

The Role of Curators in Bankruptcy Legal Issues Between Debtors and Creditors in Postponement of Debt Payment Obligations (PKPU)

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Abstract : *In accordance with article 37 of 2004 concerning bankruptcy and suspension of debt payment obligations (PKPU) Bankruptcy article 1 which explains that a creditor is a person who has receivables due to an agreement or law that can be collected in court. A debtor is a person who has debts due to an agreement or law whose payment can be collected in court. A bankrupt debtor is a debtor who has been declared bankrupt by a court decision. The Curator is the Estate Office or an individual appointed by the Court to manage and settle the assets of the Bankrupt Debtor under the supervision of the Supervisory Judge in accordance with this Law. Debt is an obligation that is stated or can be stated in an amount of money either in Indonesian currency or foreign currency, either directly or which will arise in the future or contingently, which arises due to an agreement or law and which must be fulfilled by the Debtor and if not fulfilled gives the Creditor the right to obtain fulfillment from the Debtor's assets. In the event of bankruptcy, the curator has full authority after the bankruptcy decision is issued by the Judge. The curator's responsibilities are divided into 2 (two), namely the responsibility as a curator in his capacity as a curator, and the responsibility of the curator in his capacity not as a curator. The role of the curator in postponing debt payment obligations is to manage and distribute the debtor's assets to creditors in accordance with the regulations and priorities stipulated in the Bankruptcy Law. The curator also ensures that payments are made fairly and in accordance with the law. The duties and roles of the curator in the bankruptcy process are 1) Managing the debtor's assets after the debtor no longer has the authority to manage the assets. 2) Managing and settling the bankruptcy estate from the date the bankruptcy decision was pronounced. 3) Revealing bank secrets to obtain complete information regarding the debtor's assets. 4) Carrying out execution of all debtor assets that are outside the jurisdiction of Indonesia. In carrying out his duties, the curator will be supervised by a supervising judge. The supervising judge is tasked with supervising the authority and implementation of the curator's duties so that he always carries out his authority and duties within the specified limits.*

Keywords : *Curator, Debtor, creditor, Role of curator in Suspension of Debt Payment Obligations (PKPU), Supervising Judge.*

Abstrak : Sesuai dengan pasal 37 tahun 2004 tentang kepailitan dan penundaan kewajiban pembayaran utang (PKPU) Kepailitan pasal 1 yang menjelaskan bahwa kreditor adalah orang yang mempunyai piutang karena suatu perjanjian atau undang-undang yang dapat ditagih di pengadilan. Debitor adalah orang yang mempunyai utang karena suatu perjanjian atau undang-undang yang pembayarannya dapat ditagih di pengadilan. Debitor pailit adalah debitor yang telah dinyatakan pailit berdasarkan suatu putusan pengadilan. Kurator adalah Kantor Pertanahan atau orang pribadi yang ditunjuk oleh Pengadilan untuk mengurus dan membereskan harta Debitor Pailit di bawah pengawasan Hakim Pengawas sesuai dengan Undang-Undang ini. Utang adalah kewajiban yang dinyatakan atau dapat dinyatakan dengan sejumlah uang baik dalam mata uang Indonesia maupun mata uang asing, baik secara langsung maupun yang akan timbul di kemudian hari atau dengan syarat, yang



timbul karena suatu perjanjian atau undang-undang dan yang harus dipenuhi oleh Debitor dan apabila tidak dipenuhi memberikan hak kepada Kreditor untuk memperoleh pemenuhan dari harta Debitor. Dalam hal terjadi kepailitan, kurator memiliki kewenangan penuh setelah putusan pailit dikeluarkan oleh Hakim. Tanggung jawab kurator terbagi menjadi 2 (dua), yaitu tanggung jawab sebagai kurator dalam kapasitasnya sebagai kurator, dan tanggung jawab kurator dalam kapasitasnya bukan sebagai kurator. Peran kurator dalam menunda kewajiban pembayaran utang adalah mengelola dan mendistribusikan aset debitor kepada kreditor sesuai dengan ketentuan dan prioritas yang ditetapkan dalam UU Kepailitan. Kurator juga memastikan pembayaran dilakukan secara wajar dan sesuai dengan undang-undang. Tugas dan peran kurator dalam proses kepailitan adalah 1) Mengelola aset debitor setelah debitor tidak lagi memiliki kewenangan untuk mengelola aset. 2) Mengelola dan membereskan harta pailit sejak tanggal putusan pailit diucapkan. 3) Mengungkapkan rahasia bank untuk memperoleh informasi yang lengkap mengenai aset debitor. 4) Melaksanakan eksekusi terhadap seluruh aset debitor yang berada di luar wilayah hukum Indonesia Dalam melaksanakan tugasnya, kurator akan diawasi oleh hakim pengawas. Hakim pengawas bertugas mengawasi kewenangan dan pelaksanaan tugas kurator agar senantiasa melaksanakan kewenangan dan tugasnya dalam batas-batas yang ditentukan.

Kata kunci : Kurator, Debitor, Kreditor, Peran Kurator dalam Penundaan Kewajiban Pembayaran Utang (PKPU), Hakim Pengawas.

I. INTRODUCTION

Bankruptcy is a situation where the debtor is unable to make payments on debts to his creditors. The situation of being unable to pay is usually caused by the financial distress of the debtor's business which has experienced a setback¹. From the definition of bankrupt given by Black's Law Dictionary above, it is known that the definition of bankruptcy is related to the "inability to pay" a debtor for his debts which are due. In the Black Law Dictionary bankruptcy or "Bankrupt" is: ²

"the state or conditional of a person (individual, partnership, corporation, municipality who is unable to pay its debt as they are, or become due'. The term includes a person against whom an involuntary petition has been filed, or who has filed a voluntary petition, or who has been adjudged a bankrupt".

