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Application of Tax and Customs Sanctions Against Debtors in Suspension of Payment and Bankruptcy Case

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ABSTRACT

Debt settlement through the mechanisms of suspension of payment and bankruptcy often comes into conflict with the state's financial rights in the form of tax debts arising from trade, export and import activities. In relation to the application of administrative sanctions in the form of interest and fines, the Bankruptcy and Suspension of Payment Law states that interest and fines cannot be calculated after the debtor is declared in suspension of payment or bankrupt, while the tax and customs laws state that fines will continue to be calculated until the bill is paid in full, and coercive measures can be taken. Researchers will examine how administrative sanctions are applied to bankrupt debtors and how the mechanism for applying repressive sanctions to bankrupt debtors works? This research uses normative-empirical methods and analytical descriptive research specifications. The research results conclude that administrative sanctions for tax debts can still be applied to debtors even if they are in a state of bankruptcy can be applied to the personal assets of the taxpayer, and coercive measures can be taken. Repressive sanctions can be carried out against bankrupt debtors by officials from the Directorate General of Taxes or the Directorate General of Customs and Excise as a last resort based on the PPSP Law. The researcher provides the following suggestions: harmonization of laws and regulations is needed to prevent overlapping regulations and authorities and regulations under the law are needed to technically regulate the implementation of corporal punishment so that there is no legal vacuum.

Keywords: bankruptcy; customs; tax law.

INTRODUCTION

Economic and trade developments in Indonesia have impacted legal developments and given rise to numerous legal issues, particularly in commercial law. The majority of business capital comes from loans, such as from banks, investments, bond issuances, or other sources, resulting in numerous debt settlement issues within the community. One legal instrument needed to address these issues is Law Number 37 of 2004 concerning Bankruptcy and Suspension of Payment (KPKPU Law).

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In general, an application for suspension of payment (*surseance van betaling*) submitted to the Commercial Court aims to submit or convey a composition plan which includes payment of all or part of the debtor's debt to all creditors so that the debtor does not experience bankruptcy and does not lose his interdependence in managing his assets.[1] In other words, a suspension of payment is a moratorium or opportunity for debtors to resolve their debt problems by taking steps for peace and deliberation, with the hope that they will not be immediately declared bankrupt, but will be given the opportunity for debtors to improve their economic conditions so they can pay off their debts without harming their creditors.[2] Suspension of payment and bankruptcy cases often involve state financial rights, particularly in the area of taxation. In this case, researchers focused on tax debts arising from trade, export, and import activities.

Case example in this research is case number 305/Pdt.Sus-PKPU/2023/PN Niaga Jkt.Pst with debtor PT Big Golden Bell, which ended in bankruptcy after its composition plan was rejected by creditors. PT Big Golden Bell is a garment exporter domiciled in Bandung Regency and is the recipient of a bonded storage facility in the form of a bonded zone. Article 1 paragraph (1) of Government Regulation Number 85 of 2015 concerning Amendments to Government Regulation Number 32 of 2009 concerning Bonded Warehouses (PP 85 of 2015) states that "a bonded warehouse is a building, place or area that meets certain requirements which is used to store goods for a specific purpose by obtaining a suspension of import duty". Article 1 paragraph (3) of PP 85 of 2015 defines "a bonded zone is a bonded storage area for storing imported goods and/or goods originating from other places in the customs area to be processed or combined, the results of which are primarily for export". The determination of the bonded storage area and the granting of a bonded zone business permit to PT Big Golden Bell was granted through a Decree of the Minister of Finance since 2012.

An interesting aspect of this suspension of payment case is that the Supreme Court annulled the debtor's bankruptcy status and ordered the Commercial Court at the Central Jakarta District Court to file a cassation decision, number 751 K/Pdt.Sus-Pailit/2024. The suspension of payment process was resumed from July 11, 2024, to December 9, 2024, and the debtor was ultimately declared bankrupt for the second time by the Commercial Court. The timeline of the suspension of payment case is as follows:

[1] R. Anton Suyatno, *Pemanfaatan Penundaan Kewajiban Pembayaran Utang: Sebagai Upaya Mencegah Kepailitan* (Jakarta: Kencana Prenada Media Group, 2012).
[2] Eko Susanto Tejo, Hernawati Ras, and Yeti Kurniati, *Application of the Principle of Balance and Justice to Debtors Who Do Not Act in Good Faith Based on Law Number 37 of 2004 Concerning Bankruptcy and Suspension of Payment*, 13, no. 37 (2025): 662–76, https://doi.org/10.18535/ijsrm/v13i05.lla01.

