

Thesis Title : Legal Problem Relating to Tax Liabilities in Reorganization
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ABSTRACT

When debtors enter the process of reorganisation process, the law requires the reorganization plan to be accepted by the creditors as well as to be confirmed by the court in order to bind all creditors who qualify file proof of claim. The law divides creditors to be two types, which are secured creditor and unsecured creditor.

However, the reorganization process does not imply that the debts will be settled to creditors in full amount or more than liquidation. According to section 90/46(2) of the Bankruptcy Act B.E.2483, assets must be distributed to the creditors according to their priority specify by the law of liquidation. Therefore the unsecured tax claim being due in 6 months before the court has order is preferential creditor, which has a preferential right and must be settled in full amount before other non-preferential creditors. This makes an injustice to other unsecured creditors and leads to the study of the termination of preferential right in income tax.

According to the study, it was found that the preferential right of tax claim that exists before the reorganization process is against parri passu, which is one of the most important principles in the insolvency law. Eventhough the principle of parri passu accept in law is not the absolute parri passu because of the existence of preferential right that treat each creditor differently, but such priority should be exercised only in the significant case and necessary to the reorganization such as the preferential right in administrative expenses claims , and worker claims. However, the unsecured tax claims do not have any significance and is not necessary to the reorganization process. It is merely the state's policy for state revenue. In addition, the

preferential right in unsecured tax claim would increase the risk to unsecured non-preferential creditors, who are the most suffered party. These suffered creditors may not accept the reorganization plan. As a result, the plan will not be able to continue further. Nowadays many countries, which have exercised Bankruptcy Law for long time, has already canceled the preferential right in unsecured tax claims. Thus, in the reorganization process, the unsecured tax claims are treated in the same way as other unsecured claims.

This thesis aims to separately specify the priority of distribution of assets in reorganization process from the liquidation process in section 130. The preferential right in unsecured tax claims, that are arisen before the court's order to reorganization, should be terminated and such unsecured tax claims should be treated in the same manner with other unsecured claims.