From the definition of bankrupt given by Black's Law Dictionary above, it is known that the definition of bankruptcy is related to the "inability to pay" a debtor for his debts which are due. This inability must be accompanied by concrete action to submit, either voluntarily by the debtor himself, or at the request of a third party (excluding the debtor), an application for a bankruptcy declaration to the court. ³

According to Article 1 Paragraph (1) of Law no. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (hereinafter abbreviated as UUK) determines that:

¹ Hadi Shubhan, *Hukum Kepailitan Prinsip, Norma, dan Praktik di Peradilan*, Jakarta, Kencana Prenada Media Group, 2008, hlm.1

² *Ibid* hal 2

³ Ahmad Yani dan Gunawan Widjaja, *Seri Hukum Bisnis Kepailitan*, Jakarta, RajaGrafindo Persada, 1999, hlm. 11

"Bankruptcy is a general confiscation of all assets of a bankrupt debtor, the management and settlement of which is carried out by a curator under the supervision of a supervisory judge as regulated in this law."

The logical consequence of the provisions of this article is that all of the debtor's assets are in a state of general confiscation, so that everything related to bankruptcy assets.

⁴

Bankruptcy provisions are regulations that have the aim of distributing the debtor's assets to his creditors by carrying out a general confiscation of all of the debtor's assets which are then distributed to creditors in accordance with their proportional rights.⁵ Bankruptcy itself is the embodiment of the principle of creditorium parity and the principle of *pari passu* *prorate parte* in the property law regime.⁶

The principle of creditorium parity is adhered to in the civil law system in Indonesia, this principle is contained in Article 1131 of the Civil Code and Article 1132 of the Civil Code. According to Kartini Mulyadi, the formulation in Article 1131 of the Civil Code shows that every action a person takes in the field of wealth will always bring the impact on his assets, either increasing the amount of assets (credit) or reducing the amount of assets (debit). Meanwhile, if it turns out that in the legal relationship between assets, a person has more than one obligation that must be fulfilled towards more than one person who has the right to fulfill that obligation, then Article 1132 of the Civil Code determines that each party or creditor who has the right to fulfill the obligation must be fulfilled. The engagement of the assets of the obligated party (debtor) is *pari passu*, (jointly obtaining repayment, without any precedence), and *pro rata*, (proportionally calculated based on the size of each receivable compared to their receivables as a whole, against the debtor's assets).⁷

Bankruptcy is a commercial solution to get out of the debt and receivables problem that is crushing a debtor, where the debtor no longer has the ability to pay the debts to his creditors. So if the debtor realizes that he is unable to pay obligations that are due, then the step of submitting an application for a determination of bankruptcy status against him becomes a possible step, or a determination of bankruptcy status by the court against the debtor if evidence is later found that the debtor has indeed able to pay debts that are due and can be collected. This bankruptcy institution is expected to function as an alternative institution for settling debtor obligations to creditors more effectively, efficiently and proportionally.

If a company cannot be restructured then another alternative is for the company concerned to go bankrupt. However, in the bankruptcy process there are still open ways to resolve payment delays. In the process of postponing payments, there is a possibility of peace between creditors and debtors. In essence, suspension of payment is different from bankruptcy. Postponement of debt payments is not based on circumstances where the debtor is unable to pay his debts or is insolvent and is also not aimed at settling

⁴ Hadi Shubhan, *Op Cit*, hlm. 168

⁵ Hadi Shubhan, *Op Cit*, hlm. 168

⁶ Hadi Shubhan, *Op Cit*, hlm. 5

⁷ *Ibid*, hlm. 4

bankruptcy assets. The aim of postponing debt payments is to ensure that a debtor, who due to certain circumstances, for example, is in a liquid state because his bills are difficult to collect or because of difficulties in obtaining credit, is declared bankrupt, even though the debtor is given time, there is great hope that the debtor will be able to pay off his debts. ⁸

Debtors who know that their financial situation is in trouble and are likely to stop paying their debts, can choose several steps to resolve their debts. Some of the efforts referred to include the following: ⁹ 1) Making peace outside of court with creditors; 2) Make peace in court if the debtor is sued in a civil manner; 3) Submit a request for Postponement of Debt Payment Obligations (PKPU); 4) Proposing peace in PKPU; 5) Submit an application to have himself declared bankrupt by the court; 6) Applying for peace in bankruptcy. ¹⁰

A debtor can file a bankruptcy petition if he has two or more creditors who are unable to carry out their obligations, namely paying debts and interest that are due. In this case, the bankruptcy petition addressed to the Commercial Court must be granted, if there are facts that are in accordance with the requirements for being declared bankrupt that have been fulfilled by the party filing for bankruptcy. For bankruptcy applications submitted by debtors themselves, the conditions are that the debtor must have two or more creditors and not pay at least one debt that is due. ¹¹

The conditions for a debtor to be declared bankrupt are if the debtor has two or more creditors and does not pay in full at least one debt that is due and collectible (provisions of Article 2 Paragraph (1) of Law Number 37 of 2004). Meanwhile, the decision on the application for declaring bankruptcy is submitted to the commercial court whose jurisdiction includes the area where the debtor is located as regulated in the provisions of Article 3 and Article 4 of Law Number 37 of 2004. ¹²