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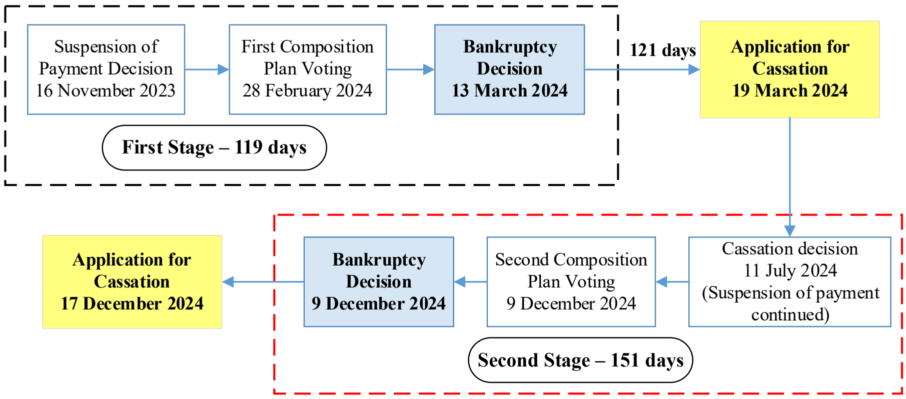

Figure 1. Process Flow of Case Number 305/Pdt.Sus-PKPU/2023/PN Niaga Jkt.Pst

In this case, there are several preferred creditors (creditors who have special rights to have their payments prioritized over other creditors), in this case represented by *Kantor Pelayanan Pajak Madya* Bandung (KPP Madya Bandung) and *Kantor Pengawasan dan Pelayanan Bea dan Cukai Tipe Madya Pabean* a Bandung (KPPBC Tipe Madya Pabean a Bandung). When the debtor is in a state of suspension of payment, there is a tax debt of IDR 6,775,514,270 and potential tax debt from export-import activities amounting to IDR 2,661,695,000.[3] When the debtor is in a state of bankruptcy, the tax debt becomes IDR 6,899,792,493 and IDR 309,578,000.[4] Article 1 paragraph (1) of Law Number 19 of 1997 concerning Tax Collection by Distress Warrant (PPSP Law) states that "taxes are all types of taxes collected by the central government, including import duties and excise, and taxes collected by regional governments, according to applicable laws and regulations". Article 1 paragraph (8) of the PPSP Law defines "tax debt as tax that still has to be paid including administrative sanctions in the form of interest, fines or increases stated in a tax assessment letter or similar letter based on tax laws and regulations".

The total bill submitted by KPP Madya Bandung to the receiver team includes a fine of 2% per month, based on the provisions of Article 9 paragraph (2a) of Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures (KUP Law) which states that "payment or deposit of tax as referred to in paragraph (1), which is made after the due date for payment or deposit of tax, is subject to administrative sanctions in the form of interest of 2% per month calculated from the due date of payment until the date of payment, and

[3] Kepaniteraan Pengadilan Niaga pada Pengadilan Negeri Jakarta Pusat, "Daftar Piutang Tetap PT Big Golden Bell (Dalam PKPU)," 2023.
[4] Kepaniteraan Pengadilan Niaga pada Pengadilan Negeri Jakarta Pusat, "Daftar Piutang Tetap PT Big Golden Bell (Dalam Pailit)," 2024.

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part of a month is calculated as a full 1 month". Regarding the bill, KPP Madya Bandung has also issued an immediate and simultaneous collection letter, followed by issuing a letter of compulsion, namely a letter ordering payment of tax debt and tax collection costs as stated in Article 1 paragraph (12) of Law Number 19 of 2000 concerning Amendments to Law Number 19 of 1997 concerning Tax Collection by Distress Letter (Amendments to the PPSP Law).

Coercive letter is a legal document in the form of an official order issued by the government based on law and has permanent legal force. With the authority and power granted by law, hierarchically, a coercive letter has the same legal standing as a court decision.[5] Tax confiscation is carried out if the tax debt has not been paid and after a period of more than 2x24 hours has passed since the letter of coercion was notified to the taxpayer.[6]

After the debtor was declared bankrupt for the first time on March 13, 2024, KPPBC Tipe Madya Pabean A Bandung is revoking the permit for bonded storage facilities, a legal step as mandated by Article 46 paragraph (4) letter b of Law Number 10 of 1995 concerning Customs (Customs Law). Interest sanctions apply to the debts of bankrupt debtors in accordance with the provisions in Article 38 paragraph (1) of the Customs Law which states that "debts or bills to the state based on this law which are not paid or underpaid are subject to interest of two percent per month or for a maximum of twenty-four months, calculated from the due date until the day of payment, and the monthly portion is calculated as one month". In addition, the fine provisions based on Article 45 paragraph (4) of the Customs Law also apply, which states that "bonded storage place entrepreneur who cannot account for goods that should be at that place, will be subject to administrative sanctions in the form of a fine of 100% of the import duty that should be paid".

If linked to the legal perspective of bankruptcy and suspension of payment, the calculation of interest and fines on the debtor's debt can only be collected until the debtor is declared in the status of suspension of payment or bankrupt. Article 273 paragraph (1) of the KPKPU Law states that "interest-bearing receivables must be included in the list as referred to in Article 272 accompanied by the calculation of interest until the day the decision to postpone the obligation to pay the debt is pronounced" and Article 134 paragraph (1) which states "regarding interest on debts arising after the bankruptcy declaration decision is pronounced, no receivables may be matched, except and only to

[5] Direktorat Jenderal Pajak, "Mendapat Surat Paksa? Jangan Panik! Ini yang Harus Dilakukan," 2025, https://www.pajak.go.id/id/artikel/mendapat-surat-paksa-jangan-panik-ini-yang-harus-dilakukan.
[6] Ortax, "Bagaimana Ketentuan Penyitaan dalam Penagihan Pajak?," 2023, https://ortax.org/bagaimana-ketentuan-penyitaan-dalam-penagihan-pajak.

