

ISBN : 978-602-0860-11-4

PROCEEDING

INTERNATIONAL CONFERENCE 1ST SHIELD 2016

Bandar Lampung, November 2-3, 2016



Post Graduate Program
University of Lampung



Institute of Research
and Community Service

 **BANK BRI**
Melayani Dengan Setulus Hati

Proceeding of International Conference 1st SHIELD 2016

Bandar Lampung, November 2-3, 2016

ISBN: 978-602-0860-11-4

Publisher:

Post Graduate Program, University of Lampung
Institute of Research and Community Service

WELCOME ADDRESS**Report by the Organizing Committee****Dear distinguished guests and participant**

In this globalization era, advancement in science and technology has led to remarkable gains in life. However, despite the remarkable gains, many countries particularly Asian countries face inequalities and uneven progress. Even worse, these countries are facing many problems such as poverty, terrorism, drug abuse, and other social issues. These problems are complex and multidimensional. We should give a real contribution to solving these problems. Because the problems are multidimensional, we need people from cross-disciplinary interests to work hand in hand with strong commitment, not only to face, but also to change these problems into opportunities.

Therefore, the Postgraduate Program in collaboration with Institute of Research and Community Service of University of Lampung provides a place for academicians, practitioners, policy makers, researchers and professionals from multi-disciplines related to Social Sciences and Humanities, Economics, Education, Law, and Sustainable Development to meet and interact with members inside and outside their own particular disciplines. All participants are challenged to give their real contribution to helping solve the real-world problems.

At this first international conference, 93 research articles were submitted from 4 countries. The authors are academicians, practitioners, policy makers, researchers and professionals. This conference aims to share information and discuss recent developments and innovations arising from research in a wide range of disciplines. Through this conference, it is expected that the research articles can be documented and communicated throughout the countries.

I would like to thank you for your participation and looking forward to having productive discussion among participants.

Sincerely yours,

Professor Muhammad Akib

**Remarks by the Director of the
Graduate Program of University
of Lampung**

Honorable keynote speakers, committees, participants, ladies and gentlemen.

It gives me a great pleasure to welcome all of you and chair the Opening Ceremony this morning to the “to the First SHIELD International Seminar”, jointly organized by Postgraduate Program and Institute for Research and Public Services, the University of Lampung. Also, we’d like to say how grateful we are to all the keynote speakers who have accepted our invitation. Also, we are delighted to have all of participants here to participate and share in the First SHIELD International Seminar.

Along with an increase in the activity of national development and the dynamic development of the international world due to globalization, then it will always be followed by the emergence of complex social, humanity, economics, education, law and sustainable development issues. Therefore, the University of Lampung (which has a vision to be the best 10 among public universities nationwide, a mission to be a world class research university, and as the third largest state university outside Java Island) feels compelled to draw up concepts and provide solutions to the various issues.

In relation to the issues, practically the University of Lampung through its Postgraduate Program in collaboration with its Institute for Research and Public Services organizes the first International Seminar with such themes as social, humanities, economics, education, law and sustainable development. This international seminar presents several speakers who come from leading universities in the world. These activities are held in Lampung, which is one area that has a nationally important role, because it is the gateway of Sumatra Island and is strategically located for the development progress.

As the arena for discussion, communication, and enrichment of the knowledge of participants; this seminar is expected to provide a significant contribution to capturing opportunities from the development of science today. This seminar is intended to function as a forum among the participants from various walks of life for dissemination of research results in the fields of social, humanities, education, economics, law and sustainable development. The participants include practitioners, researchers, academics, students, industrialists and science observers from various organizations such as industries, state-owned enterprises, research institutions, government agencies, and public and private universities.

To expand the horizons of thinking for the participants and to share the experiences of international research from world experts, this international seminar invites four keynote speakers from four countries who will present their main papers. These speakers are:

1. Prof. Ryohei Kada from Shijyonawate Gakuen University, Japan
2. Prof. Michael Reed from the University of Kentucky, USA
3. Prof. Dr. M. Reevanny Bustami from Universiti Sains Malaysia (USM), Malaysia.
4. Dr. Herlambang P. from Universitas Airlangga, Indonesia.

We are honored to have you all the speakers here in this seminar, and thank you for being our keynote speakers in this seminar.

Finally, I do hope that this seminar can run well and all participants can participate actively.

Sincerely yours,
Rector,

Prof. Dr. Hasriadi Mat Akin

ORGANIZING COMMITTEE

The composition of the Advisory Board:

Prof. Dr. Ir. Hasriadi Mat Akin, M.P. (Rektor Unila)

Prof. Dr. Bujang Rahman, M.Si. (Wakil Rektor I Unila)

Prof. Dr. Ir. M. Kamal, M.Sc. (Wakil Rektor II Unila)

Prof. Dr. Sudjarwo, M.S. (Direktur Pascasarjana Unila)

Warsono, Ph.D. (Ketua Lembaga Penelitian dan Pengabdian Kepada Masyarakat Unila)

Streering Group:

Chairman : Prof. Dr. Muhammad Akib, S.H., M.Hum.