However, in practice, many companies still find loopholes in Law Number 37 of 2004 and then manipulate applications for Postponement of Debt Payment Obligations (PKPU) to the Commercial Court to be declared bankrupt. The PKPU and Bankruptcy process in the Commercial Court is one thing you have to be wary of because there are companies that really go bankrupt due to economic difficulties, but there are also companies that bankrupt themselves to avoid paying debts. ¹³

This engineering action was carried out by the company after collecting a large amount of public funds and then the company easily filed for recovery or bankruptcy due

⁸ Widjanarko, *Dampak Implementasi Undang-Undang Kepailitan Terhadap Sektor Perbankan*, Jurnal Hukum Bisnis, Volume 8, 1999, hlm. 78

⁹ Man S. Sastrawidjaja, *Hukum Kepailitan dan Penundaan Kewajiban Pembayaran Utang*, Bandung, PT Alumni, 2006, hlm. 20

¹⁰ Munir Fuady, *Hukum Pailit*, Bandung, Citra Aditya Bakti, 2002, hlm. 30

¹¹ Ronald Saija, *Perlindungan Kreditur Atas Pailit Yang Diajukan Debitur Dalam Proses Peninjauan Kembali Di Pengadilan Niaga*, Jurnal SASI Volume 24 Nomor 2, Juli - Desember 2018, hlm. 116

¹² *Ibid* hal 117

¹³ Suhanda, *Tren Perusahaan Mengajukan Pailit, Pidana Menanti*, diakses dari <https://rri.co.id/nasional/hukum/872927/tren-perusahaan-mengajukan-pailit-pidana-menanti> pada 29 Mei 2021 Pukul 16.23 WIB

to payment difficulties. The increasing number of these manipulations occurs because the process of proving bankruptcy is very easy. ¹⁴

In cases like this, the rights of a creditor are not protected against debtors who have bad intentions (bad faith). There are some bad intentions by debtors to discharge their responsibility to pay debts by bankrupting themselves, as is the case in the Commercial Court, there are practices that cause the bankruptcy institution not to run properly, the Commercial Court has been used to legitimize practices of not paying debts or the practice of money being paid according to the wishes of the debtor. ¹⁵

One of these acts of engineering can be seen in the case that occurred between PT. Golden Adishoes with PT. Bank Negara Indonesia (Persero) Tbk as creditor. PT. Golden Adishoes filed for bankruptcy and its petition was granted by the commercial court through its decision Number 33/Pailit/2004/PN. Niaga.Jkt.Pst. In the case of PT. Golden Adishoes by the Commercial Court Judge found evidence that there was no hope for future recovery considering that the amount of debt had far exceeded the amount of assets. In conditions like this, technically, the company is already in bankruptcy (technical bankruptcy). ¹⁶

In this case, the creditors, namely PT Bank Negara Indonesia, Citibank N.A, Korean Supplier and Local Supplier, were not asked for prior approval by PT. Golden Adishoes in order to file a bankruptcy petition. Basically this must be done because PT. Golden Adishoes as the debtor and the creditors are bound by a debt and receivables agreement, so that in deciding a problem that concerns both parties, another agreement must be obtained, especially since the debtor's assets are not sufficient to pay all the debts, so the creditors are clearly disadvantaged in this case. Indirectly, this is not in accordance with Civil Code Article 1338, an agreement must be made in good faith and with the principles of the goal of bankruptcy law itself, namely to provide justice in terms of returning the debtor's debt to the creditor equally. ¹⁷

With the case of default from the Duniatex Group, a number of banks have become alert. It is estimated that there are at least 24 creditor banks that channel credit funds to the Duniatex Group and its subsidiaries. Failure to pay this debt will certainly destroy the value of the bond as an indication, and inevitably the holder will record some losses. This incident could worry the capital market and increase banking bad credit. It's not just Duniatex whose rating has decreased, Indonesia's credit rating has also gone bankrupt. Postponement of Debt Payment Obligations (PKPU) in Law Number 37 of 2004 concerning Bankruptcy and PKPU in Article 222 Paragraph (2) states that,

"Debtors who cannot or do not expect to be able to continue paying their debts which are due and payable, can request a postponement of debt payment obligations with the intention of submitting a peace plan which includes an offer to pay part or all of the debt to creditors."

¹⁴ *Ibid* hal 118

¹⁵ Ronald Saija, *Ibid* 119

¹⁶ Putusan Pengadilan Niaga Nomor 33/Pailit/2004/PN.Niaga.Jkt.Pst

¹⁷ Ronald Saija, *Ibid* 120

Even though it is not clearly explained in the law, PKPU can be understood as an effort to reach consensus between debtors and creditors regarding the settlement of debts. PKPU can also be understood as a certain time period given to debtors and creditors determined through a commercial court decision in order to make a mutual agreement regarding the method of payment or settlement of debt and receivable problems between the parties, whether all or part of the debt as well as the possibility of debt restructuring. the.

Creditors are people who have receivables due to agreements or laws that can be collected before the court. ¹⁸

A debtor is a person who has a debt due to an agreement or law whose repayment can be claimed before the court. ¹⁹

II. RESEARCH METHODOLOGY

The research method used is a normative juridical research method using a qualitative research approach. Normative juridical research is a type of research that is commonly carried out in legal science development activities or what is commonly known as legal dogmatics²⁰. Normative juridical research methods using a qualitative research approach include activities of inventorying, explaining, interpreting, systematizing and also evaluating the overall positive law that applies in a particular society or country using concepts (understandings), categories, theories, , classifications, and methods that were formed and developed specifically to carry out all these activities, all of which are directed at preparing efforts to find juridical solutions to legal problems (micro and macro) that may occur in society.