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the extent guaranteed by a pledge, fiduciary guarantee, security right, mortgage or other collateral rights on property". Therefore, interest and fines cannot be collected from debtors after a suspension of payment or bankruptcy decision is issued. However, this tax debt only arises after the debtor is declared bankrupt. Administrative sanctions stipulated in law also apply to tax debts, and there are no exceptions for taxpayers who have already filed for bankruptcy.

The KUP Law, the Customs Law, and the PPSP Law are special laws (*lex specialis*), namely regulations or laws that regulate a specific field or type of problem, in this case regulating taxation, customs and tax collection. Likewise, the KPKPU Law are *lex specialis* of the Civil Code. So that the entire process of resolving suspension of payment cases must be subject to the KPKPU Law as special legal regulations that have a higher standing than general legal regulations based on the principle *lex specialis derogat legi generalis*.[7] In reality, the application of legal rules often encounters several problems, including: the existence of legal vacuums (*leemten in het recht*), the existence of conflicts between legal norms (legal antinomies), and the existence of unclear norms (*vage normen*).[8]

Based on the problem description above, the researcher intends to conduct an analysis regarding the application of tax sanctions in cases of suspension of payment and bankruptcy, particularly regarding the application of administrative sanctions in the form of interest and fines. The KPKPU Law states that interest and fines cannot be calculated after the debtor is declared in suspension of payment or bankrupt status, while the tax and customs laws state that fines will continue to be calculated until the bill is paid in full. The problem identification used by the researcher is: how are administrative sanctions applied to bankrupt debtors? What is the mechanism for applying repressive sanctions to bankrupt debtors?

RESEARCH METHOD

This research employs a normative-empirical (applied) approach, examining the application of positive law (statutory regulations) and applicable legal doctrines in the areas of bankruptcy, taxation, and customs law. This normative approach is combined with an empirical approach through analysis of written documents and observations

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[7] Diana Ayu Mardiani, Muhammad Eko Prasetiyo, and Nyulistiowati Suryanti, "Pilihan Domisili Yurisdiksi dalam Permohonan PKPU Berdasarkan Asas Lex Specialis Derogat Legi Generalis," *Doktrin:Jurnal Dunia Ilmu Hukum dan Politik* 2, no. 1 (2024): 102–16.
[8] Shinta Agustina, "Keywords: Lex Specialis Derogat Legi Generali, Criminal Justice System. Abstrak," *Masalah-Masalah Hukum* 44, no. 4 (2015): 503–10.

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that reflect the facts of specific legal events occurring in society.[9] The aim of this research is to assess whether the results of the application of law in legal events *in concreto* are in accordance with the provisions stipulated in statutory regulations. In other words, the aim of this research is to identify whether the laws and regulations have been implemented appropriately so that the parties involved can achieve their goals or not.[10] This combined approach allows for a more comprehensive understanding of how legal norms are applied in different social realities.[11] The research specifications used in this research are analytical descriptive, namely analysing the research object by describing the situation and problems in order to obtain a general picture of the situation and conditions, by presenting the data and information obtained as they are, which are then analysed to produce several conclusions.

DISCUSSION

Fines Sanctions According to Tax Law

Tax debts arise when there are underlying provisions or regulations and the tax target has been fulfilled or has occurred (*taatbestand*), which includes certain conditions, events, and/or certain actions.[12] In general, tax debts can arise due to laws and the government can force payment of tax debts to taxpayers.[13] Tax debts have several characteristics as follows: can be enforced, can appoint other people to help pay it, can be collected immediately, has priority rights over other debts (preferential rights), can be prevented or taken hostage against the taxpayer.[14] The right of priority is emphasized in Article 21 paragraph (1) of the KUP Law which states "The State has the right of priority for tax debts on goods belonging to the taxpayer" and Article 21 paragraph (2) of the KUP Law states "the provisions regarding the right of priority as referred to in paragraph (1) include the principal tax, administrative sanctions in the form of interest, fines, increases and tax collection costs".

Fines are imposed on taxpayers for violations of their reporting obligations. These fines are imposed as a form of accountability for tax law provisions as stipulated by law, which must be adhered to and complied with. Essentially, tax sanctions are implemented as a preventative measure against potential violations committed by

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[9] Wiwit Juliana Sari, Yeti Kurniati, and Eko Susanto Tejo, "Eksistensi Perkawinan Adat di Tengah Pengaruh Hukum Nasional : Studi Perbandingan di Beberapa Daerah Indonesia," *Jurnal Ilmu Hukum, Humaniora dan Politik (JIHHP)* 5, no. 2 (2024): 1257–66.
[10] Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif dan R&D* (Jakarta: Alfabeta, 2012).
[11] Reza Banakar, "Norms and Normativity in Socio-Legal Research," in *Normativity in Legal Sociology: Methodological Reflections on Law and Regulation in Late Modernity* (Cham: Springer International Publishing, 2015), 215–39, https://doi.org/10.1007/978-3-319-09650-6_11.
[12] Dwi Ratna Kartikawati, *Hukum Pajak* (Tasikmalaya: CV. ELVARETTA BUANA, 2021).
[13] Khalimi and Darma Prawira, *Hukum Pajak dan Kepabeanan di Indonesia* (Jakarta: Penerbit Kencana, 2022).
[14] *Ibid.*

