

The Tax Responsible Party of Corporate Taxpayer on Legal Liability Discourse

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Abstract

This article examines, from the perspective of legal liability, the determination of third party liability other than corporate taxpayers, both personally and jointly. The discussion covers three areas, including tax provisions, tax court decisions, and the concept of legal liability. The results are, firstly, the third party liability of corporate taxpayers is the target of Compulsion Letters, Seizures, and Auctions, both personally and jointly. Secondly, several tax court lawsuit decisions indicate that in principle the obligation of corporate taxpayers to pay tax debts is attached to the third party liability, and for director, this attachment opens up the possibility of interference with his/her ownership rights. Finally, the provisions on the third party liability of corporate taxpayers are not rooted in the concept of legal liability, thus creating a risk of uncertainty as shown in the tax court lawsuit decision.

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Introduction

There are several reasons this article examines the liability of Tax Responsible Party of Corporate Taxpayer (hereinafter referred to as TRCT). First, TRCT has drawn the attention of the tax authorities, as evidenced by the issuance of the Minister of Finance Regulation Number 61 of 2023 concerning Procedures for the Implementation of Tax Collection on Outstanding Tax Payables (hereinafter referred to as PMK No. 61 of 2023). Article 9 paragraph (1) and paragraph (10) of PMK No. 61 of 2023 introduce new provisions with the additional criteria to identify TRCT and alter the order of prioritized TRCT in cases of immediate and simultaneous tax collection, particularly when there are indications that the TRCT may discontinue or reduce the company's business activities.

The abovementioned provision raises the issue on the fulfillment of the principle of proportionality, as this principle seeks to minimize the impact of tax collection on property rights,¹ whereas the aforementioned Minister of Finance Regulation actually increases the potential impact of tax collection on property rights. Second, throughout

¹ Pasquale Pistone and others, *Fundamentals of Taxation: Introduction to Tax Policy, Tax Law and Tax Administration* (IBFD 2019).

2023, there have been at least six TRCT asset seizures that became national news. These seizures occurred in the City of Bandung,² District of Temanggung,³ District of Banyumas,⁴ as well as several cities and districts in East Java Province,⁵ East and North Kalimantan Provinces,⁶ and Riau Province.⁷

The value of TRCT assets seized by the tax authorities ranges from Rp80 million to Rp1.2 billion at the municipal/district level, and accumulates from Rp3.6 billion to Rp29.6 billion at the provincial level. Although these seizures are ultimately aiming for tax debts settlement, the methods fail to safeguard TRCT's right to private property and cannot be justified. The reason is simply that when the protection of TRCT's property rights is carried out consistently, the public, as stakeholders on tax debts settlement, will equally benefit from such legal protection.⁸

Third, the recognition and protection of the right to act or refrain from acting with respect to one's private property is a fundamental principle of statehood, as outlined in Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 NRI Constitution). The obligations imposition on TRCT, which are essentially not taxpayers, raises the question of whether such involvement is in accordance with the foundational principles of statehood as stipulated in Article 28G paragraph (1) of the 1945 NRI Constitution. This question arises from the preposition

² Ringkang Gumiwang, 'KPP Pratama Bandung Cicadas: Utang Pajak Rp 337 Juta Tak Kunjung Dilunasi, Mobil WP Akhirnya Disita' (*Redaksi DDTCNews*, 2023) <<https://news.ddtc.co.id/utang-pajak-rp-337-juta-tak-kunjung-dilunasi-mobil-wp-akhirnya-disita-1798824>> accessed 7 March 2024.

³ Eka Yonavilbia, 'Pekan Sita, KPP Temanggung Lakukan Sita Bus Penunggak Pajak' (*InfoPublik*, 2023) <<https://infopublik.id/kategori/nusantara/797653/pekan-sita-kpp-temanggung-lakukan-sita-bus-penunggak-pajak>> accessed 7 March 2024.

⁴ Ringkang Gumiwang, 'KPP Pratama Purwokerto: Utang Pajak Rp 300 Juta Tak Dilunasi, Mobil Daihatsu Akhirnya Disita' (*DDTCNews*, 2023) <<https://news.ddtc.co.id/utang-pajak-rp-300-juta-tak-dilunasi-mobil-daihatsu-akhirnya-disita-1799201>> accessed 7 March 2024.

⁵ Choirul Anam, 'Kasus Pajak Di Jatim, 255 Aset Senilai Rp29,6 Miliar Disita' (*Bisnis: Surabaya*, 2023) <<https://surabaya.bisnis.com/read/20230906/531/1692320/kasus-pajak-di-jatim-255-aset-senilai-rp296-miliar-disita>> accessed 7 March 2024.

⁶ M Mutawallie Syarawie, 'Penyitaan Aset Penunggak Pajak Di Kaltimara Capai Rp3,8 Miliar' (*Bisnis: Kalimantan*, 2023) <<https://kalimantan.bisnis.com/read/20231017/407/1704974/penyitaan-aset-penunggak-pajak-di-kaltimara-capai-rp38-miliar>> accessed 7 March 2024.

⁷ Mediacycenter Riau, 'DJP Riau Sita Aset Penunggak Pajak Senilai Rp3,69 Miliar' (*Riau.go.id*, 2024) <<https://www.riau.go.id/home/content/2023/07/17/17583-djp-riau-sita-aset-penunggak-pajak-senilai-rp369>> accessed 7 March 2024.

⁸ Juliane Kokott and Pasquale Pistone, *Taxpayers in International Law: International Minimum Standards for the Protection of Taxpayers' Rights* (Hart Publishing 2022).

that the position of an individual as a TRCT does not, in fact, allow for the freedom to act or refrain from acting with regard to their property.⁹

Fourth, although the three previous reasons highlight the importance of examining TRCT in relation to property rights, in reality, only a few articles address this issue. For example, the study by Siregar et al. which analyzed the authority of tax collectors in seizing the assets of taxpayers in East Medan,¹⁰ concluded that incidentally, tax collectors, in carrying out their duties, may request assistance from ministries/agencies, local governments, or other parties.¹¹

Next, an article by Wisiswa and Aribowo examines the practice of TRCT account blockage in Madiun.¹² This article concludes that there are obstacles in the blocking process due to disagreements between the bank and tax authorities.¹³ Furthermore, an essay by Mahandara analyzes the principles of limited liability with shareholders as TRCT.¹⁴ The essay concluded that the position of shareholders as TRCT is contradictory to the principles of limited liability.¹⁵

Lastly, an article by Baker et al. used human rights paradigm to analyze TRCT's liability for unpaid or outstanding tax debts.¹⁶ The article expressed concerns that the liability of TRCT undermines tax justice because it threatens the fundamental rights of individuals in cases of international tax avoidance within the European Union.¹⁷ The article also recommends strengthening reciprocal cooperation among European Union countries to lower dependency on the accountability of TRCT.¹⁸

⁹ Philip Baker, Pasquale Pistone and Katerina Perrou, 'Third-Party Liability for the Payment of Taxes and Their Fundamental Rights' (2023) 15 *World Tax Journal* 85 <<https://www.ibfd.org/shop/journal/third-party-liability-payment-taxes-and-their-fundamental-rights>>.