Directly directed normative juridical research offers alternative juridical solutions to concrete legal problems. The alternative solution offered is formulated in the form of a legal decision which is also called a legal proposition. This legal proposition contains a determination of the rights and obligations of certain legal subjects; meaning: contains legal rules. ²¹

The specifications used in this research are analytical descriptive research, meaning they are intended to provide as precise data as possible about a situation or other symptoms. ²²

A normative juridical approach is used to provide a qualitative description of the legal rules of the bankruptcy process and PKPU. In conducting this normative juridical research, the method used is a qualitative method. This method is used because of several considerations, namely: first, adapting this method is easier when dealing with multiple

¹⁸ Pasal 1 ayat (2) Undang-Undang No. 37 Tahun 2004 Tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang

¹⁹ Pasal 1 ayat (3) Undang-Undang No. 37 Tahun 2004 Tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang

²⁰ Sulistyowati Irianto dan Sidharta, *Metode Penelitian Hukum Konstelasi dan Refleksi*, Jakarta, Yayasan Obor Indonesia, 2009, hlm. 142

²¹ Ibid., hlm. 142-143

²² Lexy J. Moleong, *Metodologi Penelitian Kualitatif*, PT. Remaja Rosda Karya, Bandung, 2000, hlm. 5.

realities; second, this method presents directly the nature of the relationship between researchers and respondents; third, this method is more sensitive and more adaptable to many sharpening joint influences on the value patterns encountered.²³

Research stages are a series of activities in research which are described in detail from the preparation stage, research stage and thesis preparation or creation stage. The research stages carried out after the research proposal is declared passed, consist of only one stage, namely Library Research. At this stage, the data collection stage is carried out through literature study, namely collecting data based on references from literature books, various laws and regulations or literature related to research problems in order to obtain legal material.

This data collection includes normative legal research. In an effort to obtain objective data, this research uses data obtained through data collection according to the approach method used. Regarding library data, data collection was carried out using library study techniques on: Primary legal materials, namely legal materials that are binding, and consist of norms or basic rules, basic regulations, statutory regulations, and so on that are related to the research topic. Secondary legal materials, which provide explanations of primary legal materials, such as draft laws, research results or legal books, works from legal circles and others. Tertiary legal materials are materials that provide instructions and explanations for primary and secondary legal materials, such as legal dictionaries, Indonesian dictionaries, encyclopedias, cumulative indexes and others.

Data analysis can be formulated as breaking down the things to be researched into smaller and simpler elements. Starting from this understanding, there is a close relationship between analytical methods and problem approaches. In analyzing study data related to research conducted by the author, this research used normative qualitative data analysis. Normative qualitative analysis is intended so that the author obtains clarity on the problems being studied by being guided by legislation that applies as positive law by adapting to the facts and data obtained in the field in the form of research data analysis results in the form of sentences.

III. RESULTS AND DISCUSSION

According to Kartono, bankruptcy is defined as follows:²⁴ "A confiscation and execution of all assets of all creditors together who at the time the debtor was declared bankrupt had receivables and for the amount that each creditor owned at that time."

E. Suherman stated that:²⁵ "In essence, bankruptcy is a general confiscation with a conservatorship character and the party declared bankrupt loses control of its assets."

The term bankruptcy in English terminology is called bankruptcy. Based on the definition above, it can be seen that bankruptcy is a confiscation of assets. Article 1 Paragraph (2) of the Bankruptcy Law states that: "Creditors are people who have receivables due to agreements or laws that can be collected before the court. A debtor is

²³ Soerjono Soekanto, *Op. Cit.*, hlm. 10.

²⁴ Kartono, *Kepailitan dan Pengunduran Pembayaran*, Pradnya Paramita, Jakarta 2000, hlm 7.

²⁵ E.Suherman, *Failissement*, Bina Cipta, Jakarta 1997, hlm 5.

a person who has a debt due to an agreement or law whose repayment can be claimed before the court."

Debt is also one of the basic requirements in filing a bankruptcy petition and to ensure legal certainty, Article 1 Number 6 of the Bankruptcy Law has provided a definition of debt, namely:

"Debt is an obligation that is expressed or can be expressed in amounts of money either in Indonesian currency or in foreign currency either directly or which will arise at a later date (contingent), which arises due to an agreement or law and which the debtor is obliged to fulfill. and if it is not fulfilled, it gives the creditor the right to obtain fulfillment from the debtor's assets."

In the Elucidation of Article 2 Paragraph 1, it is further explained that:

"Debt that has matured and can be collected is an obligation to pay debt that has matured, either because it has been agreed, because the collection time has been accelerated as agreed. Due to the imposition of sanctions or fines by the competent authority, or due to a decision by a court, arbitrator or arbitration panel." Agreement (where the debtor has received a certain amount of money from its creditor), as well as the obligation to pay a certain amount of money arising from other agreements or contracts that causes the debtor to have to pay a certain amount of money."

Meanwhile, Kartini Mulyadi interprets debt broadly, linking the meaning of debt with the provisions of Article 1233 and Article 1234 of the Civil Code. In essence, the definition of debt is any agreement that can give rise to an obligation.

Debtors Who Can Be Declared Bankrupt and Bankruptcy Requirements

The debtors who can be declared bankrupt are: ²⁶1) Individuals, 2) Both men and women, married or unmarried. If the application for declaring bankruptcy is submitted by an individual debtor who is married, then the application can only be submitted with approval. husband or wife, unless there is no mixing of assets between the husband and wife. 3) Unions and Associations are Not Legal Entities. 4) Companies, cooperative associations and foundations that are legal entities.