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taxpayers in complying with tax laws. When taxpayers fail to pay their outstanding taxes, officials from the Directorate General of Taxes will collect the tax. A series of tax collection actions carried out by bailiffs include issuing warning letters, direct and simultaneous collection, issuing warrants, preventing taxpayers from leaving the country, or taking them hostage, and selling confiscated goods.[15]

In relation to the case example above, PT Big Golden Bell as a taxpayer has been in suspension of payment status since November 13, 2023. Furthermore, the Directorate General of Taxes, represented by KPP Madya Bandung, issued an immediate and simultaneous collection letter to PT Big Golden Bell in accordance with the provisions of Article 20 paragraph (2) letter e of the Third Amendment to the KUP Law, which states "excepted from the provisions as referred to in paragraph (1), immediate and simultaneous collection is carried out if: there is a confiscation of the taxpayer's goods by a third party or there are signs of bankruptcy" and Article 6 paragraph (1) letter e of the Amendment to the PPSP Law which states "tax bailiffs carry out immediate and simultaneous collection without waiting for the payment due date based on an immediate and simultaneous collection order issued by an official if there is a confiscation of the taxpayer's goods by a third party or there are signs of bankruptcy". What is meant by there are signs is a strong indication that the taxpayer will experience bankruptcy, so that all the taxpayer's assets will be in public confiscation.

Because the taxpayer (debtor) did not pay off all of his tax debt within 21 days after the issuance of the immediate and simultaneous collection letter, KPP Madya Bandung followed up by issuing a letter of coercion. Article 8 paragraph (1) of the PPSP Law states that "a letter of coercion is issued if: (a). the taxpayer does not pay the tax debt and a warning letter or a reminder letter or other similar letter has been issued to him; (b). the taxpayer has been charged immediately and simultaneously; or (c). the taxpayer does not fulfill the provisions as stated in the decision to approve instalments or postpone tax payments". If a taxpayer is declared bankrupt, a coercive letter is submitted to the Supervisory Judge or the receiver, and if the taxpayer is dissolved or in the process of liquidation, a coercive letter is submitted to the person or body charged with carrying out the settlement, or the liquidator.

When the taxpayer is in suspension of payment situation, the verified tax debt value recorded is Rp. 6.775.214.570. In the composition plan dated November 24, 2024, the debtor proposed a 24-month grace period (months 1 to 24) and the tax debt will be paid in installments over a 24-month period (months 25 to 48).[16] Regarding the

[15] Direktorat Jenderal Pajak, "UU Pailit, Pajak, dan Gugatan Actio Pauliana," 2022, https://pajak.go.id/id/artikel/uu-pailit-pajak-dan-gugatan-actio-pauliana.
[16] Eko Susanto Tejo, "Rekaman Suara Persidangan," Jakarta, November 2024.

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composition plan, KPP Madya Bandung stated that the debtor's tax debt collection is non-negotiable. If the taxpayer objects to the tax bill, KPP Madya Bandung invites the taxpayer to take legal action through the Tax Court.

When the taxpayer was in a state of bankruptcy from December 9, 2024 until now, KPP Madya Bandung has not yet carried out coercive measures or carried out confiscation because the debtor is in bankrupt status and is in the process of settling the bankruptcy estate by the receiver team. If the tax debt has not been paid in full, then KPP Madya Bandung can still carry out collection from the taxpayer up to the taxpayer responsible for PT Big Golden Bell, in this case it can be done against the directors, board of commissioners, people who clearly have the authority to determine policies and/or make decisions to carry out business activities in a limited company, and shareholders.

The procedures for collecting tax debts are also regulated in Article 10 paragraph (2) of the Minister of Finance Regulation Number 61 of 2023 concerning Procedures for Implementing Tax Collection on the Amount of Tax Still to be Paid (PMK 61/2023) which states "in the event that the assets of a taxpayer declared bankrupt are insufficient to pay off tax debts, tax collection actions are carried out against the taxpayer as referred to in Article 9 paragraph (1) letter b" and Article 10 paragraph (3) of PMK 61/2023 which states "after the taxpayer is dissolved, liquidated, or its legal entity status ends as referred to in paragraph (1) letter b, tax collection actions can still be carried out against the taxpayer".

From the discussion above, KPP Madya Bandung remains authorized to collect tax debts from PT Big Golden Bell in accordance with the applicable provisions in the taxation sector even though the taxpayer is in a state of bankruptcy. Apart from that, KPP Madya Bandung also has the authority to collect taxes from taxpayers, in this case Park Choul Young as director of PT Big Golden Bell. Taxpayers or those responsible for paying taxes can even be subject to criminal tax sanctions. In short, KPP Madya Bandung will continue to collect tax debts from PT Big Golden Bell in accordance with the applicable mechanisms under tax law and the PPSP Law. In 2019, the Directorate General of Taxes pursued personal liability for a director, even though the company's bankruptcy process had been completed but the tax debt had not been paid off against the former management of PT United Coal Indonesia.[17]

[17] Hukumonline, "Pertanggungjawaban Pribadi Direksi dan Kurator Atas Utang Pajak Perusahaan Pailit," 2022, http://www.hukumonline.com/stories/article/lt62cec83e796b0/pertanggungjawaban-pribadi-direksi-dan-kurator-atas-utang-pajak-perusahaan-pailit/.