Secretary : Rara Diantari, S.Pi., M.Sc.

Treasurer : Dr. Ir. Slamet Budi Yuwono, M.S.
Berta Putri S.Si., M.Si.

Seminar Session

Coordinator : Dr. Melya Riniarti

Member : Yuliana Saleh, S.P., M.S.
Purba Sanjaya, S.P., M.S.
Tiara. A.R.Hernanda, S.P., M.Si.

Section Secretariat and Proceedings

Coordinator : Aristoteles, M.Si.

Member : Siti Khoiriah, S.H., M.H.
Acib Saputra, S.Pi.
Septi Malida, S.Pi.
Rifaldhi Ardhi Wiyanto
Eria Ayu Ningtias
Cinda Marsya D
Zainnur

Equipment Committee

Coordinator : Sulaemi, S.H.

Consumption Committee

Coordinator : Giarti
Nurmiyati

Reviewer

Coordinator : Dr. Zainal Abidin
Member : Rudy, S.H., LL.M., LL.D
Dr. Yuliansyah
Dr. Vivit Bertoven
Dr. Sukirlan
Dr. Samsul Bakri
Dr. Hasan Hariri
Rudi Natamihardja, SH.,D.E.A



TABLE OF CONTENT

Tittle and Writer	Page
PROTECTION OF HERITAGE BUILDINGS IN THE SEMARANG CITY AS NATIONAL CULTURAL HERITAGE THROUGH REVIEWS VARIOUS INSTRUMENTS CONSTITUTION Aristo Evandy A.Barlian	1-12
LEGAL PROTECTION OF THE VILLAGE OF NATURAL RESOURCES FORESTS Agus Surono	13-30
DISPARITIES ON THE CONDEMNATION Ade Kurniawan Muharram, Rini Fatonah	31-41
DEATH PENALTY ON INDONESIA CRIMINAL LAW Eddy Rifai , H.S. Tisnanta,Tomy Pasca Rifai	42-55
ISLAMIC OBLIGATION (SUKUK), BUDGETING ALTERNATIVE FOR NATIONAL DEVELOPMENT Nunung Rodliyah, Ade Oktariatas KY	56-65
AN EFFORTS TO CONTROL CORRUPTION THROUGH THE CONVENTION OF UNITED NATION CONVENTION AGAINST CORRUPTION (UNCAC) AND ITS IMPLEMENTATION IN INDONESIA Yunita Maya Putri	66-74
LABOUR WAGES STEVEDORING; ABANDONMENT OF LABOUR PROTECTION Satria Prayoga, Arief Triwibowo	75-85
THE IMPLEMENTATION OF THE PRINCIPLE OF PUBLIC INFORMATION FREEDOM ON CRIMINAL CASES IN THE COURT Maroni and Nenny Dwi Ariani	86-101

DUE DILIGENT, TOLLS TO CORPORATE RESPONSIBILITY ON HUMAN RIGHT Rehulina Tarigan	243-254
THE LEGAL STATUS OF PROCEEDING LAND RIGHT THAT IS OBTAINED BY AUCTION BASED ON COUNTRY'S PRECEDENCE RIGHT Kurnia Martini Dwi Putri	255-264
THE URGENCY OF SANCTIONS FOR VIOLATORS OF CORPORATE SOCIAL RESPONSIBILITY (CSR) FOR IMPROVING OF THE WELFARE OF SOCIETY Pujiyono, Jamal Wiwoho	265-282
FORUM NON-CONVENIENCE: CAN INTERNATIONAL ORGANIZATION BE SUED IN INDONESIAN COURT OF LAW? Gunawan Widjaja	283-291
DIGITAL SHARING CASES AND JAPANESE COPYRIGHT ENFORCEMENT Bayu Sujadmiko, Nobuhide Otomo, Ahmad Sopyan	292-308
JURIDICAL REVIEW OF INTERNATIONAL AND TRANSNATIONAL CRIME BASED ON INTERNATIONAL LAW Desia Rakhma Banjarani, Desy Churul Aini	309-328
THE DECONSTRUCTION OF THE LAW ON THE VOTE GAP LIMITATION OF THE PARLIAMENTARY THRESHOLD IN THE PETITION FOR CANCELLATION IN THE DETERMINATION OF VOTE COUNTS IN CONSTITUTIONAL COURT Anisa Cahaya Pratiwi, Darwin Yohanes Manalu, Dedi Putra, I Ketut Dharma Putra Yoga	329-341
IUU FISHING IN INDONESIA, ARE ASEAN MEMBER STATES RESPONSIBLE FOR? Ema Septaria	342-352
INTERNATIONAL SALE AND PURCHASE AGREEMENTS ACCORDING TO CISG 1980 AND THE IMPLEMENTATION IN INDONESIA Siti Azizah	353-363
REFLECTING THE ROLE OF INDIVIDUAL IN GLOBALIZED WORLD: A STUDY CASE ON JULIAN ASSANGE AND WIKILEAKS Andi Windah	364-376