Regarding the conditions for a bankruptcy declaration to be made, these are: A debtor who has two or more creditors and has not paid in full at least one debt which is due and can be collected, is declared bankrupt by a court decision, either at his own request or at the request of one or more of his creditors. ²⁷.

According to Sutan Remi S. the requirements for bankruptcy are: ²⁸1) The requirement is that there must be at least 2 (two) creditors; 2) Requirements that there must be debt; 3) The debt requirement has matured and can be collected; 4) The only requirement is that one debt has matured and can be collected.

Sutan Remy Sjahdeiny stated that claims according to the American Bankruptcy Code require a right to payment¹⁶. A right to payment can be a claim even if it is in the

²⁶ Ahmad Yani dan Gunawan Widjaja, *Kepailitan*, PT.Raja Grafindo Persada, Jakarta, 2002, hlm 16

²⁷ Pasal 22 UU Kepailitan

²⁸ Sutan Remi Syahdeni, *Hukum Kepailitan*, Grafiti, Jakarta, 2006. hlm 63-71

form of contingent (debt that will arise in the future), unliquidated (asset), and unmature (not yet due).²⁹ Thus, if the debtor's obligations do not give rise to a right to payment, then the debtor's obligations cannot be classified as a claim. Remy further stated that based on the language used in the law and legislative history, practically all courts were of the opinion that the definition of claim was very expansive.³⁰ Likewise, the concept of debt in Dutch bankruptcy law is also applied in Indonesia with the principle of concordance in bankruptcy regulations, that debt is a form of obligation to fulfill performance in an agreement.

Fred B.G. Tumbuan states that in the event that a person's actions or failure to do something results in the obligation to pay compensation, provide something or not provide something, then at that time he also has a debt and has an obligation to perform. So, debt equals achievement.³¹

Jery Hoff believes that debt refers to obligations in civil law. Obligations or debts can arise either from agreements or from law. In bankruptcy law, the concept of debt apart from the limitations of the definition of debt, there is the concept of the amount of debt value that can be submitted as a basis for filing a bankruptcy petition. In Singapore, there is a minimum debt requirement that is used as the basis for filing for bankruptcy, namely, S\$10,000 (ten thousand Singapore dollars).

Jery Hoff believes that debt refers to obligations in civil law. Obligations or debts can arise either from agreements or from law.³² In bankruptcy law, the concept of debt apart from the limitations of the definition of debt, there is the concept of the amount of debt value that can be submitted as a basis for filing a bankruptcy petition. In Singapore, there is a minimum debt requirement that is used as the basis for filing for bankruptcy, namely, S\$10,000 (ten thousand Singapore dollars). This can be seen in the Singapore Bankruptcy Law, which states as follows:³³

The cancellation of the nominal value of debt as a basis for filing a bankruptcy petition is intended to limit bankruptcy applications to creditors who have small amounts of debt (below the minimum) and limit the scale of bankruptcy handling. Apart from that, these restrictions are intended as a form of legal protection for majority creditors from arbitrariness by minority creditors.

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The limitation on the minimum value of debt is only related to legal standing in *judicio* (authority to file a case) while the recognition of creditors who are below this

²⁹ *Ibid* hal 72

³⁰ *Ibid* *ibid* hal 73

³¹ Fred BG Tumbuan (2005), "*mencermati Makna Debitur, Kreditur dan Utang Berkaitan Dengan Kepailitan*", Dalam, Hadi Shubhan, *ibid.*, hlm. 35

³² *Ibid* hal 36

³³ Hadi Shubhan, *Hukum Kepailitan*, hlm. 36

minimum value in the process of dividing bankruptcy assets is the same as other creditors on a proportional basis.

a. Principles of Debt Collection

Debt collection principle means the concept of retaliation from creditors against bankrupt debtors by collecting their claims against the debtor or the debtor's assets. In ancient times, the principle of debt collection was manifested in the form of slavery, cutting off part of the debtor's body (mutilation), and even dismemberment. Meanwhile, in modern bankruptcy law, this principle is manifested in the form of, among other things, asset liquidation.³⁴ Tri Hernowo stated that bankruptcy can be used as a mechanism for coercion and blackmail.³⁵

Emmy further stated that bankruptcy law is needed as a tool for collective management of bankruptcy assets by a curator (collective proceeding) to overcome the actions of each creditor who compete individually to claim the debtor's assets arising from the interests of each creditor (collective action problem). With the existence of bankruptcy law, it can provide a mechanism where creditors can jointly determine whether it is best for the debtor company to continue as a going concern or not, and can force minority creditors to follow the flow or pattern (scheme) of majority creditors because of the voting procedure.³⁶

Setiawan believes that in principle, a bankruptcy law is a debt collection law and that bankruptcy is a collective action in debt collection.³⁷

Collection Principle is a principle that emphasizes that debts from debtors must be paid with assets owned by the debtor as soon as possible to avoid bad faith from the debtor by hiding and misappropriating all of his assets which are actually used as general collateral for his creditors.³⁸

Manifestations of the principle of debt collection in bankruptcy are the provisions for settling assets through quick and certain liquidation, the principle of simple proof, the implementation of bankruptcy decisions immediately (*uitvoerbaar bij voorraad*), the existence of waiting period provisions (*stay*) for security holders material, the curator is the executor of management and settlement.³⁹

b. Principles of Commercial Exit From Financial Distress

In principle, bankruptcy is not simply an effort to make it easier for a business, whether owned by an individual or a corporation, to go bankrupt, but bankruptcy is an effort to overcome the bankruptcy of a business.⁴⁰

³⁴ *Ibid.*, hlm. 37

³⁵ Emmy Yuhassarie (2005), "Pemikiran Kembali Hukum Kepailitan Indonesia", Dalam, Hadi Shubhan, *Hukum Kepailitan*, hlm. 38

³⁶ Hadi Shubhan, *Hukum Kepailitan*, hlm. 38

³⁷ Hadi Shubhan, *Hukum Kepailitan*, hlm. 40

³⁸ *Ibid.*, hlm. 41

³⁹ *Ibid* hlm 42

⁴⁰ *Ibid* hlm 43

Sutan Remy Sjahdeini stated that bankruptcy should only be the ultimum remedium.⁴¹ Ricardo Simanjuntak stated that bankruptcy, especially corporate insolvency, is actually an exit from financial distress⁴².

