussed, it can be said that the applied law must also protect the interests of state-owned banks. This is because state-owned banks also have interests in the scope of the community association. State-owned banks are parties that have the authority to channel funds to the public, therefore it is necessary to protect the interests of state-owned banks. In the issues raised, the protection of interests for the Tax Office and BUMN Banks can be carried out with coordination to find solutions and agreements before carrying out the execution of mortgage objects tied to BUMN Banks for payment of tax debts to the state and debt payments to BUMN Banks.

In relation to the theory of legal certainty, the UUHT has provided an explanation of the rights of the holder of the mortgage object but does not provide clear regulation, elaboration, and/or explanation in relation to the object being confiscated by the State. The existence of the *droit de suite* principle as stated in Article 7 of the UUHT, according to the author, provides legal certainty for mortgage holders. This is because the mortgage still follows the object in the hands of anyone so the mortgage will not end if the object of the mortgage is transferred to another party. Based on this, it can be said that the mortgage holder still gets legal certainty from the *droit de suite* principle, as long as there is still money remaining from the execution of the collateral object to paying state taxes.

Based on the explanations above, it can be said that the state has the right to carry out the first execution of the tax object if the taxpayer has a tax debt to the state, even though the condition that the tax object is being tied to the bank's mortgage. This applies to objects of mortgage that are guaranteed by private banks and state-owned banks. Especially for state-owned banks, the tax office must be more careful before executing mortgage objects tied to state-owned banks. This is done to avoid

²⁷ Interview with Resource Person (State Owned Enterprise Bank Employee).

²⁸ Achmad Ali, *Menguak Tabir Hukum*, Gunung Agung, Jakarta, 2002, p. 46

losses experienced by state-owned banks. Losses for state-owned banks can also be categorized as losses for the state.

CONCLUSION

The tax office has the right to receive prepayment for the execution of the taxpayer's property due to a tax debt. State-owned banks also have the right to receive repayments first compared to other creditors for the execution of mortgage objects, as a result of default by the debtor. In this case, the Tax Office and the State-Owned Bank both have the right to receive payment first compared to other parties. Based on the applicable regulations, there is no article that specifically and in detail regulates which payment should be prioritized if the Tax Office and State-Owned Bank both have an interest in the execution of the same object for the settlement of tax debts and debts to creditors. Therefore, it is necessary to coordination between the Tax Office and State-Owned Banks to obtain solutions to solving problems, with consequences that are not detrimental to the Tax Office and State-Owned Banks.

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