The Legal Status of Land Title Transfer That is Obtained by Auction Based on Country's Precedence Right

Kurnia Martini Dwi Putri^a, Muhammad Akib^b, and FX. Sumarja^c

^aGraduate Education of Law faculty of Lampung University

Email : niamartini3110@gmail.com

^bLaw faculty of Lampung University

Email : fxsuj.unila@gmail.com

^cLaw faculty of Lampung University

Email : akib97@yahoo.co.id

Abstract

Tax is one of the biggest fund sources proponent in Indonesia's development activities. Tax payment is an obligation for every Tax Subject. They would be reputed to have debt to Country once they don't pay the tax. Tax liability is a debt that particularly arise because of law, so it has the precedence characteristic over other debts. If a Taxpayer don't pay their tax, Government can sell their valuable assets off by the auction based on Country's Precedence Right. In Bandar Lampung City, land title transfer registration that is obtained by auction based on Country's Precedence Right happened to the ownership land of a personal property on behalf of individual belonging, which became a company's tax liability payment, and also an object of inheritance dispute. The land title transfer registration validity then became legally questionable, because the auction object is recorded on behalf of individual ownership, not the Company's. Moreover, it was under inheritance dispute and has been blockaged at The Bandar Lampung Land Affair Office.

Keywords: Country's Precedence Right, Auction, Land Certificate Blockage.

1. Introduction

One of principal characteristic of tax is that the fund collecting should be based on law. This is because basically, tax is a burden people must bear, so they should have participated in formulating the tax rate by determining and approving it through their representatives in Parliament or House of Representatives.¹

Tax payment is an obligation for every tax subject, but in fact, many of them arrears it, so they are considered to have debt to the country. Tax liability is a debt that particularly arise, because country (creditor) is bounded and can not choose freely whom to be the debtors as in civil law. It is because tax liability is set in law.² As the impact, it has precedence characteristic over other debts.

If a Taxpayer don't pay their tax liability, Government can sell their valuable assets off by the auction. The valuable assets can be form as movable or immovable assets, such as land.

¹ Safri Nurmantu, 2005. *Pengantar Perpajakan*, (Jakarta: Granit), Page. 14.

² Rochmat Soemitro, 1998. *Asas dan Dasar Perpajakan 2*, (Bandung: PT. Refika Aditama), page. 2.

Land is an important thing to Indonesian people. As the Indonesia's current development, the human population continues increasing. The demand of land growing as well, but the conditions and circumstances of land is fixed, not increased. Hence the importance of land, people then need a legal guarantee against their rights to the land.

The legal protection from Government in agrarian sector is an obligation to proceed the land registration. Associated to land auctioned to be the tax liability payment based on Country's Precedence Right, then it has to be followed by proceeding the land registration. Land registration is held to ensure legal certainty, to fulfill the needs of either society and Government.³

The proceeding of land registration includes the initial and maintenance registration.⁴ In Bandar Lampung City, generally the land title transfer by auction occurs because of non-performing loan of security title. However, land title transfer by auction based on Country's Precedence Right ever happened in Bandar Lampung Land Affair Office, to the ownership land on behalf of individual belonging in the name of Mr. A. The land is also under inheritance dispute, and has been recorded in The Land Books within 30 (thirty) days at Bandar Lampung Land Affair Office by one of the disputing parties, in the preparation for submission blockage with sequestration.

At the same time, the land was auctioned by Bandar Lampung State Assets and Auction Service Office (hereinafter referred as SAASO) on request of Tanjung Karang Tax Service Office (hereinafter referred as TSO), to be the payment of Article 25 Tax Income and The Value Added Tax arrears of Limited Liability Company (hereinafter referred to Company/XYZ, Ltd.) belongs to Mr. A.

The disputing land then auctioned after the thirty days of land books recording period was over, and now has been conveyed to the third party (auction winner). The blockage invoking party feels aggrieved of the land title transfer, and claim the legal validity over it, because the land is registered on behalf of individual ownership, not the company's. Moreover the land is under blockage in Land Affair Office due to inheritance dispute.

Issues

Based on the description above, the issues of this research are:

- a. What is the legal status of land title transfer that is obtained by auction based on Country's Precedence Right against a disputing land?
- b. What is the legal protection to the related parties in the implementation of land title transfer that is obtained by auction based on Country's Precedence Right against a disputing land?

2. Research Methodes

This research adopting normative and empirical approach. This research type is exploratory. Data sources used in this research is primary, secondary, and tertiary datas. Data collection procedures performed by literature, the study documents, and interviews. Data processing was performed using data selection, data classification, and data compilation. This research using qualitative analysis.