So it is a way out of complicated problems that financially cannot be resolved. So there is a fact that there is an obligation that technically makes the company unable to pay, rather than having to relate both emotionally and business-wise with each of its parties, the only way is for it to create a new business, something like that. definition of corporate bankruptcy from several textbooks from America and England.⁴³

The principle of Commercial exit from financial distress from bankruptcy also provides the meaning that bankruptcy is a solution to the problem of resolving debts of debtors who are experiencing bankruptcy and not the other way around that bankruptcy is actually used as a legal institution to bankrupt a business.⁴⁴

The ease of bankrupting a debtor actually does not conflict with this principle as long as the ease of bankruptcy is in the context of debt settlement due to financial difficulties in the debtor's business. The principle of commercial exit from financial distress is a principle found in limited liability company bankruptcy. Theoretically, bankruptcy of a limited company must be distinguished from bankruptcy of a limited company, dissolution of a limited company, and liquidation of a limited company⁴⁵. Bankruptcy of a limited liability company is a situation where the company experiences damage (deterioration) in the company's adaptation to its environment which results in low performance for a certain period of time which is sustainable which ultimately causes the company to lose its resources and funds as a result of the company's failure to perform. a healthy exchange between the output produced and the new input that must be obtained⁴⁶.

However, the definition of turnaround⁴⁷ referred to here has a broader meaning where companies often show signs or symptoms of failure long before a crisis occurs, similar to a sick person initially showing signs of being sick.

PKPU Application

According to Article 222 paragraph (1) of the Bankruptcy Law and PKPU⁴⁸, namely: Debtors who are unable or estimate that they will not be able to continue paying their debts which are due and payable, can request a postponement of debt payment obligations, with the intention of submitting a peace plan that includes an offer to pay part or all of the debt to creditors. Article 222 paragraph (2) of the Bankruptcy and PKPU Law: a) Creditors who estimate that the Debtor will not be able to continue paying their debts which are due and can be collected, can request that the Debtor be given a

⁴¹ Sutan Remy Sjahdeini, *Hukum Kepailitan*, hlm. 59

⁴² Sutan Remy Sjahdeini, *Hukum Kepailitan*, hlm. 59

⁴³ Ricardo Simanjuntak, *oblm.cit.*, hlm. 63

⁴⁴ Hadi Shubhan, *Hukum Kepailitan*, hlm. 64

⁴⁵ Suwarsono Muhammad, *Strategi Penyehatan Perusahaan Generik dan Kontekstual*, Ekonisia, Yogyakarta, 2001, hlm. 2

⁴⁶ *Ibid* hal 3

⁴⁷ M. Hadi Shubhan, *Hukum Kepailitan*, hlm. 65

⁴⁸ *Ibid* hal 66

postponement of debt payment obligations, to enable the Debtor to submit a peace plan which includes an offer to pay part or all of the debt to creditors. b. PKPU Application As stipulated in Article 222 of the Bankruptcy Law and PKPU, debtors and creditors can request a PKPU Application to submit a peace plan which includes an offer to pay part or all of their debt.

A PKPU application can be submitted by a creditor or debtor without waiting for a bankruptcy petition first. If a PKPU application is submitted and examined at the same time, the Commercial Court is obliged to give a decision first on the PKPU application compared to the application for bankruptcy declaration.

This is regulated in the provisions of the Bankruptcy Law and PKPU, namely: Article 229 paragraph (3) of the Bankruptcy Law and PKPU: "If the application for declaring bankruptcy and the application for postponement of debt payment obligations are examined at the same time, the application for postponement of debt payment obligations must be decided first." Article 229 paragraph (4) of the Bankruptcy and PKPU Law: "A request for postponement of debt payment obligations submitted after an application for a bankruptcy declaration has been filed against the Debtor, so that it can be decided first as intended in paragraph (3), must be submitted at the first hearing of the examination of the application for declaration bankrupt."

The legal consequences of granting a PKPU application include:⁴⁹ 1) the debtor loses his independence. Debtors who are in PKPU, during the process, lose their rights to carry out their own management actions of the debtor company. Debtors without Article 240 of the Bankruptcy Law and PKPU approval from the Management cannot manage and transfer rights to their assets. 2) if the debtor has filed for bankruptcy, he can no longer request a postponement of debt payment; 3) if the PKPU ends, the debtor will immediately go bankrupt; 4) confiscation falls and is lifted; 5) ongoing cases are suspended; 6) the debtor may not be a plaintiff or defendant; 7) postponement of debt payments does not apply to preferred creditors; 8) postponement of debt payments does not apply to several types of important costs; 9) the creditor's retention rights remain valid; 10) a period of suspension of execution of collateral rights applies; 11) compensation can be made; 12) certainty of reciprocal agreements; 13) the agreement on the commodity exchange ends; 14) the debtor can terminate the lease; 15) payments to debtors who have obtained PKPU do not free up assets; 16) postponement of debt payments does not apply to debtor and guarantor participants; 17) no actio pauliana; 18) the debtor's actions cannot be canceled by the curator; 19) PKPU can be carried out multiple times; 20) criminal provisions apply.