¹⁰ *ibid.*

¹¹ *ibid.*

¹² Nikita Puspa Wisiswa and Irwan Aribowo, 'Mengkaji Praktik Pemblokiran Harta Kekayaan Penanggung Pajak (Studi Di Kantor Pelayanan Pajak Pratama Madiun)' (2021) 5 *Jurnal Pajak Indonesia (Indonesian Tax Review)* 83 <<https://jurnal.pknstan.ac.id/index.php/JPI/article/view/1315/704>>.

¹³ *ibid.*

¹⁴ Alta Mahandara, 'Prinsip Tanggung Jawab Terbatas Dan Kedudukan Pemegang Saham Sebagai Penanggung Pajak' (2022) 6 *Jurnal Ilmu Hukum* 181 <<https://journal.umpo.ac.id/index.php/LS/article/view/5443/2257>>.

¹⁵ *ibid.*

¹⁶ Baker, Pistone and Perrou (n 9).

¹⁷ *ibid.*

¹⁸ *ibid.*

This article study completes the four essays and articles mentioned above. The scope of this article is limited to TRCT liability in Indonesia, with the aim to provide feedback related to the fulfillment of proportionality in the interaction between taxpayers and tax authorities. After the introduction, this article elaborates the provisions of TRCT liability. This second chapter also discusses several approaches of TRCT liability in the collection of tax debts.

Furthermore, this paper examines court decisions related to cases involving TRCT liability. This chapter explores the extent to which TRCT can be held liable for the tax debts of Corporate Taxpayers, whether individually or jointly and severally. Third, the article discusses TRCT liability in relation to legal liability. This discussion aims to assess the consistency of regulations on TRCT liability with the established framework of legal liability.

Research Method

This article is a doctrinal law research that uses law materials through qualitative approach.¹⁹ Data is collected through study of literatures that focus on laws and regulations and literatures related to third party of corporate taxpayers and tax provisions.²⁰ This article discusses various law concepts on third party liability of corporate taxpayers and legal liability, through an analysis with deductive patterns.²¹

Provisions of the TRCT Liability

TRCT is within the scope of procedure taxes.²² TRCT first appears in Law Number 9 of 1994 on the Amendment of Law Number 6 of 1983 on the General Provisions and

¹⁹ Lynne Oats, *"On Methods and Methodology," in Taxation: A Fieldwork Research Handbook*, ed. Lynne Oats (Routledge 2012).

²⁰ Yati Nurhayati, Ifrani, and M.Yasir Said, 'Metodologi Normatif Dan Empiris Dalam Perspektif Ilmu Hukum' (2021) 2 no 1 Jurnal Penegakan Hukum Indonesia (JPHI) 1-20.

²¹ Sufriadi Ishak, 'Logika Dan Penalaran Dalam Ilmu Hukum Dan Ilmu Hukum Islam' (2023) 10 no 1 Jurnal Al-Mizan: Jurnal Hukum Islam dan Ekonomi Syariah 1-2. DOI: <https://doi.org/10.54621/jiam.v10i1.581>.

²² Procedure tax law contains methods of implementation regarding the determination of tax debts, government control over its implementation, taxpayer obligations both before and after receiving a tax assessment letter, third party obligations, and tax collection procedures. Lihat R Santoso Brotodihardjo, *Pengantar Ilmu Hukum Pajak* (Keempat, Refika Aditama 2010).

Taxation Procedures (hereinafter referred to as Tax Procedure Law).²³ The regulation defines a taxpayer as an individual or entity responsible for the payment of taxes, including a representative who exercises the rights and fulfills the obligations of the taxpayer in accordance with the provisions of tax legislation.²⁴

The TRCT liability simultaneously targets Corporate Taxpayer and several related subjects, depending on the legal form of the Corporate Taxpayer.²⁵ The types of targets related to Corporate Taxpayers are displayed in Table 1.

Tabel 1. Subject TRCT²⁶

Form of corporate taxpayer	TRCT	Rule
limited liability company	president director, deputy president director, and/or finance director	be personally and/or jointly liable
	main commissioner, deputy commissioner, and/or commissioner	
	a person who is actually involved in determining the policies of a limited company	
permanent establishment	shareholder	proportionally according to share ownership
	head of representative, parent company, person who is actually in charge of determining the policy of permanent establishment	be personally and/or jointly liable
	capital owner	proportionally according to share capital
limited partnership	active partner, someone who is clearly involved in determining the policy of the partnership	be personally and/or jointly liable
	passive partner	proportionally according to share capital
civil partnership and firm	partners, and/or people who are clearly in determining alliance policy	be personally and/or jointly liable
cooperative	administrators, supervisors, and/or people who are actually involved in determining cooperative policies	be personally and/or jointly liable

²³ Law Number 6 of 1983 concerning Tax Procedure Law which has been amended several times, most recently by Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law.

²⁴ The same definition is contained in Article 1 number 3 of Law Number 9 of 1997 concerning Tax Collection by Distress Warrant as amended by Law Number 19 of 2000.

²⁵ Article 9 paragraph (1) of PMK No. 61 of 2023.

²⁶ Article 9 paragraph (2) letters a to i PMK No. 61 of 2023.

foundation	chairman, secretary, treasurer, advisor, supervisor, and/or person who is clearly involved in determining foundation policy	be personally and/or jointly liable
joint of cooperation	leader, the person who is actually involved in determining the operational cooperation policy	be personally and/or jointly liable
	pemilik modal	proportionally according to share capital
other bodies	leader, the person who is actually involved in determining the operational cooperation policy	be personally and/or jointly liable
	capital owner	proportionally according to share capital
government work unit	head, authorized budget user, financial officer, and person who is actually involved in determining government work unit policy	be personally and/or jointly liable

The table above shows, first, the broad scope of Corporate Taxpayers, with nine forms ranging from limited liability companies to government work units. Second, all forms of Corporate Taxpayers recognize TRCT liability on a personal basis and/or jointly and severally. Lastly, there are five forms of Corporate Taxpayers that recognize TRCT liability on a proportional basis according to capital contribution, namely: limited liability companies, permanent establishments, limited partnership, joint operations, and other Entities. The remaining forms do not recognize proportional TRCT liability; these forms are civil partnerships and firms, cooperatives, foundations, and government work units.

Conceptually, TRCT is connected to, or is a part of, the tax collection process of Corporate Taxpayers. This position is reflected in the formulation of Article 20 of the Tax Procedure Law, which establishes the tax authority's right to collect tax debts with distress warrant²⁷ when the tax debt is not paid by TRCT within one month²⁸ (or two months in certain circumstances)²⁹ after the issuance of determination or administration decision

²⁷ Article 1 number 21 of the Tax Procedure Law defines a Letter of Compulsion as a letter ordering the payment of tax debts and tax collection costs.