3. Result

Legal Status Of Land Title Transfer That Is Obtained By Auction Based On Country's Precedence Right Against A Disputing Land

³ Adrian Sutedi, 2014. *Peralihan Hak Atas Tanah*, (Jakarta: Sinar Grafika), page.114.

⁴ FX. Sumarja, 2010. *Hukum Pendaftaran Tanah*, (Bandar Lampung: Unila), page. 20.

XYZ, Ltd. is a business entity, the form of Limited Liability Company. A Limited Liability Company (Company) is a legal entity, constituting a capital partnership, established based on agreement, conducting business activities with all of its authorized capital being divided into shares, and meeting the requirements stipulated in Limited Liability Company law and its implementing regulations.⁵

As a legal subject, XYZ, Ltd. is a taxpayer that has rights and obligations of taxation.⁶ The fulfillment of tax obligation is by paying some taxes, such as the payment of article 25 of tax income, and value added tax payment. According to the Tax Law, to fulfill the rights and obligations of tax, a company needs people who act as its entity management, whom be a representative and act in the name of company. The *people* is referred to Company's Organs.

The Company's organs in Company law are consist of:

1. The General Meeting of the Shareholders (GMS) is the company organ holding the authority not conferred upon the Board of Directors or Board of Commissioners within the limits determined under this law and/or the articles of associations. GMS shall not be individually responsible for commitments made on behalf of the Company and shall not be responsible for company losses exceeding the nominal value of the shares subscribed by each of them.⁷

According to I.G. Widjaja, since a company gained legal entity status, then the law treats the GMS and the Board of Directors is separate from the company itself, known as the separate legal personality, or an individual stand-alone. Thus GMS who have interest in Company's wealth, also not responsible for the debts of company's.⁸

Responding to the content of Article 3 title (1) above, Yahya Harahap give an opinion on what the meant of "limited liability, that are:⁹

- a. Company doesn't liable of its shareholders, vice versa;
- b. The shareholders loses are limited to their investment;

The shareholders shall not take further responsibility to the creditors on their personal belongings.

2. Board of Directors (BOD) is the Company Organ that is fully responsible for and has the authority to manage the Company for the Company's interest and in accordance with its purposes and objectives and to represent the company, both within and outside the courts of law, based on the provisions of its articles of associations.
3. Board of Commissioners is The Company Organ in charge of conducting supervision in general and/or in particular in accordance with articles of association and providing advise to the BOD.

The obligation of tax payment hasn't been fulfilled by XYZ, Ltd. when the Company still active, and even after it filled for bankruptcy. Country, presented by TSO, immediately take the securiy action of XYZ, ltd. assets so it won't fall into the other creditors prior the tax liability been paid. After all the assets are being used entirely to paid the tax debt off, eventually the amount of the assets still haven't cover all the tax liability. TSO then proceed the auction of some personal properties of Mr. A, as the owner of XYZ, Ltd.,

⁵ Article 1 title (1) of Law Of Republic Of Indonesia No. 40 of 2007 Concerning Limited Liability Companies (herein after referred to Company Law)

⁶ Article 2 Law of The Republic of Indonesia No. 28 of 2007 Concerning The Third Amendment of The law No. 6 of 1983 Concerning The General Provision and Tax Procedure (hereinafter referred to Tax Law).

⁷ Article 3 title (1) of Company Law.

⁸ Kurniawan, 2014. *Hukum Perusahaan Karakteristik Badan Usaha Berbadan Hukum dan Tidak Berbadan Hukum di Indonesia*, (Yogyakarta: Genta Publishing), page. 64

⁹ M. Yahya Harahap, 2009. *Hukum Perseroan Terbatas*, (Jakarta:Sinar Grafika), page. 59.

including his freehold title. The land title transfer registration in Bandar Lampung Land Affair Office then being proceed by the auction winner right after the auction completed.

The land title transfer then raised an objection from one of the disputing party, which stated that it's not legally valid. The objections filed by one of the heirs are:

1. The auctioned land is an individual property, not the Company's, and it was clear of debts from any parties.
2. The auctioned land is under inheritance dispute, and has been registered to recored the blockage on Land Books at Bandar Lampung Land Affair Office. The land title transfer was violate the right of the Heirs of Mr. A whom are entitled to the land.

To determine the validity of the land title transfer, firstly should be examined the cause of action of Country to auction a personal belonging property to pay the Company's tax liability.