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Fines Under Customs Law

One of the facilities provided by the Directorate General of Customs and Excise to entrepreneurs is a bonded warehouse (TPB), namely a place, building, location, or area that meets certain criteria or requirements for storing, processing, displaying, or providing goods for sale by obtaining a suspension of import duty.[18] One form of TPB is a bonded zone. Bonded zone facilities are customs facilities provided to industrial companies focused on the production or sale of products intended for export or sale to other bonded zones.

When a bonded warehouse entrepreneur is declared bankrupt by the Commercial Court, the Directorate General of Customs and Excise carries out customs activities by revoking the permit to establish a bonded warehouse and the permit to organize or operate at a bonded warehouse in accordance with the provisions of Article 46 paragraph (4) letter b of the Customs Law which states "the bonded storage facility permit is revoked if the bonded storage facility organizer goes bankrupt" and also refers to Article 45 letter b of PP 32/2009 which states "the determination of a bonded storage facility and the permit to organize or operate a bonded storage facility shall be revoked if the organizer and/or entrepreneur of the bonded storage facility is declared bankrupt". Continued by carrying out a customs audit process or simple inspection (*stock opname*) to calculate the customs value of ex-import goods (deferred import duty) and local VAT that is still owed by state levies (in the form of import duty and VAT) in order to secure the state's financial rights, and then security measures are taken in the form of a seal so that there are no changes/reductions in the number of goods after a simple inspection has been carried out. Customs activities have a very crucial role for a country's economy, both in terms of state revenue and in maintaining sovereignty, as well as the controlling and security aspects of the entry and exit of goods in a country.

After the bonded warehouse permit is revoked, KPPBC Tipe Madya Pabean A Bandung issues a Customs Determination Letter (SPP) and the bonded warehouse entrepreneur must pay all taxes owed based on the provisions of Article 47 of the Customs Law which states "if the bonded warehouse permit has been revoked as referred to in Article 46, the entrepreneur within thirty days of the revocation must: a. pay all import duties owed; b. re-export the goods still in the bonded warehouse; or, c. move the goods still in the bonded warehouse to another bonded warehouse" and refers to the provisions of Article 45 paragraph (3) of the Regulation of the Minister of Finance Number 65/PMK.04/2021 concerning Amendments to the Regulation of the Minister of Finance Number 131/PMK.04/2018 concerning Bonded Zones (PMK 65/2021) which

[18] Direktorat Jenderal Bea dan Cukai, "Tempat Penimbunan Berikat," Jakarta, 2025, https://www.beacukai.go.id/fasilitas-tempat-penimbunan-berikat.

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states “in the event that a permit has been revoked as referred to in paragraph (2), the bonded zone organizer, bonded zone entrepreneur, and/or entrepreneur in the bonded zone, within a maximum period of 30 days from the date of revocation of the permit, must pay all import duties and/or excise, and import taxes owed, which include debts originating from audit findings and/or debts incurred due to the release of goods from the bonded zone to another place in the customs area”.

If the tax debt is not paid off by the bonded place entrepreneur within the specified time period, then an interest penalty will apply to the debt of 2% per month of the total debt value and can be applied for a maximum of 24 months as stipulated in Article 38 paragraph (1) of the Customs Law. In addition to interest sanctions, the Directorate General of Customs and Excise can also take coercive measures against bonded goods entrepreneurs as regulated in the Customs Law and the PPSP Law.

In relation to the above case example and based on the bankruptcy decision number 305/Pdt.Sus-PKPU/2023/PN Niaga Jkt.Pst dated March 13, 2024, KPPBC Tipe Madya Pabean A Bandung, revoked the bonded storage facility of PT Big Golden Bell through a decree of the Minister of Finance, conducted a simple inspection and calculation (inventory taking), and installed a seal to prevent changes in the number of goods that had been inspected. The debtor had submitted a written objection to the decision letter revoking the bonded zone permit of PT Big Golden Bell (in bankruptcy) to the Director General of Customs and Excise. Ultimately, the objection letter was rejected by the Directorate General of Customs and Excise dated May 2, 2024 through a decision letter rejecting the revocation of the objection to the revocation of the bonded zone permit of PT Big Golden Bell.

When the debtor’s bankruptcy status was canceled by the Supreme Court through cassation decision number 751 K/Pdt.Sus-Pailit/2024, the debtor again submitted an objection to the revocation of the bonded storage permit and requested that the revocation letter be canceled. Regarding this objection, KPPBC Tipe Madya Pabean A Bandung stated its position based on Article 33 paragraph (2) of Law Number 30 of 2014 concerning Government Administration (Government Administration Law) which states that “decisions and/or actions determined and/or carried out by authorized government agencies and/or officials remain valid until the decision ends or is revoked or the action is stopped by the authorized government agencies and/or officials”. So it can be interpreted that even though the debtor’s bankruptcy status has been canceled by the Supreme Court and the debtor is back in the status of “in suspension of payment”, all legal steps that have been taken by KPPBC Tipe Madya Pabean A Bandung against the debtor while in bankruptcy status are still valid and binding. Conditions like this can be used as a precedent for similar cases that occur in the future.