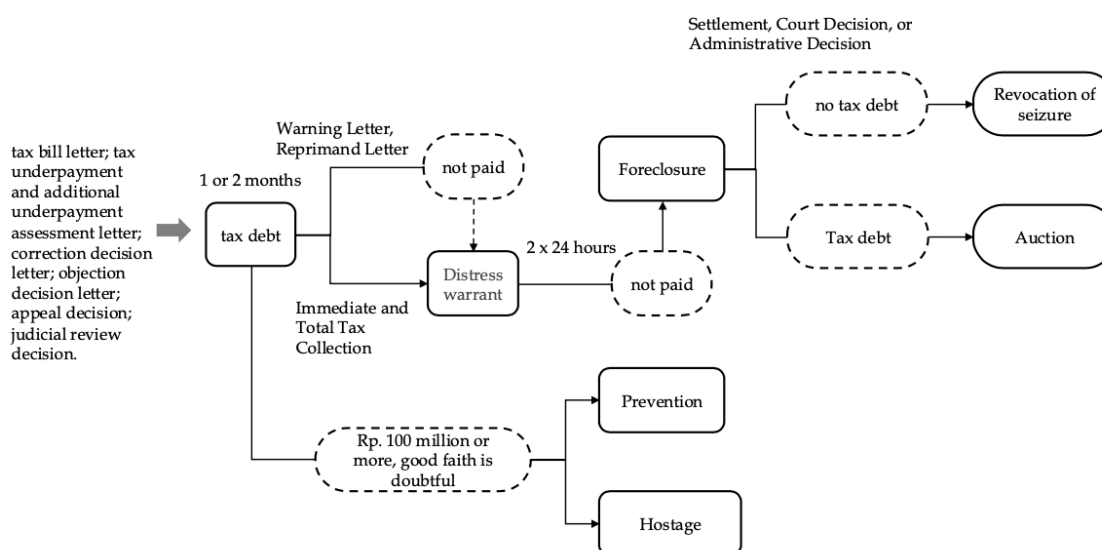
²⁸ Article 9 paragraph (3) of the Tax Procedure Law stipulates that within a period of 1 month after the issuance of the administrative determination or decision or judicial decision which is the basis for tax collection, tax debts must be paid off.

²⁹ Article 9 paragraph (3a) of the Tax Procedure Law stipulates exceptions in certain circumstances, tax debts must be paid within 2 months after the issuance of the administrative determination or decision or judicial decision which is the basis for tax collection.

or judicial decision³⁰ which become the foundation of tax collection. Fundamentally, tax collection is a series of actions taken by tax authorities to secure tax receivables.

Such actions by tax authorities, formulated in Article 1 point 9 of Tax Collection Law³¹ includes: issuing warnings or notices, conducting immediate and simultaneous collection, notification of a distress warrant, proposing bans, executing asset seizures, carrying out detention, and selling seized assets. Schematically, actions that can be taken by tax authority can be illustrated as follow.

Diagram 1. Tax Collection³²



The diagram above shows that, basically, the actions taken by tax authorities in tax collection are divided into the notification of a Distress Warrant, proposing Bans,³³

³⁰ Article 18 paragraph (1) of the Tax Procedure Law formulates the basis for tax collection which causes the amount of tax debt to be paid. These bases can be divided into 2, namely administrative products and judicial products. Administrative products include tax billing letters, tax underpayment assessment letters including additional underpayments, correction decision letters, and objection decision letters. Administrative products are issued by the tax authority, and therefore in the domain of executive power. While judicial products include appeal decisions and judicial review decisions. Both are issued from the "judicial power", and therefore in the domain of judicial power.

³¹ Law Number 9 of 1997 concerning Tax Collection by Distress Warrant as amended by Law Number 19 of 2000.

³² Abstracted from Article 18 paragraph (1) of the Tax Procedure Law; and Article 8 letters a and b, Article 11, Article 12, Article 22 paragraph (1), Article 25 paragraph (1), Article 29, and Article 33 paragraph (1) of the Tax Collection Law.

³³ Article 1 number 20 of the Tax Collection Law defines Prevention as a temporary prohibition against certain Taxpayers from leaving the territory of the Republic of Indonesia for certain reasons in accordance with statutory regulations.

and carrying out Detention.³⁴ The delivery of a Distress Warrant, as elaborated before, is carried out by the tax authority within one month or two months after TRCT fails to pay their tax debts. A Distress Warrant, in accordance with Article 7 paragraph (1) of Tax Collection Law, has an executory power and has the same position as a court decision with permanent legal force. This means that such Distress Warrant can be delivered without having to go through court and is final and binding to TRCT to adhere such decision.

Regarding the time frame for the notification of a Distress Warrant, within such period of one or two months, Article 8 paragraph (1) letter a of Tax Collection Law adds the requirement for the issuance of a Warning Letter, Notice Letter, or other similar documents.³⁵ Furthermore, notification of a Distress Warrant may proceed without waiting for the one or two month period.³⁶ Such notification is subject to specific conditions, including: the TRCT is about to or intends to permanently leave Indonesia; the TRCT moves assets they own or control as part of discontinuing or reducing their business or professional activities; the TRCT is identified as undertaking corporate actions; the business entity is to be dissolved by the state, or the assets of the TRCT are subject to seizure by a third party; or there are indications of insolvency.³⁷ This mechanism is referred to as Immediate and Simultaneous Collection.³⁸

If the TRCT does not pay their tax debts within 2 x 24 hours after the delivery of Distress Warrant, tax authorities shall carry out a seizure.^{39 40} For non-corporate TRCT, the seizure is carried out by tax authorities on movable and immovable assets, whether

³⁴ Article 1 number 21 of the Tax Collection Law defines hostage-taking as the temporary restriction of the Taxpayer's freedom by placing him in a certain place.

³⁵ Article 1 number 10 of the Tax Collection Law defines a Letter of Reprimand or Warning Letter or other similar letter as a letter issued by an official to reprimand or warn Taxpayers to pay off their tax debts.

³⁶ Article 8 paragraph (1) letter b Tax Collection Law in conjunction with Article 20 paragraph (2) Tax Procedure Law.

³⁷ Article 6 paragraph (1) Tax Collection Law in conjunction with Article 20 paragraph (2) of the Tax Procedure Law.

³⁸ Article 1 number 11 of the Tax Collection Law defines Immediate and Simultaneous Collection as a tax collection action carried out by Tax Bailiffs without waiting for the payment due date which includes all tax debts from all types of taxes, Tax Periods and Tax Years.

³⁹ Article 1 number 14 of the Tax Collection Law defines Confiscation as an action by a Tax Bailiff to take possession of the Taxpayer's property, in order to be used as collateral to pay off tax debts according to statutory regulations.