The term of limited liability company consist of two words: Company and Limited. The Company referred to the capital of stocks. The Limited is referred to the limited liability of shareholders that is extent only to the value of all shares they owned.¹⁰

A limited Liability Company as a business enterprise should have at least five structural characteristics, such as:¹¹

1. Legal Personality;
2. Limited Liability;
3. Transferable Shares;
4. Centralized Management;
5. Shared Ownership.

The Company's limited liability is not absolute. Under certain circumstances, it is possible to remove such a liability because of some exceptions. Here we see that Company law adheres the piercing of corporate veil doctrin. In simple terms, Company's Organs liability is being limitless in certain conditions.¹²

Piercing means to rip or cut through, while *veil* means a headscarf. Piercing the corporate veil literally mean is to torn the corporate veil. This doctrine states that that there are possibilities to imposing the liability to another party whom is not the Company itself, even though the act was legally carried by and on behalf of company as legal entity.¹³

This doctrine aims to avoid unfair things, especially to the parties outside the Company from the arbitrarily and improper actions conducted on behalf of company, both rises from the transaction with the third parties or arise by a misleading or unlawful acts. Basically, this doctrine will be applied if there is a very unfair situation where the liability only requested to company as a legal entity.¹⁴

The existence of this doctrine can be seen in several articles of Company law, such as:

1. Shareholders

This doctrine is provided in Article 3 title (2) which is an exception of Article 3 title (1) Company Law which states that the Shareholders shall not individually responsible for the losses of company exceeding the nominal value of the shares they have. This limited liability shall not applied if:

¹⁰Ridwan Khairandy, 2007. *Perseroan Terbatas Sebagai Badan Hukum*, Business law Journal, Volume 26, page. 5.

¹¹ Henry Hansmann dan Reiner Kraakman, "What is: Corporate Law?" In Kurniawan, 2014. *Op.Cit.*, (Yogyakarta: Genta Publishing), page. 58.

¹² Chatamarrasjid Ais, 2004. *Penerobosan Cadar Perseroan dan Soal-Soal Aktual Hukum Perusahaan*, (Bandung: PT. Citra Aditya Bakti), page. 8.

¹³ Steven H. Gifis In Munir Fuady, 1996. *Hukum Bisnis Dalam Teori dan Praktek, Third Book*, (Bandung:PT. Citra Aditya Bakti), page. 97.

¹⁴ Kurniawan, 2014. *Op.Cit.*, page. 81

- a. The Company's requirements as a legal entity have not been or are not fulfilled;
- b. The relevant Shareholders either directly or indirectly and acting in bad faith take advantage of the company for their personal interest;
- c. The relevant shareholders are involved in unlawful acts conducted by company; or
- d. The relevant shareholder either directly or indirectly unlawfully use the company's assets, causing the company assets to be insufficient to settle the company's debt.

The provisions of Article 3 title (2) of Company Law doesn't stated which party is actually protected with the implementation of piercing the corporate veil principle. However, by looking into Article 3 title (2) of Company law, we could say that the protection is given to the creditors.¹⁵

2. Board of Directors

In performing its duties, the BOD must implement it in good faith and full of responsibility, as stipulated in Article 97 title (2) of Company Law. There is no clear formulation of *good faith* and *fully responsibility* terms in that article. Sutan Remy Sjahdeini stated that these two elements can be linked in the standard of care or prudential standards, such as:¹⁶

- a. The BOD members can not perform such activities on Company's expenses, if it does not give a very small benefit that gained the relevant BOD members.
- b. The BOD members may not be a contenfer of the company they lead.
- c. The BOD members shall refuse to make a decision about something that is known or should be known that the Company to be able to do unlawful acts so that company may be subject to sanction by competent authority.
- d. The BOD members with its deliberately or due to its negligence has not done or has not done enough to do an effort or action to prevent the company's loses.
- e. The BOD members either deliberately or due to negligence has not done or has not done enough to do the effort or action that is necessary to increase the profits of the company.

If BOD members carry out their duty with a bad faith and irresponsible, then they shall be fully personally responsible as stipulated in Article 97 title (3), also jointly responsible as stipulated in Article 97 title (4) of Company law.

Personal responsibility of BOD also provided in Article 104 title (2) of Tax law, which states that, "In event of bankruptcy due to the mistakes or negligence of the BOD and the Company bankruptly assets are insufficient to settle all the Company's liability, each member of the BOD shall be jointly and personally responsible for all outstanding liabilities of the bankruptcy assets."

Billing payment of Company is provided in Article 32 of Tax law and its explanation which stated that representative of company shall be responsible individually and/ or jointly or severally upon the payment of tax payable, unless if they can proving and ensuring the Director General of Tax that in their position, it is impossible for them to bear such the payment of tax liability.

3. Commissioner

Commissioner shall be fully personally responsible as stipulated in Article 114 title (3), also jointly responsible as stipulated in Article 114 title (4) of Company Law if in carrying out the task of monitoring and providing advice to BOD, not in good faith, prejudice, and fully responsible.

¹⁵ Kurniawan, 2014. *Tanggung Jawab Pemegang Saham Perseroan Terbatas Menurut Hukum Positif*, Law Rostrum Journal, Volume 26 No. 1, page. 80-81.

¹⁶ Sutan Remy Sjahdeini, 2001. *Tanggung Jawab Pribadi Direksi dan Komisaris*, Business Law Journal, Vol. 14, page. 100.