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In July to August 2025, researchers discovered that some of the seals installed by KPPBC Tipe Madya Pabean A Bandung had been opened without permission and the number of items inside was suspected to have changed. This act can be subject to criminal sanctions and/or fines in accordance with the provisions of Article 105 letter b of the Customs Law which states "anyone who without permission opens, removes or damages locks, seals or security marks that have been installed by Customs and Excise Officials, shall be punished with imprisonment of up to two years and/or a maximum fine of IDR 150,000,000". If there is loss or damage to goods in the area that cannot be accounted for by the bonded storage area entrepreneur (bankrupt debtor) and/or the receiver team (in this case as the person responsible for general confiscation), then the perpetrator will be subject to additional sanctions in the form of administrative sanctions of 100% of the import duty owed, as regulated in Article 45 paragraph (4) of the Customs Law.

From the above discussion and from the perspective of the Customs Law, tax debts, interest sanctions and/or fines (administrative), as well as the potential for customs criminal sanctions can arise after the bonded warehouse entrepreneur is declared bankrupt and the bonded warehouse permit is revoked by the Ministry of Finance. These tax debts are mandatory to be paid, and can even be collected immediately and in one go, with an interest penalty of 2% per month, which is mandatory, and non-negotiable even if the bonded warehouse entrepreneur is in a state of bankruptcy.

In the practice of bankruptcy cases, if the proceeds from the sale of the bankrupt's assets are not sufficient to pay off the debtor's debt to the Directorate General of Customs and Excise or if there are still bills in the form of interest sanctions and/or fines that have not been paid by the debtor, then the Directorate General of Customs and Excise will continue to collect by submitting a *renvoi prosedur* or taking coercive measures against the bonded storage place entrepreneur (bankrupt debtor) based on the PPSP Law. However, the *renvoi prosedur* was always rejected by the Commercial Court because in the process of examining the *renvoi prosedur*, the Commercial Court is guided by the provisions in the KPKPU Law, specifically Article 134 paragraph (1).

If there are still outstanding tax debts (including interest and fines) and the renvoi procedure is rejected by the Commercial Court, the Directorate General of Customs and Excise can take further legal action by actively collecting debts from bonded warehouse operators under the PPSP Law through joint collection between the Directorate General of Customs and Excise and the Directorate General of Taxes. Joint collection program is a synergistic effort between the Directorate General of Customs and Excise and the Directorate General of Taxes, which aims to optimize state revenue through joint

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collection activities for tax debts and customs debts by combining the expertise and resources of both institutions.[19] KPPBC Tipe Madya Pabean A Bandung can still collect tax debts from PT Big Glden Bell after the bankruptcy status has been revoked by the Commercial Court and can be collected from the individual taxpayer. Because in essence, the State can force people to pay tax debts if taxpayers have tax debts to the State.

Regulation of Interest and Fine Sanctions According to the KPKPU Law

In general, interest and fines on debt can arise from laws or agreements. Interest and fines arising from agreements refer to Article 1765 of the Civil Code, which states, "for loans of money or goods that are used up, it is permissible to stipulate that interest will be paid on the loan". Meanwhile, interest and fines arising from laws refer to provisions contained in the law, for example, interest on tax debts and fines in the tax sector.

With the bankruptcy decision, the debtor loses control and loses rights (*beheer en beschiking*) on his assets and can no longer carry out business activities. Therefore, interest and/or fines on the debtor's debt cannot be calculated and charged to the debtor as stipulated in Article 273 paragraph (1) and Article 134 paragraph (1) of the KPKPU Law. Based on these provisions, interest and/or fines on the debtor's debt can only be calculated until the debtor is declared in suspension of payment status or until the debtor is declared bankrupt by the Commercial Court.

The inability to collect interest and fines from debtors is often deliberately used by debtors who do not have good intentions so that the debtor can remain in "stay" condition, cannot be forced to pay the debt, and so that his assets cannot be executed by the creditors. Conditions like this are often considered commercially advantageous for the debtor, compared to having to pay his debts with interest and fines. These provisions apply to all creditors, including preferred creditors, separatist creditors, and concurrent creditors.

Coercive Corporal Punishment Against Debtors

The KPKPU Law accommodate the detention of bankrupt debtors who do not fulfill the obligations stipulated by law as stated in Article 93 paragraph (1) Article 93 paragraph (1) "the court with a decision declaring bankruptcy or at any time thereafter, upon the recommendation of the Supervisory Judge, the request of the receiver, or upon the request of one or more creditors and after hearing the supervisory judge, may order

[19] Direktorat Jenderal Pajak, "DJP Malang Gandeng Bea Cukai Jatim Lakukan Joint Collection," 2022, https://pajak.go.id/id/berita/djp-malang-gandeng-bea-cukai-jatim-lakukan-joint-collection.

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that the bankrupt debtor be detained, either in a state detention center or in his own home, under the supervision of a prosecutor appointed by the supervisory judge" and Article 95 states "a request to detain a bankrupt debtor must be granted, if the request is based on the reason that the bankrupt debtor intentionally does not fulfill the obligations as referred to in Article 98, Article 110, or Article 121 paragraph (1) and paragraph (2)".