⁴⁰ Article 11 Tax Collection Law.

they are under the control of the TRCT or other parties.⁴¹ For corporate TRCT, the seizure may be conducted on assets belonging to the entity itself, its directors, heads of representatives, branch managers, persons in charge, and shareholders.⁴²

The targets of such seizure, referred to as objects of seizure, include not only those owned by the TRCT, but also assets belonging to the spouse and dependent children of the TRCT, unless there is an agreement on the separation of assets exists.⁴³ There are two possible outcomes of the seizure process: (1) the revocation of the seizure due to the absence of tax debt as a result of payment, a court decision, or an administrative ruling/determination,⁴⁴ or (2) auction of the seized assets if the TRCT fails to settle the tax debt.⁴⁵

Lastly, the proposal for Bans and implementation of Detention apply only to TRCT with tax debts of at least Rp100 million and whose good faith in settling the tax debt is in doubt.⁴⁶ Neither of the two measures, according to Articles 31 and 35 of Tax Collection Law, results in the removal of the tax debt nor the termination of the tax collection process. This provision implies that, in an extreme scale, for the same tax debt, the tax authority may simultaneously carry out tax collection with a Distress Warrant and Bans, or with a Distress Warrant and Detention.

After looking into the provisions of the TRCT liability, it is known that Distress Warrant, Assets Seizure, and Auction targets the TRCT liability individually or jointly and severally. TRCT individual liability means that the taxation system applies special obligations for the TRCT to pay the Corporate Taxpayer tax debt. Whereas TRCT joint and several liability raises a collective liability for the Corporate Taxpayer. The next chapter illustrates how a judge operationalizes such individual TRCT liability and joint or several TRCT liability in a lawsuit case in the Tax Court.

⁴¹ Article 14 number (1) Tax Collection Law.

⁴² Article 14 number (1a) Tax Collection Law.

⁴³ Article 14 number (1) PMK No. 61 of 2023.

⁴⁴ Article 22 number (1) UU Tax Collection Law.

⁴⁵ Article 25 number (1) UU Tax Collection Law.

⁴⁶ Article 29 dan Article 33 number (1) Tax Collection Law.

Tax Court Decisions in Lawsuits Concerning TRCT Liability

As explained at the end of the previous chapter, this article explores two categories in the application of TRCT liability. The first category focuses on cases involving personal liability of TRCT. The second category examines cases of joint and several liability of TRCT. The first category focuses on the extent of the TRCT's authority to act⁴⁷ in relation to the tax rights and obligations of the Corporate Taxpayer. This feature is a concern to the Tax Court Panel of Judges, as demonstrated in Decision Number PUT-117621.99/2017/PP/M.XIIIA of 2018, dated 31 October, 2018.

The case began from the follow-up to a change in the management of the Corporate Taxpayer through a notarial deed of agreement, which included the transfer of TRCT status from Sulistijo Gunawan Sia (the former director) to the plaintiff (the new director).⁴⁸ As a compensation for the transfer, Sulistijo Gunawan Sia promised to transfer ownership of a number of shares in the Corporate Taxpayer to the plaintiff. In the development, Sulistijo Gunawan Sia defaulted on this obligation, leading the plaintiff to issue a notarial declaration annulling the original notarial deed of transfer of TRCT status.

When tax authority issued Letter Number S-8243/WPJ.24/KP.04/2017 which informed the plaintiff of their status as a TRCT, the letter was challenged.⁴⁹ The plaintiff opined that such issuance was inappropriate. In the claim, the plaintiff argued that in accordance with the notarial declaration on the annulment of the notarial deed of transfer of TRCT, the party who held the TRCT status was not the plaintiff, but Sulistijo Gunawan Sia. In other words, the plaintiff claimed that the notarial declaration on the annulment of the notarial deed of transfer of TRCT had the legal effect of nullifying the transfer of TRCT status from Sulistijo Gunawan Sia to the plaintiff.

The panel of judges disagreed with the plaintiff's argument.⁵⁰ According to the panel, the notarial declaration is a unilateral legal act that cannot annul a contractual agreement. The principle of *pacta sunt servanda* applies to the deed of agreement, as

⁴⁷ Ade Maman Suherman and J Satrio, *Kecakapan dan Kewenangan Bertindak Berdasar Batasan Umur* (2010).

⁴⁸ *Putusan Pengadilan Pajak Nomor PUT-11762199/2017/PP/MXIIIA Tahun 2018.*

⁴⁹ *ibid.*

⁵⁰ *ibid.*

formulated in Article 1338 paragraph (1) of the Indonesian Civil Code, which states that all agreements shall have the force of law to the parties who create them. Based on this provision, the panel concluded that the plaintiff had the authority to act in fulfilling the tax rights and obligations of the Corporate Taxpayer. Consequently, the status of TRCT is with the plaintiff, and not with Sulistijo Gunawan Sia.

The same focus can also be found in Tax Court Decision Number Put.69223/PP/M.XVIII A/99/2016 and Tax Court Decision Number Put.69224/PP/M.XVIII A/99/2016. Both lawsuits were filed by the same plaintiff. The case⁵¹ originated from a tax audit carried out by the tax authority on a Corporate Taxpayer that had ceased operations and still had outstanding obligations to former employees whose employment had been terminated.

The audit resulted in the issuance of an Underpayment Tax Assessment Letter, which was delivered by the tax authority through the postal service.⁵² In its progress, all assets of the Corporate Taxpayer and the plaintiff were auctioned by Bank BRI, as those assets had been pledged as collateral for loans. Thereafter, the tax authority issued a Warning Letter, followed by the issuance of a Distress Warrant, the notification of which was signed by the plaintiff.

The Distress Warrant was challenged, and in the claim, the plaintiff based his arguments on the fact that he (1) never received any Underpayment Tax Assessment Letter; and (2) the plaintiff did not own any asset as all of the assets had been auctioned by Bank BRI.⁵³ In response to the plaintiff's first argument, the panel of judges held that the Underpayment Tax Assessment Letter had been duly delivered to the plaintiff by the tax authority through postal services.

This view is supported by the fact that the plaintiff signed the delivery and notification of a Distress Warrant.⁵⁴ The execution showed that the plaintiff confirmed the receipt of the Underpayment Tax Assessment Letter which had a permanent legal power, as the Distress

⁵¹ Tax Court Decision Number Put69223/PP/MXVIII A/99/2016, Tax Court Decision Number Put69224/PP/MXVIII A/99/2016.

⁵² *ibid.*

⁵³ *ibid.*

⁵⁴ *ibid.*

Warrant was issued based on the Underpayment Tax Assessment Letter. In response to the plaintiff's second argument, the panel of judges considered that the argument was not admissible under the prevailing tax laws and regulations, and therefore disregarded it. As a consequence, the status of TRCT was deemed to be with the plaintiff.

The second category is the TRCT joint or several liability. Joint and several liability is a concept rooted from the civil law, which is a binding in a big number of subjects.⁵⁵ Joint and several liability is divided into: [1] active liability, with more than one creditor; and [2] passive liability, with more than one debtor.⁵⁶ The second case falls in the category of passive joint and several liability. TRCT joint and several liability can be observed in Tax Court Decision Number Put-119068.99/2017/PP/M. XVIB of 2018, dated 12 July, 2018.