End of PKPU

PKPU can be terminated or expired in various ways, as follows: 1) ended due to the debtor's fault;⁵⁰ 2) revoked because the condition of the debtor's assets has improved;

⁴⁹ Munir Fuady, Op.cit., hlm. 183 – 192.

⁵⁰ Edward Manik, 2012, Cara Mudah Memahami Proses Kepailitan dan Penundaan Kewajiban Pembayaran Utang, Mandar Maju, Bandung, hlm. 148 - 153.

3) ended because peace was achieved; 4) ended because the peace plan was rejected; 5) ended because the peace was not ratified by the Commercial Court; 6) ends because PKPU is cancelled; 7) ends after the PKPU period has expired; 8) ended because peace was not achieved; 9) terminated because the PKPU was permanently disapproved by creditors.

The legal consequences that the debtor receives if the PKPU process is terminated due to making one or more mistakes, not achieving the above, is that the debtor must be declared bankrupt and the bankruptcy decision must be stated in the same decision as the PKPU decision. Henceforth, the bankruptcy debtor's assets are immediately declared insolvent.

Duties and Authorities of the Management

Since the date of commencement of the temporary suspension of debt payment obligations (Temporary PKPU), the debtor is no longer authorized to carry out management or transfer actions relating to Article 284 of the Bankruptcy Law and PKPU 99 Article 285 paragraph (2) Bankruptcy Law and PKPU 100 Article 291 Bankruptcy Law and PKPU 101 Article 228 paragraph (5) Bankruptcy and PKPU Law 102 Article 230 paragraph (1) Law Bankruptcy and PKPU 103 Article 228 paragraph (4) of the Bankruptcy and PKPU Law Elucidation of Article 292 of the Bankruptcy Law and PKPU 44 of their assets without the approval of the management. In other words, the debtor may carry out actions to manage and transfer ownership of his assets as long as he gets approval from the management.

All actions by the debtor regarding his assets that are carried out without the approval of the management do not bind his assets, unless the action benefits the debtor's assets. The management is given the right by law to act independently without cooperation with the debtor, namely if the debtor violates the provisions of Article 240 paragraph (1) of the Bankruptcy Law and PKPU, then the management has the right to do everything necessary to ensure that the debtor's assets are not harmed due to the debtor's actions. the.

The authority of the management is not easy, because the management themselves cannot act alone, even if the debtor improperly refuses to cooperate with the management. The management's weapon in this case is simply to ask the Commercial Court to withdraw the PKPU. To be able to achieve maximum results during PKPU, the management requires an active and professional role.

Postponement of Debt Payment Obligations based on Law no. 37 of 2004.

Debtors who know that their financial situation is in trouble and are likely to stop paying their debts, can choose several steps to resolve their debts. Some of the efforts intended include the following: ⁵¹ 1) Establishing peace outside of court with creditors; 2) Make peace in court if the debtor is sued in a civil manner; 3) Submit a request for

⁵¹ Man. S. Sastrawidjaja, *Hukum Kepailitan dan Penundaan Kewajiban Pembayaran Utang*, hlm. 20

postponement of debt payment obligations; 4) Submit an application to have himself declared bankrupt by the Court; 5) Apply for peace in bankruptcy.

As for Law no. 37 of 2004 provides at least (two) solutions that debtors can take to be free from liquidation of their assets in the event that the debtor is having difficulty paying debts. The first way is to make peace between the debtor and his creditors after the debtor has been sentenced to bankruptcy. Another way that debtors can take is by applying for a Postponement of Debt Payment Obligations, as mentioned above.

A request for postponement of debt payment obligations, also known as *Surseance Van Betaling* or Suspension of Payment, is a concept in commercial law, which allows a debtor who has good faith to submit a request which essentially postpones his obligation to pay the debt he has. Regarding the Postponement of Debt Payment Obligations, both Law no. 37 of 2004, Law no. 4 of 1998 and FV regulates it as part of the provisions on bankruptcy. If you pay attention, the title of the legal regulations regarding bankruptcy before the current regulations do not mention Postponement of Debt Payment Obligations even though the provisions are regulated in these regulations. It was only in 2004 when Law no. 37 of 2004 was promulgated, the term Postponement of Debt Payment Obligations is mentioned in the title of the regulation Prof. Dr. Man. S. Sastrawidjaja in one of his books states that "The mention of Postponement of Debt Payment Obligations in the title of the legislation is actually very meaningful because Postponement of Debt Payment Obligations is an important means of resolving debts and receivables by debtors, not only through bankruptcy."⁵²

The application for postponement of debt payment obligations itself is different from bankruptcy, although in bankruptcy there is known peace, but basically bankruptcy is aimed at eradicating the bankruptcy assets which is carried out by selling all the bankruptcy property and distributing the proceeds of the sale to the creditors who are entitled to it according to the specified order. in law.⁵³

The purpose of a request for a postponement of debt payment obligations, in general, is to propose a peace plan by the debtor. This peace plan actually provides an opportunity for debtors to restructure their debts, which can include paying all or part of the debt to the concurrent debt. So, it can be said that the Postponement of Debt Payment Obligations has the aim of enabling the debtor to continue his business even though there are difficulties in payment and to avoid bankruptcy. .⁵⁴

The Bankruptcy Law has given Bank Indonesia "special rights" as the party that has the authority to file bankruptcy with banks. This is very reasonable because banks as intermediary institutions that mobilize public funds and channel them back, if they have a business license, are no longer owners who hold shares, but also belong to the community. In order to grant special rights, this must be done proportionally, because this is why problems often arise because in reality banks in Indonesia are "bankruptcy immune".