The legal basis for forced corporal punishment is also regulated in Supreme Court Regulation Number 1 of 2000 concerning the Institution of Forced Corporal Imprisonment (Perma Number 1 of 2000). Article 1 letter a of PermaNumber 1 of 2000 states that "corporal coercion is an indirect coercive measure by placing a debtor with good intentions into a state detention center determined by the court, to force the person concerned to fulfill his obligations". There are 2 things that need to be noted in Perma Number 1 of 2000, namely: 1. *Gijzeling* as a coercive tool (execution) which is psychologically applied to debtors to pay off the principal debt; 2. *Gijzeling* is an indirect coercive measure by putting a "delinquent debtor" (a debtor who does not act in good faith) into a state detention center determined by the Court. A delinquent debtor is defined as a debt guarantor, which can be broadened to include a taxpayer who is capable of paying but unwilling to pay their debt. G*ijzeling* can only be applied to debtors who are not acting in good faith and have debts of at least IDR 1 billion.

Coercive agency or *gijzeling* also known in tax law (in the PPSP Law and its amendments). It's just that the term used is "hostage taking" as written in Article 33 paragraph (1) of the PPSP Law "hostage taking can only be carried out by taxpayers who have tax debts of at least IDR 100,000,000 and whose good faith in paying off the tax debt is in doubt". The explanation of Article 33 paragraph (1) of the PPSP Law explains that hostage-taking is an effort to collect taxes which takes the form of temporarily restricting the freedom of the taxpayer by placing him in a certain place. So that hostage-taking is not carried out arbitrarily and does not conflict with the common sense of justice, certain conditions are given, both quantitative conditions, namely having to meet a certain amount of tax debt, and qualitative conditions, namely doubts about the taxpayer's good faith in paying off the tax debt, and that tax collection has been carried out up to the point of a coercive letter. Thus, officials who obtain accurate data and/or information can use it as a basis for consideration when submitting a request for permission to take hostages. Hostage-taking is only carried out very selectively, with great caution, and as a last resort.

In the practice of bankruptcy and suspension of payment cases, the imposition of a *gijzeling* on bankrupt debtors has never occurred. The KPKPU Law themselves do not regulate the mechanism for detention by prosecutors appointed by the Supervisory Judge in detail. Therefore, the implementation and enforcement of the institution of

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physical punishment stipulated in the KPKPU Law cannot be implemented effectively, due to weaknesses and the absence of implementing regulations to guide judges in deciding whether to grant a request for detention against a debtor. Consequently, judges appear reluctant to apply the institution of detention against debtors.[20]

Although *gijzeling* cannot yet be implemented, "delinquent debtors" can be charged under Articles 511 and 512 of the Criminal Code. The crimes referred to in Articles 511 and 512 of the Criminal Code also apply to corporations, as stipulated in Article 513 of the Criminal Code, which states that "the crimes referred to in Articles 511 and 512 may also be committed by corporations". Article 45 paragraph (2) of the Criminal Code stipulates that "corporation is a legal entity in the form of a limited liability company, foundation, cooperative, state-owned enterprise, regional-owned enterprise, or something similar to that, as well as associations, whether incorporated or not incorporated, business entities in the form of a firm, limited partnership, or something similar to that in accordance with the provisions of statutory regulations".

Against the managers (directors) or commissioners of bankrupt companies who do not act in good faith, criminal sanctions can be imposed as per Article 517 of the Criminal Code which states "managers or commissioners of corporations declared bankrupt or who are ordered to carry out the liquidation of the company based on a court decision fraudulently reduce the rights of creditors in the manner referred to in Article 512, shall be punished with a maximum imprisonment of 7 years or a maximum fine of category VI." The ensnarement of this criminal sanction is in accordance with the principle of criminal law as a last resort in law enforcement (*ultimum remedium*).

Conflicts between KUP Law, Customs Law, PPSP Law, and KPKPU Law

Based on the discussion above, there is a conflict between legal norms (legal antinomy) between the KUP Law, the Customs Law, and the PPSP Law with the KPKPU Law. Antinomy is a condition that contradicts each other (is a conflict with each other) but cannot be separated because both need each other. This indicates that, in the material content of laws and regulations as a form of legal norms, it is always impossible to avoid the existence of antinomy or conflict.[21] In line with Fockema's thinking, "antinomy is defined as two or more rules that contradict each other, so that the solution must be sought through interpretation".[22] Legal antinomy is not only manifested in the conflict

[20] Diana Rahmawati, "Penerapan Penahanan (Paksa Badan) Terhadap Debitor Pailit Menurut UU No 37 Tahun 2004 Tentang Kepailitan dan PKPU," *Lambung Mangkurat Law Journal* 2, no. 1 (March 2017): 75–88, https://doi.org/10.32801/abc.v2i1.42.
[21] Zainal Arifin Mochtar and Eddy O. S. Hiariej, *Dasar-Dasar Ilmu Hukum: Memahami Kaidah, Teori, Asas dan Filsafat Hukum* (Depok: RajaGrafindo Persada, 2021).
[22] Endrik Safudin, *Harmonisasi Hukum dalam Antinomi Hukum Telaah Kritis Atas Penerapaannya Oleh Mahkamah Agung* (Yogyakarta: Q-Media, 2021).

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between two or more rules, but can also be in the form of a conflict of values of a law that is intended to be achieved.