The case⁵⁷ in the decision mentioned above began with the issuance of an Underpayment Tax Assessment Letter to the Corporate Taxpayer, with TRCTs including the president director, directors, president commissioner, and commissioners. The letter was issued on 16 January, 2002. A few days later, the Corporate Taxpayer was dissolved and appointed Antoni Bangun as the liquidator.

Afterward, the tax authority took a series of tax collection actions, such as the issuance of a Warning Letter, notification of the Distress Warrant, and delivery of the Warrant for Seizure Execution.⁵⁸ In response to these actions, the Corporate Taxpayer made installment payments on the tax debt, with the payment statement signed by the director. The collection actions continued with the issuance of the Minister of Finance of the Republic of Indonesia Decree Number 911/KMK.03/2017, dated 4 December, 2017, which imposed a ban on the president director, president commissioner, and commissioners. This decree was later challenged in court.

In the claim,⁵⁹ the plaintiff argued that such ban was inappropriate as the Corporate Taxpayer had been dissolved and liquidated, hence the plaintiff was no longer the

⁵⁵ C Asser, *Pengajian Hukum Perdata Belanda* (Dian Rakyat 1991).

⁵⁶ *ibid.*

⁵⁷ Tax Court Decision Number Put-11906899/2017/PP/MXVIB of 2018.

⁵⁸ *ibid.*

⁵⁹ *ibid.*

commissioner, but a shareholder. The liability of shareholders as TRCT is limited to the shares deposited to the Corporate Taxpayer. Shareholders acting as TRCT should not be subjected to a Ban, as the liability does not extend to their personal assets. The plaintiff argued that the TRCT should have been imposed on Antoni Bangun as the liquidator of the Corporate Taxpayer. Since the dissolution, all actions related to the management of liquidation, including the rights and obligations of the Corporate Taxpayer, were carried out by the liquidator.

The panel of judges disagreed with the plaintiff.⁶⁰ Referring to the Underpayment Tax Assessment Letter, it is evident that the tax debt arose prior to the dissolution and liquidation of the Corporate Taxpayer. The creation of the tax debt adheres to the material doctrine (*materieel leer*), that a tax obligation arises immediately upon the fulfillment of both subjective and objective requirements. At the time the tax debt arose, the plaintiff held the position of commissioner, and the commissioner is regarded as a TRCT. Upon the dissolution and liquidation of the Corporate Taxpayer, the role of Antoni Bangun as liquidator was not connected to the origin of the tax debt. Consequently, the TRCT liability remained with the plaintiff as the former commissioner, and not with Antoni Bangun in his capacity as the liquidator.

The next case, involving joint and several liability of TRCT, is reflected in several Tax Court Decisions as follows: PUT-118605.99/2017/PP/M.IIIA of 2018, PUT-118606.99/2017/PP/M.IIIA of 2018, PUT-118607.99/2017/PP/M.IIIA of 2018, PUT-118608.99/2017/PP/M.IIIA of 2018, PUT-118609.99/2017/PP/M.IIIA of 2018, and PUT-118610.99/2017/PP/M.IIIA of 2018. All six cases involve lawsuits filed by the same plaintiff.

The case⁶¹ began with the issuance of an Underpayment Tax Assessment Letter addressed to the plaintiff on 21 June 2017. After sending three warning letters, the tax authority issued and notified the plaintiff of a Distress Warrant. The issuance of this letter was challenged by the plaintiff.

In the lawsuit,⁶² the plaintiff argued that the issuance of the Distress Warrant was

⁶⁰ *ibid.*

⁶¹ Tax Court Decisions in 2018 with Numbers: 11860599, 11860699, 11860899, 11860899, 11860999, and 11861099.

⁶² *ibid.*

inappropriate because the tax arrears were caused by the actions of Yayak Gunawan, the director, who failed to deposit the VAT, as stated in the East Sidoarjo District Court Decision Number 03/Pdt.G/2017/PN.Sidoarjo dated 23 March, 2017. This court decision ordered Yayak Gunawan to compensate the plaintiff for failing to remit the VAT to the state treasury. The plaintiff used this ruling as the basis to argue that the Distress Warrant should have been directed to Yayak Gunawan.⁶³

The Tax Court Panel disagreed with the plaintiff's argument.⁶⁴ According to the panel, the district court decision placed the liability of Yayak Gunawan on the plaintiff, which already included the plaintiff's losses arising from Yayak Gunawan's failure to deposit the VAT to the state. Meanwhile, the plaintiff is president director, and Yayak Gunawan is director, both of whom were company officers, thus both were considered as TRCTs. As a result, the plaintiff remained in the position of TRCT.⁶⁵

Next, a variant of the joint and several TRCT liability case regarding capital contributions can be seen in the Tax Court Decision Number Put.70116/PP/M. IA/99/2016. The TRCT versus tax authority dispute began with the issuance of an Underpayment Tax Assessment Letter against the Corporate Taxpayer on 16 June, 2009.⁶⁶ Following this issuance, several tax collection actions had been carried out by the tax authority: the issuance of a Warning Letter, a Distress Warrant, a Warrant for Seizure, a Ban against the Board of Directors of the Corporate Taxpayer, and Auction. This series of actions by the tax authority had not yet settled all the tax arrears of the Corporate Taxpayer, which, when the lawsuit was filed, still had an outstanding debt of Rp229,172,965,840.

The tax authority then attempted to reach the shareholders of the Corporate Taxpayer as TRCT.⁶⁷ The ownership structure of the shares can be described through the following diagram.

⁶³ *ibid.*

⁶⁴ *ibid.*

⁶⁵ *ibid.*

⁶⁶ Tax Court Decision Number Put70116/PP/MIA/99/2016.

⁶⁷ *ibid.*

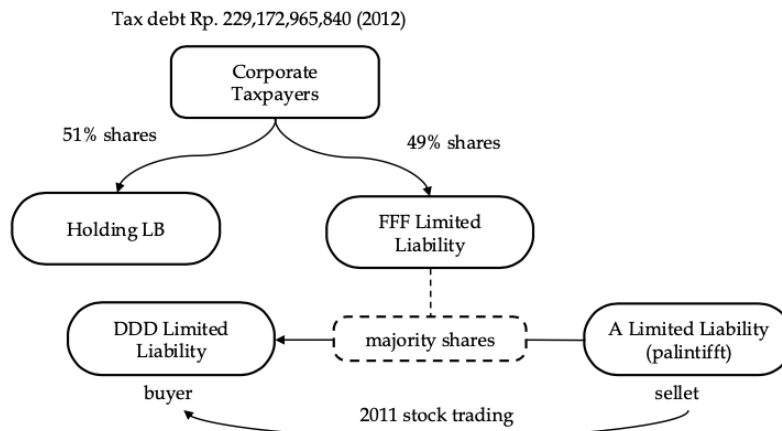
Diagram 2. Corporate Taxpayer Shareholders⁶⁸

Diagram 2 shows the Corporate Taxpayer Shareholders of Holding LB of 51% and Company FFF of 49%. The majority of shares of Company FFF are owned by Company DDD. Such ownership is decided based on the trade activity between Company A (the plaintiff) as the seller and Company DDD as the buyer. The trade activity was conducted on 8 July, 2011.