Based on the regulations above, the auction to the personal property belonging as a payment of limited company's tax liability is legitimate, because it is in accordance and uncontrary to law. Although the Company law states that private property separates to Company's assets, but it still open the possibility to charge the payments to Company's organs as long they proceed their duties in bad faith and/or in irresponsible acts.

The principle of limited liability is not being threatened despite the existence of piercing the corporate veil principle. Limited liability principle will remained solid, because the piercing the corporate veil only been used if the company only be an instrument that is as a mask or conceal the real intent of it's organs.¹⁷ Thus, law will protect the shareholders, BOD, or commissioners who has good faith.

Regarding the element of fault and negligence of tax liability payment is not yet given a clear limitation by Tax Law. It means, there should be a proof in advance that there is an intent or negligence by BOD on tax liability arrears, which led to do the auction.

Basically, tax payment is an obligation arise by legislation to every tax subject, either individual or legal entities, which the amount and the calculation method has been regulated in the Tax law. Arrears of the Income Tax and the Valuable Added Tax payment by XYZ, Ltd. is a form of the mistakes and negligence of Company's management, so TSO has a solid cause of action to auction off Mr. A's personal property to be the payment of XYZ, Ltd. tax liability.

The implication of the legal of the prosecution using personal land property of Mr. A as a payment of XYZ, Ltd. tax liability is causing SAASO can auctioning the land, also the transfer of land title can be registered at the Bandar Lampung Land Affair Office. So far, it can be said that land title transfer is legitimate, because it is meet the formal requirements of auction.

The Legal Protection To The Related Parties In The Implementation Of Land Title Transfer That Is Obtained By Auction Based On Country's Precedence Right Against A Disputing Land

In land registration, either in the initial registration (first time registration) as well the maintenance registration, it is possible happened a dispute or a conflict interest between the relevant parties, so as the land title transfer by auction based on Country's Precedence Right to the former land of Mr. A to the hands of third party (auction winner). It then creates a dissatisfaction feeling among the heirs. It is understandable, because everyone reserve the right to maintain their right over land.

On the other hand, the Bandar Lampung land Affair Office, TSO, and SAASO, as the associated institution to the auction process implementation over the land title transfer, will also maintain their administrative act. As well as the auction winner as the rightful owner.

Land title transfer that is obtained by auction based on country's precedence right carried out by Bandar Lampung land Affair Office is legitimate because it fulfill the mistakes and negligence elements as stipulated in Article 32 title (2) Tax Law, also the Article 97 title (3) and (4) the Company Law. So, the legal protection for the three associated institutions is free from all lawsuits.

Country's Precedence Right is stipulated in Article 21 title (3a) of Tax Law, which states that country has the precedence right upon properties belong to tax bearer, over other creditors

¹⁷ Chatamarrasjid, 2004. *Op.Cit.*, page. 16.

Furthermore, the Article 21 title (3b) states that In the terms of the Taxpayer is certified in bankruptcy, disband, or liquidated, then the curator, liquidator, person or agency that is assigned to carry out revamping shall be prohibited to divide the asset of Taxpayer in bankruptcy, dissolution, or liquidation to the shareholder to the other creditors before using the assets to pay the taxpayer tax liability first.

According to the contents of the article above, Country has the privilege right to be precedence among other creditors due to tax liability payment. Tanjung Karang TSO as a fiscus has the authority to issue the Distress Warrant and Warrant for the Implementation of seizure confiscation. In the event that the taxpayer doesn't pay off the tax liability as determined in Underpaid Tax Assessment after the payment due, fiscus has authority to issue distress warrant within specified period that is 2x24 hours to pay off tax liabilities. If within this period the taxpayer still does not pay the tax liability, fiscus will follow up by issuing Warrant for the Implementation of Seizure confiscation, against taxpayer assets as collateral to pay off his tax liability.¹⁸

Law of Republic Indonesia No. 19 of 2000 Concerning the Amendment of Act No. 19 of 1997 Concerning Tax Billing With Distress Warrant provides a very strong position against distress warrant. This can be seen in the content of Article 7 title (1) of that act, which stated that:

" The letterhead of Distress Warrant had the words" FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD," has the executorial power and legal position equal to a court decision that is legally binding."

Distress warrant position is being clarified in article explanation above, that stating the purpose of giving the executorial power equals to distress warrant is to achieve effectiveness and efficiency of tax billing based on distress warrant. This provision provides executorial power and legal position as same as the grosse deed of legally binding decision of civil court. Thus, direct distress warrant can be implemented without court decision and can not submitted appeal request letter.

The land title auction based on Country's Precedence Right is held by TSO after the billing to the arrears of tax liability payment, that consist of the issuing of warning letter, immediate and total tax collection order, distress warrant, foreclosure, and auction. Implement the auction is an obligation for the Chief Officer KPKNL Auction or Class II, along petition submitted to the auction is complete and in compliance with the Formal Legality Subject and Object Auction.