The regulatory principles contained in the KUP Law, the Customs Law, and the PPSP Law include interest sanctions, fines, coercive and non-negotiable sanctions, and criminal sanctions. These sanctions remain in effect even if the debtor is in a state of suspension of payment or bankruptcy. In fact, most tax debts and these sanctions only arise after the debtor is declared bankrupt, so the researcher believes that the legislators accommodated these sanctions for taxpayers declared bankrupt. The researcher analysis several conflicts as follows:

1. First confict, when the taxpayer (debtor) receives a letter of immediate and simultaneous collection from KPPBC Tipe Madya Pabean A Bandung, then during the suspension of payment period the debtor cannot be forced to pay the debt and all execution actions that have been initiated to obtain debt repayment must be suspended as stipulated in Article 242 paragraph (1) of the KPKPU Law and the debtor without the approval of the administrator cannot carry out management or ownership actions over all or part of his assets as stipulated in Article 240 paragraph (1) of the KPKPU Law. However, if within 21 days the debtor does not pay off all his tax debt, then KPPBC Tipe Madya Pabean A Bandung will issue a letter of compulsion;
2. Second confict, when the debtor who received the bonded storage facility is declared bankrupt, KPPBC Tipe Madya Pabean A Bandung revokes the bonded storage permit and conducts an audit and stocktaking, followed by issuing a bill for tax debts that must be immediately paid by the debtor. When the debtor is declared bankrupt, the debtor has lost his right to control and manage his assets. If the debtor does not immediately pay off his tax debt, the provisions of administrative sanctions under the Customs Law apply and KPPBC Tipe Madya Pabean A Bandung can carry out forced collection against the debtor. Even 100% administrative sanctions, criminal sanctions can be applied, and can take *gijzeling*, hostage-taking, and/or closure measures against debtors if there is loss or damage to imported goods that cannot be accounted for;
3. Third confict, if the tax debt remains unpaid by the time the administrative sanctions are imposed, the Directorate General of Taxes and the Directorate General of Customs and Excise will conduct a joint collection to collect the tax debt even if the debtor is no longer in bankruptcy. This often occurs in tax debt collection practices in cases of suspension of payment and bankruptcy;
4. Potential conflict, in the composition plan dated November 24, 2024, approved by the creditors (separatist creditors and concurrent creditors) so that homologation

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is achieved, the composition plan should bind all creditors who have the right to collect. However, if the mechanism for paying tax debts to KPP Madya Bandung and/or to KPPBC Tipe Madya Pabean A Bandung as stated in the composition plan does not comply with the applicable provisions (for example: there is a grace period and instalments), then KPP Madya Bandung and KPPBC Tipe Madya Pabean A Bandung will continue to collect tax debts based on the provisions of the applicable laws and regulations in the field of taxation and customs.

One solution that can be used to minimize the antinomy between legal certainty, justice, and utility is legal reasoning. Legal reasoning is the application of logic or a straight line of thinking to understand propositions, principles, rules, and legal facts in a case.[23] If these conflicting norms actually form a single, simultaneous, dynamic legal rule that fulfils the ideals of law, it certainly won't be a problem. Furthermore, as long as the conflict between these legal rules doesn't harm the fulfilment of citizen's constitutional rights, this is understandable, as in legal theory; there are contradictory elements (antinomies) that must be accommodated proportionally in the law to avoid bias toward one party, thus giving rise to tensions in legal practice.[24]

The researcher argues that the application of the KUP Law, the Customs Law, the PPSP Law, and the KPKPU Law, which are specific in nature, have the same high hierarchy and are equally applicable specifically. In the practice of suspension of payment and bankruptcy cases, each party is more guided by the law that is more closely related. KPP Madya Bandung is more guided by the KUP Law and the PPSP Law, KPPBC Tipe Madya Pabean A Bandung is more guided by the Customs Law and the PPSP Law, the debtor and the receiver team are more guided by the KPKPU Law.

This kind of thing sometimes creates tensions in legal practice. However, these conflicting norms/contradictions between laws should be interpreted as positive by the parties. The KUP Law, the Customs Law, and the PPSP Law are the legal basis for collecting tax debts (including interest and fines) from bankrupt debtors. This is because tax debts are inherently enforceable, can be collected immediately, and can be assigned to others to co-pay.

CONCLUSIONS

From the research and discussion conducted by the researcher, the following conclusions can be drawn: administrative sanctions against tax debts in the form of

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[23] I Wayan Budha Yasa, "Penalaran Hukum dan Konsep Hukum H.L.A. Hart Sebagai Solusi untuk Meredakan Gejala Antinomi dalam Penegakan Hukum di Indonesia," *Jurnal Komunikasi Hukum (JKH)* 9, no. 1 (January 2023): 766–81, https://doi.org/10.23887/jkh.v9i1.57115.
[24] Zainal Arifin Mochtar, *Antinomi dalam Peraturan Perundang-undangan di Indonesia*, 1, no. 3 (2015).

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interest, fines, and tax collection fees can still be applied to taxpayers (debtors) even though they are in a state of bankruptcy and can be applied to the personal assets of the taxpayer, and coercive measures can be taken. Repressive sanctions (criminal sanctions, detention, or hostage-taking) against bankrupt debtors can still be carried out by Officials of the Directorate General of Taxes or the Directorate General of Customs and Excise as a last resort based on the PPSP Law.

Based on the research conducted, the researcher has several suggestions as follows: first, the need for harmonization of laws (review and alignment of laws) to prevent overlapping regulations and authorities. Second, there is a need for regulations under the law that can technically regulate the implementation of corporal punishment or detention to avoid a legal vacuum.

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