In reaching the shareholders as TRCT, tax authority only determined Company FFF, Company DDD, and Company A (the plaintiff) as the TRCT.⁶⁹ Furthermore, the tax authority also determined permanent establishment EEE as TRCT because they are seen as controlling the operations of Corporate Taxpayer. Such permanent establishment is not the shareholder of the Corporate Taxpayer. Meanwhile, Company DDD as the majority shareholder of the Corporate Taxpayer was not determined as the TRCT.

The plaintiff disagreed with the appointment of Company A (the plaintiff) as TRCT.⁷⁰ The plaintiff proposed that the plaintiff no longer owned any shares in the Corporate Taxpayer since 2011 because the shares had been transferred through trade activity with Company DDD. Meanwhile, the tax authority stipulated both Company A (the plaintiff) and Company DDD as TRCT.

The determination above confuses the positions of shareholders *ex-ante* and *ex-post*.⁷¹ *Ex-ante* transfer, meaning Company A (the plaintiff) was the shareholder and

⁶⁸ *ibid.*

⁶⁹ *ibid.*

⁷⁰ *ibid.*

⁷¹ *ibid.*

Company DDD was not. *Ex-post* transfer, meaning Company A (the plaintiff) no longer held shareholder status, and Company DDD had become the shareholder. Confusing the two, by treating both Company A (the plaintiff) and Company DDD as TRCT, is contradictory to the established legal facts.

Next,⁷² the plaintiff argued that the tax authority's collection actions, which did not determine Holding LB as TRCT, were contrary to the principle of justice, as Holding LB was the majority shareholder of the Corporate Taxpayer. The injustice was also shown by the tax authority's decision to appoint permanent establishment EEE as TRCT because it was considered controlling the operations of the Corporate Taxpayer, despite the fact that the permanent establishment was not a shareholder.

Simply put, the plaintiff challenged the inconsistency of the tax authority's classification of TRCT.⁷³ There was classification of TRCT based on direct minority shareholding, as in the case of Company FFF; classification based on indirect shareholding that conflated ex-ante and ex-post share transfers, as in the case of Company DDD and Company A (the plaintiff); classification based on control without share ownership, as in the case of permanent establishment EEE; and a refusal to classify as TRCT despite holding a position as the direct majority shareholder, as in the case of Holding LB.

The panel of judges concurred with the arguments presented by the plaintiff.⁷⁴ According to the panel, the tax authority should have first completed the collection process against the board of directors and commissioners. The designation of Company FFF, Company DDD, Company A (the plaintiff), and permanent establishment EEE as TRCT, while failing to designate Holding LB, despite it being the direct majority shareholder, as TRCT, reflected actions that are inconsistent with the principle of legal certainty. As a result, the designation of the plaintiff as TRCT was annulled.

Several of the aforementioned court rulings indicate that tax collection causes various issues concerning the liability of TRCT. TRCT are not only held responsible for the payment of tax debts, but also bear significant additional burdens in the tax

⁷² *ibid.*

⁷³ *ibid.*

⁷⁴ *ibid.*

collection process. The complexity of these issues varies across the two categories of cases previously described. In particular, the issues center on the position of corporate officers as TRCT – both in cases involving personal liability and in those involving joint and several liability.

In cases under the first category, TRCT in their personal capacity, as newly appointed management, is required to pay the tax debts of the Corporate Taxpayer which arises from the actions of the previous management⁷⁵ while disregarding the interests of other creditors over the TRCT 's personal assets.⁷⁶ In contrast, in cases under the second category, joint and several TRCT must pay the tax debts of the Corporate Taxpayer incurred during their own tenure as part of the previous management,⁷⁷ while disregarding the misconduct of individual members of the management that led to the Corporate Taxpayer's non-compliance.⁷⁸ A variant within the second category supports joint and several liability primarily imposed on members of the management of the Corporate Taxpayer.⁷⁹

Both categories show that, essentially, Corporate Taxpayer's liability to pay tax debts adhere to the TRCT. The position of TRCT as part of the management of the Corporate Taxpayer shows the possibility of interference with property rights compared to the position of TRCT as capital contributors. These two categories show a broader structural issue, whether effective tax collection can justify imposing liability without thoroughly considering the potential impact on the TRCT. The following chapter explores how TRCT liability is positioned within the broader discourse of legal accountability.

TRCT Liability in the Discourse of Legal Liability

Article 23A of the 1945 Constitution of the Republic of Indonesia is the only constitutional article that explicitly refers to taxation. This article serves as the foundation

⁷⁵ Tax Court Decision Number PUT-117621.99/2017/PP/M.XIIIA of 2018 (n 45).

⁷⁶ Tax Court Decision Number Put.69223/PP/M.XVIII/99/2016, Tax Court Decision Number Put.69224/PP/M.XVIII/99/2016 (n 48).

⁷⁷ Putusan Pengadilan Pajak Nomor Put-119068.99/2017/PP/M.XVIB Tahun 2018 (n 54).

⁷⁸ Tax Court Decision Number Put-119068.99/2017/PP/M.XVIB of 2018 (n 54).

⁷⁹ Tax Court Decision Number Put.70116/PP/M.IA/99/2016 (n 63).

for the issuance of all tax-related legislation in Indonesia, including the Tax Procedure Law and the Tax Collection Law, both of which contain normative formulations regarding the TRCT liability. These normative provisions are further elaborated in various implementing regulations.

The normative formulation, which essentially exposes third parties to obligations related to the fulfillment of the *tatbestand* of the Corporate Taxpayer, necessitates an assessment of the impact of tax collection measures on such third parties in order to test their proportionality.⁸⁰ The facts within various Tax Court decisions on the involvement of TRCT, extending liability to both former and current management in relation to the payment of a Corporate Taxpayer's tax debt, raise concerns from a justice and fairness perspective.

In this context, tax legislation should not rely solely on Article 23A of the 1945 NRI Constitution, but must also refer to Article 28G paragraph (1) of the 1945 NRI Constitution, which serves as the foundation for the protection of property rights. Any interference with property rights must achieve a "fair balance" between tax levies as a representation of the public interest and the protection of property as a manifestation of the recognition of human rights. This fair balance between taxation and property protection, in the context of TRCT liability, may be assessed through the lens of legal liability.

Conceptually, legal liability is connected to legal obligation.⁸¹ This relationship can be simply illustrated as follows: an individual is legally obliged to behave in a certain manner if acting otherwise constitutes grounds for the imposition of coercive measures.⁸² There are two primary categories of legal liability, namely absolute or strict liability and fault-based liability.⁸³

Strict liability is fundamentally characterized by the imposition of liability based on

⁸⁰ Pistone and others (n 1).