Auction implementation is an obligation to The Chief of State Assets and Auction Service Office, also The Auction Officer Class II, as long as the auction petition submitted is complete and in compliance to the Formal Legality Subject and Object of auction.¹⁹

In Bandar Lampung Land Affair Office, inheritance problem tends to inflict the dispute, both between the heirs itself; the heir to a third party who has an interest in inheritance land, as well as between the heirs to legal entities.²⁰

The disputes over land can be formed as an administrative dispute, civil disputes, and criminal disputes, relating to the ownership, transactions, registration, underwriting, utilization, tenure, and customary land title disputes. A dispute subjects certainly more than

¹⁸ Wirawan B. Ilyas dan Richard Burton, 2007. *Hukum Pajak, Third Edition*, (Jakarta: Salemba Empat), page. 160-161.

¹⁹ Article 13 PMK. 27/PMK.06/2016.

²⁰ Interview with Badarudin Umar, Head Of Section of Land Title and Land Registration of Bandar Lampung Land Affair Office, Agustus, 18th 2016, at 13.10 pm.

one parties, either the individual subjects, groups, organizations, even the large institutions such as the State Owned Enterprises (SOEs) or the state.²¹

Inheritance dispute is a civil law dispute, as to who is entitled to a plot. Generally, in an inheritance dispute, one of the parties will file a registration of certificate blockage in Bandar Lampung Land Affair Office.

Land title certificate blockage itself is often inflicting some misunderstandings in the community. The misconceptions are include:²²

1. That the blockage is timeless. Once a land title object are being blockaged, the land would remain status quo until the blockage applicant itself repeal it;
2. Blockage will be valid for 30 (thirty) days and thereafter can be further extended continously after completion of another 30 (thirty) days period.

Responding to public misunderstanding about the land certificate blockage, Mr. Badarudin Umar as Head Of Section of Land Title and Land Registration of Bandar Lampung Land Affair Office, explained about land certificate blockage as referred in Article 126 title (2) of Regulation of state Minister of Agrarian/ Head of BPN No. 3 of 1997 concerning The Provision of Government Regulation No. 24 of 1997 On Land Registration.

“Actually, the blockage contemplated in Article 126 title (2) was not the 30 (thirty) days of recording on Land Books, but a blockage due to the status quo order by the judge followed by sequestration. So, the 30 (thirty) days of recording on Land Books meant is the time provided by the Land Affair to prepare sequestration filing in court. If after a period of 30 (thirty) days granted by the Land Affair Office was over and the applicant did not follow the blockage up in the form of sequestration filing in court, then the blockage will automatically fall by itself.²³

Sequestration (*Conservatoir Beslag*) is a precedes ruling legal action taken by Court. It means, the foreclosure was carried out on the property of the Defendant before the principal case being inspected or can be carried out during the proceedings runs, before the court handed down the verdict. The sequestration role is very important in the court practice. By doing so, Defendant will temporarily lost the control authority over his goods/assets, and these assets are stored (*diconserveer*) to be a guarantee and shall not be conveyed, embezzled or transferred to another person.²⁴

Sequestration intended to ensure the Plaintiff right and interests, in case a lawsuit will being granted and the law provides efforts to guarantee it by doing foreclosure (*arrest, beslag*).²⁵

Based on the rule of law, If after the 30 (thirty) days of period given by Bandar Lampung Land Affair Office has ended but the applicant has not submitted seizure confiscation from court to blockage land certificate, so then the land status is back to its original state, thus towards it, some legal acts can be implemented, for example to proceed the auction.

Auction conducted by the principle of prudence, after the 30 days period of recording in land books end. Regarding the auction object are being blockaged at Land Affair Office, doesn't directly stop auction execution.

²¹ Bernhard Limbong, 2014. *Politik Pertanahan*, (Jakarta: Margaretha Pustaka), page. 65.

²² Interview with Luthfi Muchtaedy, Officer of Land Right Registration Counter of Bandar Lampung Land Affair Office, Agustus, 16th 2016 at 14.10 PM.

²³ Interview with Badarudin Umar, Head Of Section of Land Title and Land Registration of Bandar Lampung Land Affair Office, Agustus, 18th 2016, at 13.10 pm.

²⁴R. Soeparmono, 2006. *Masalah Sita Jaminan (C.B) Dalam Hukum Acara Perdata*, (Bandung: Mandar Maju), page. 3-5.

²⁵ Sudikno Mertokusumo, 1998. *Hukum Acara Perdata di Indonesia*, (Yogyakarta: Liberty), page. 48-58.

“The State would be considered to have a small and trivial position if each blockaged cancelled the auction. SAASO respects the blockage procedure applied in the Land Affair Office, but not all blockage can cancel the auction. Anyone who has interest over land could apply blockage, but SAASO will examine whether there are other greater interest than the applicant’s.²⁶

The Chief of Land Affair Office can only refuse a file application if the submitted document is incomplete and doesn’t meet the requirements set in regulation.²⁷ If the procedure of gaining the land title is according to the law and all the requirement documents of land title transfer is complete, then the conveyancing should be done.

The form of legal protection to the auction winner is a legal guarantee of land ownership by the land title transfer registration/continuous recording in Land Affair Office. As explained above, that a land registration is held to ensure legal certainty.

In accordance with the secure principle of land registration that set in Article 2 of Government Regulation No. 24 of 1997 concerning Land Registration and its explanation that the land registration in Indonesia is implemented by purpose to demonstrating that land registration should be organized carefully and meticulously so that the result can ensure legal certainty as the purpose of land registration itself.

4. Conclusion

After doing research, the can be drawn some conclusions, among others:

1. The land right transfer that is obtained by auction based on Country’s Precedence Right conducted by Bandar Lampung Land Affair Office is legitimate because it has met the formal requirements of auction.
2. Tanjung Karang TSO in proceeding auction over land to be payment of Company’s tax liability is in accordance to requirements set in Article 32 title (2) of Tax Law and in Article 97 title (3) and (4) of Company law, so the legal protection to TSO, SAASO, and Bandar Lampung Land Affair Office is freed of all law charges. The legal protection to auction winner is a legal guarantee of land ownership by the land title transfer registration/continuous recording in Land Affair Office.

References

- Ais, Chatamarrasjid; 2004; *Penerobosan Cadar Perseroan dan Soal-Soal Aktual Hukum Perusahaan*; PT. Citra Aditya Bakti; Bandung.
- Fuady, Munir; 1996; *Hukum Bisnis Dalam Teori dan Praktek, Third Book*, PT. Citra Aditya Bakti; Bandung.
- Harahap, M. Yahya 2009; *Hukum Perseroan Terbatas*; Sinar Grafika; Jakarta.
- Ilyas, Wirawan B. and Richard Burton; 2007; *Hukum Pajak Edisi 3*; Salemba Empat; Jakarta.
- Khairandy, Ridwan; 2007; *Perseroan Terbatas Sebagai Badan Hukum*; Business Law Journal; Volume 26.
- Kurniawan; 2014; *Hukum Perusahaan Karakteristik Badan Usaha Berbadan Hukum dan Tidak Berbadan Hukum di Indonesia*, Genta Publishing; Yogyakarta.

²⁶ Interview with Andri Dwinanto, Head Of Section of Auction Bandar Lampung State Assets and Auction Service Office, Agustus, 5th 2016 at 15.00 pm.

²⁷ Article 6 title (3) Regulation of State Minister of Agrarian/Head of BPN No. 1 of 2010 Concerning Service Standard and Administration Of Land.

- Kurniawan; 2014; *Tanggung Jawab Pemegang Saham Perseroan Terbatas Menurut Hukum Positif*; Law Rostrum Journal; Volume 26 No. 1.
- Limbong, Bernhard 2014; *Politik Pertanahan*; Margaretha Pustaka; Jakarta.
- Mertokusumo, Sudikno; 1998; *Hukum Acara Perdata di Indonesia*; Liberty; Yogyakarta.
- Nurmantu, Safri; 2005; *Pengantar Perpajakan*; Granit; Jakarta.
- Sjahdeini, Sutan Remy; 2001; *Tanggung Jawab Pribadi Direksi dan Komisaris*; Business Law Journal, Vol. 14.
- Soemitro, Rochmat; 1998; *Asas dan Dasar Perpajakan 2*; PT. Refika Aditama; Bandung.
- Soeparmono, R.; 2006; *Masalah Sita Jaminan (C.B) Dalam Hukum Acara Perdata*; Mandar Maju; Bandung.
- Sutedi, Adrian; 2014; *Peralihan Hak Atas Tanah*; Sinar Grafika; Jakarta.
- Sumarja, FX. 2010; *Hukum Pendaftaran Tanah*; Universitas Lampung; Bandar Lampung
- Law of The Republic of Indonesia No. 28 of 2007 Concerning The Third Amendment of The law No. 6 of 1983 Concerning The General Provision and Tax Procedure
- Law of Republic Indonesia No. 19 of 2000 Concerning the Amendment of Act No. 19 of 1997 Concerning Tax Billing With Distress Warrant.
- Law Of Republic of Indonesia No. 40 of 2007 regarding Limited Liability Companies
- Regulation of state Minister of Agrarian/ Head of BPN No. 3 of 1997 Concerning The Provision of Government Regulation No. 24 of 1997 On Land Registration.
- Regulation of State Minister of Agrarian/Head of BPN No. 1 of 2010 Concerning Service Standart and Administration Of Land.
- Regulation Of The Minister Of Finance of The Republic Of Indonesia No. 27/ PMK.06/2016 Concerning The Amendment of Regulation Of Minister Of Finance of The Republic Of Indonesia No. 106/PMK.06/2013 Concerning Implementation Guidelines Of Auction.