⁸¹ Martin P Golding, 'Responsibility' in Martin P Golding and William A Edmundson (eds), *The Blackwell Guide to the Philosophy of Law and Legal Theory* (Blackwell Publishing Ltd 2005).

⁸² Hans Kelsen, *Pure Theory of Law* (Max Knight ed, Second, University of California Press 2020).

⁸³ Miriam Buiten, Alexandre de Streel and Martin Peitz, 'The Law and Economics of AI Liability' (2023) 48 Computer Law and Security Review 105794 <<https://doi.org/10.1016/j.clsr.2023.105794>>.

the “materialization” of certain risks arising from an act.⁸⁴ It is founded on the preposition that a particular act is considered dangerous, yet the state permits individuals to engage in such conduct due to its perceived social utility.⁸⁵ In this context, reasonable care becomes the key determinant in the imposition of strict liability – namely, the failure to exercise reasonable care results in the triggering of strict liability.⁸⁶

Next, fault-based liability is imposed on a perpetrator’s act that causes harm, where the act is planned or intended to bring about that harmful consequence.⁸⁷ In this context, an examination is done to investigate if there is a causal link between the act and its consequence: whether the harmful outcome was deliberately planned and intended by the perpetrator, and whether that intent constitutes a prohibited act under the law. In its development, the perpetrator can be held legally responsible for the harmful consequence not only if the consequence was intentionally caused, even without malicious intent, but also if the consequence occurs without the perpetrator’s intent or planning.⁸⁸

In addition to the categorization into strict liability and fault-based liability, legal liability is also divided into individual liability and collective liability.⁸⁹ The distinction between the two can be simply described as follows: an individual may be held liable solely for their own behaviors, or an individual may be held liable not only for their own actions but also for the actions of others.⁹⁰ The former is individual liability, while the latter represents collective liability.

The explanation above illustrates that individual liability is exclusive (targets the perpetrator), whereas collective liability is inclusive (targets a group of individuals associated with the perpetrator).⁹¹ The explanation also indicates that individual liability

⁸⁴ Franz Werro and Erdem Büyüksagis, ‘The Bounds between Negligence and Strict Liability’ in Mauro Bussani and Anthony J Sebok (eds), *Comparative Tort Law* (Second Edi, Edward Elgar Publishing Limited 2021).

⁸⁵ Nils Jansen, ‘The Idea of Legal Responsibility’ (2014) 34 *Oxford Journal of Legal Studies* 221.

⁸⁶ Buiten, de Streel and Peitz (n 80).

⁸⁷ Jimly Asshiddiqie and M Ali Safa’at, *Teori Hans Kelsen Tentang Hukum* (Mahkamah Konstitusi RI 2016).

⁸⁸ *ibid.*

⁸⁹ Kelsen (n 79).

⁹⁰ *ibid.*

⁹¹ *ibid.*

typically falls under fault-based liability, while collective liability aligns with the concept of strict liability.⁹²

In its development, collective/strict liability has significant attention from scholars due to its characteristic of assigning liability to individuals associated with the wrongful act.⁹³ The concept of reasonable care once again becomes the focus: when and under what conditions, can an individual be deemed to have failed to exercise reasonable care in relation to the actions of another person, thereby resulting in the imposition of liability on the former?⁹⁴ This condition is examined through the doctrine of *res ipsa loquitur*.

The doctrine of *res ipsa loquitur* is applied when the cause of a loss is unclear, but the circumstances show a lack of care.⁹⁵ The doctrine is applied to determine the target of liability in various fields of law, such as environmental law,⁹⁶ consumer law,⁹⁷ and medical malpractice.⁹⁸ The application of *res ipsa loquitur* requires the creditor to prove two general elements: [1] the obligation is fulfilled if and when someone manages it with due care; and [2] the debtor has exclusive control over the fulfillment of that obligation.⁹⁹

Identification of an individual as the debtor is not done randomly, because random methods cause uncertainty in the liability of each actor within the group: with a total obligation of D and the number of n actor(s) in the group, random selection means each

⁹² Asshiddiqie and Safa'at (n 84).

⁹³ Rosa Agustina, *Perbuatan Melawan Hukum* (Program Pascasarjana Fakultas Hukum Universitas Indonesia 2003).

⁹⁴ Buiten, de Streel and Peitz (n 80).

⁹⁵ Nita Triana, Ade Tuti Turistiati and Lincoln Monk, 'Progressivity of Judges in Using The Principle of Strict Liability as A Legal Reasoning in Forest Fire Cases' (2023) 19 *Varia Justicia* 116.

⁹⁶ Jamalum Sinambela, 'Optimalisasi Green Economy Melalui Penerapan Doktrin Res Ipsa Loquitur Dalam Sengketa Lingkungan Hidup Green Economy' (2023) 1 *Jurnal Plaza Hukum Indonesia* 2023 <<http://www.plazahukumindonesia.com>>.

⁹⁷ Aan Suryamah and others, 'Regulation and Application of the Doctrine of Res Ipsa Loquitur in the Settlement of Consumer Disputes in Indonesia' (2024) 5 *Law & Legal Reform* 237 <<http://103.23.102.168/journals/jllr/article/view/2103/62>>.

⁹⁸ CA Maimela, 'Medical Negligence and the Res Ipsa Loquitur Doctrine in the Administration of Cancer Treatment in South Africa' (2022) 43 *Obiter* 1 <https://journals.co.za/doi/epdf/10.10520/ejc-obiter_v43_n1_a1>.with dire consequences. For example, health establishments, particularly in the public sector, are unable to realise their duty to provide health care to millions of disadvantaged people as enshrined by section 27(1

⁹⁹ J Shahar Dillbary, 'The Case Against Collective Liability' (2021) 62 *Boston College Law Review* 391 <https://scholarship.law.ua.edu/fac_articles/629/?utm_source=scholarship.law.ua.edu%2Ffac_articles%2F629&utm_medium=PDF&utm_campaign=PDFCoverPages>.

actor faces a $1/n$ chance of being chosen, and liability of D/n .¹⁰⁰ To avoid this uncertainty, the identification of “individual as debtor” is done by targeting one individual as the party bearing the liability.¹⁰¹ Targeting is applied as a condition for permitting collective activities, thus not only facilitating the identification of “individual as debtor” (*ex-post* side) but also encouraging the fulfillment of collective obligations (*ex-ante* side).¹⁰²

Moving from the overall explanation in paragraphs four to eleven above, in the context of TRCT liability, the liability is clearly not fault-based liability nor individual liability, but it also does not fully reflect the characteristics of strict liability and collective liability.

First, fault-based liability targets actions that cause harm.¹⁰³ Meanwhile, TRCT liability arises from unpaid tax debts of the Corporate Taxpayer, so the payment obligation is imposed on the TRCT.¹⁰⁴ This characteristic of TRCT liability shows a mismatch with fault-based liability. This characteristic also indicates a mismatch between TRCT liability and individual liability, because individual liability holds an individual responsible only for their own actions.¹⁰⁵

Second, in TRCT liability, a Corporate Taxpayer is seen as a group of people and capital forming a single entity.¹⁰⁶ TRCT are parties designated by law to be responsible for the actions of this “group”.¹⁰⁷ This construction is similar to collective liability, where an individual is responsible not only for their own actions but also for the actions of other individuals. Third, reasonable care in strict liability¹⁰⁸ is already reflected in TRCT liability through Article 32 paragraph (2) of the Tax Procedure Law.¹⁰⁹ However, this normative formulation still allows joint and several liability, unlike the doctrine of *res ipsa loquitur* that seeks liability to be targeted at one individual.¹¹⁰ Joint and several

¹⁰⁰ *ibid.*

¹⁰¹ *ibid.*

¹⁰² *ibid.*

¹⁰³ Asshiddiqie and Safa’at (n 84).

¹⁰⁴ Article 1 number 28 Tax Procedure Law.

¹⁰⁵ Kelsen (n 79).

¹⁰⁶ Article 1 number 3 Tax Procedure Law.

¹⁰⁷ Article 1 number 28 Tax Procedure Law.

¹⁰⁸ Buiten, de Streel and Peitz (n 80).

¹⁰⁹ This article regulates exceptions as TRCT if the party can prove that it is truly impossible for him to be burdened with responsibility for the debts of the Corporate Taxpayer.

¹¹⁰ Dillbary (n 96).

liability uses a random method in identifying TRCT,¹¹¹ which, as previously explained, creates uncertainty for each party identified as TRCT.

Lastly, strict liability is based on the preposition that certain actions are considered dangerous but potentially beneficial.¹¹² To minimize the risk of harm, government permission is required to perform such actions.¹¹³ For this risk, strict liability is imposed to reduce moral hazard: the privilege holder (licensee) has no incentive to exercise caution in performing dangerous acts that cause harm.¹¹⁴ Meanwhile, TRCT liability arises from the failure of Corporate Taxpayer to fulfill tax obligations hence the liability falls on TRCT.¹¹⁵ This framework clearly does not involve danger and therefore does not require government permission to minimize the presence of moral hazard.

The four descriptions above show that the provisions on TRCT liability are not rooted in the concept of legal liability. The question arises, is the TRCT liability provision *sui generis*? The answer begins with tracing when and how a provision is defined as *sui generis*. Terminologically, *sui generis* means “of its own kind”. A provision is defined as *sui generis* when it treats a particular entity, activity, or relationship as the subject of a narrowly defined legal regime.¹¹⁶ *Sui generis* provisions arise from the absence of a broader category to achieve the purpose, thus *sui generis* provisions are applied.¹¹⁷

Based on the characteristics of *sui generis* provisions, it can be said that tax law, particularly the provisions on TRCT liability, is *sui generis*.¹¹⁸ The goal is to facilitate administration in collecting state revenue.¹¹⁹ What needs attention is that *sui generis*

¹¹¹ Article 9 number (2a – 2i) PMK No. 61 of 2023.

¹¹² Werro and Büyüksagis (n 81).

¹¹³ Buiten, de Streel and Peitz (n 80).

¹¹⁴ Jansen (n 82).

¹¹⁵ Article 1 number 28 Tax Procedure Law.

¹¹⁶ Lyria Bennett Moses, ‘Sui Generis Rules’ (2009) 50 UNSW Law Research Paper <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1526023>.

¹¹⁷ *ibid*.

¹¹⁸ Richard K Gordon, ‘Law of Tax Administration and Procedure’ in Victor Thuronyi (ed), *Tax Law Design and Drafting*, vol 1 (International Monetary Fund 1996) <<http://www.imf.org/external/pubs/nft/1998/tlaw/eng/index.htm>>.

¹¹⁹ Gunadi, ‘Taxation of Technical Services Income Under Indonesia-Japan Treaty: Case Study of PT XYZ’ (2020) 1 Jurnal Pajak dan Bisnis 1 <<https://jurnal.stpi-pajak.ac.id/index.php/JPB/article/view/2>>.

provisions have the potential to fail to provide an adequate basis, creating gaps between regulatory regimes and legal uncertainty.¹²⁰ This risk is at least evident in the uncertainty of applying TRCT liability in cases adjudicated by the Tax Court. Some cases emphasize the liability of new management required to pay the tax debt of the Corporate Taxpayer arising from the old management's administration,¹²¹ disregarding the interests of other creditors regarding the TRCT's assets.¹²² Meanwhile, other cases focus on the liability to pay the Corporate Taxpayer's tax debt arising from the TRCT's administration as part of the old management,¹²³ ignoring the misconduct of one management member that caused the Corporate Taxpayer's non-compliance.¹²⁴

Conclusion

The provisions of formal tax law position TRCT liability as the target of tax collection enforcements within the scope of Distress Warrant, Asset Seizure, and Asset Auction. This liability target can be either individually or jointly and severally. Individual liability of TRCT means the tax system imposes a special obligation on the TRCT to pay the tax debt of the Corporate Taxpayer. Meanwhile, joint and several liability of TRCT results in shared liability for the Corporate Taxpayer's debt.

In the application of the above formal tax law provisions, several lawsuit decisions at the Tax Court show that tax collection raises several issues related to the liability of TRCT. TRCT is not only faced with the r liability for paying tax debts but also bears a considerable additional burden in tax collection enforcement. The complexity of these problems varies in individual liability and joint and several liability. Specifically regarding the liability of management as TRCT, court rulings reveal the possibility of interference with property rights compared to the position of TRCT as capital contributors of Corporate Taxpayer.

¹²⁰ Moses (n 113).

¹²¹ *ibid.*

¹²² Tax Court Decision Number Put.69223/PP/M.XVIII/99/2016, Tax Court Decision Number Put.69224/PP/M.XVIII/99/2016 (n 48).

¹²³ Tax Court Decision Number Put-119068.99/2017/PP/M.XVIB of 2018 (n 54).

¹²⁴ Tax Court Decisions 2018 with Numbers: 118605.99, 118606.99, 118608.99, 118608.99, 118609.99, and 118610.99 (n 58).

Examination through the lens of legal liability, of the provisions and their application in practice through lawsuits at the Tax Court, shows that TRCT is not rooted in the concept of legal liability. Indeed, the absence of such roots can be justified as *sui generis* provisions. However, the *sui generis* nature of the TRCT provisions poses the risk of uncertainty in application, as demonstrated by the Tax Court decisions. Some cases emphasize the liability of the new management who are required to pay Corporate Taxpayer tax debts arising from the previous management while disregarding the interests of other creditors over the assets of TRCT. Meanwhile, other cases focus on the liability to pay Corporate Taxpayer's tax debts arising from the tenure of TRCT as part of the previous management, ignoring the actions of one member of the management who caused the non-compliance of Corporate Taxpayer.

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