⁵² *Ibid* hlm 21

⁵³ Sunarmi, *Hukum Kepailitan*: Edisi 2, hlm 202

⁵⁴ Rahayu Hartini, *Hukum Kepailitan*: Edisi Revisi, hlm. 190

The consideration for granting special rights to Bank Indonesia as a bank bankruptcy applicant is because banks have special characteristics when compared with other business entities. If in practice banks can easily be filed for bankruptcy, then situations of bank panic and bank rush will often arise, this will result in public trust in banks being reduced so that people withdraw their funds from a bank that is filed for bankruptcy together. A situation like this will affect other banks, which will result in disruption to the national economy.

Bank Indonesia's authority to submit a bankruptcy application is regulated in Article 2 paragraph (3) of the Bankruptcy Law which states "In the event that the debtor is a bank, the application for a bankruptcy declaration can only be submitted by Bank Indonesia".

Regarding filing a bankruptcy application against a bank, it still refers to the explanation of Article 2 paragraph (3) of the Bankruptcy Law, which states that BI has the authority to submit a request for a bank bankruptcy statement because it is based solely on an assessment of the financial condition and overall banking condition. It is emphasized that in the OJK Law and in the closing provisions of the OJK Closing Law there is no transfer of authority regarding a bank's application for bankruptcy.⁵⁵

Responsibilities of the Management in Organizing Postponement of Debt Payment Obligations (PKPU) which Impact the Debtor's Inability to Pay. In the PKPU decision, the Commercial Court will appoint an administrator who will help the debtor manage his assets. The appointed management must be independent and have no conflict of interest with debtors or creditors.⁵⁶

Those who can become administrators are individuals or civil partnerships domiciled in Indonesia, who have the special skills needed to manage the debtor's assets and are registered with the ministry whose scope of duties and responsibilities are in the field of law and statutory regulations.⁵⁷

During the PKPU period, the debtor cannot take management or ownership of all or part of his assets without the management's approval. This provision is in accordance with Article 240 Paragraph (1) of UUK which states that "During the postponement of debt payment obligations, the Debtor, without the approval of the management, cannot carry out management or ownership actions over all or part of his assets."⁵⁸ Furthermore, in Article 240 Paragraph (2) UUK, regarding debtor actions that violate the provisions as intended in Paragraph (1), the management has the right to do everything necessary to ensure that the debtor's assets are not harmed due to the debtor's actions.⁵⁹

⁵⁵ Juli Irmayanto, dkk, *Bank dan Lembaga Keuangan*, (Jakarta: Penerbit Universitas Trisakti, Cetakan Keempat, 2004), hal 92

⁵⁶ Rachmadi Usman, Op.cit hlm 108.

⁵⁷ Lihat Pasal 234 ayat (3) Undang- Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang.

⁵⁸ Pasal 240 ayat (1) Undang- Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang

⁵⁹ Lihat Pasal 240 ayat 2 Undang- Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang.

Thus, the appointment of a manager who has special skills as explained in Article 234 concerning the provisions for a manager is in line with the requirements in Article 240 of the UUK. PKPU provides the opportunity for the debtor to still be able to manage his assets, but in this management he is accompanied by an administrator, where in managing the debtor's assets during PKPU, the administrator and the debtor are side by side. The management, with their professional skills and expertise together with the debtor, carries out management and administration of the debtor's assets, as well as supervision of the debtor's activities.⁶⁰

Furthermore, regarding the debtor's authority to act in the provisions of Article 240 Paragraph (3) which states that "Obligations of the Debtor which are carried out without obtaining approval from the management which arise after the postponement of the debt payment obligation has begun, can only be charged to the Debtor's assets to the extent that they benefit the Debtor's assets."⁶¹

The purpose of the provisions of this article states that the debtor can also do something related to his assets as long as the purpose of the action is profitable.

The debtor's right to continue managing his assets during the PKPU period can enable the debtor to carry out any actions with his assets. Actions carried out by debtors may benefit their assets or may also harm their assets, considering that in the business world anything can happen. The possibility of a debtor's actions that could harm his assets could occur if the debtor intentionally or through ignorance does things related to the management of assets himself without the knowledge of the management. The debtor's actions that can harm his assets are such as making non-existent expenses, or not recording income or withdrawing goods, having given away (*verureemden*) something for free or clearly below its price.⁶² Such actions can be considered as bad faith by the debtor in implementing PKPU.

The debtor's attitude of having bad intentions and harming or trying to harm his creditors will have the effect of terminating the PKPU, in accordance with the provisions of Article 255 Paragraph (1) letters a, b, c and d which states that: 1) The debtor, during the period of suspension of debt payment obligations, acts in good faith bad at managing his assets; 2) The debtor has harmed or has attempted to harm his creditors; 3) The debtor violates the provisions of Article 240 Paragraph (1); 4) The Debtor fails to carry out the actions required of him by the Court at the time or after the debt payment obligation is postponed, or fails to carry out the actions required by the administrator for the benefit of the Debtor's assets.⁶³

⁶⁰ G.P. Aji Wijaya, "Peran Pengurus dalam Restrukturisasi Utang (I)", terdapat dalam <http://m.hukumonline.com/berita/baca/hol6402/peran-pengurus-dalam-restrukturisasi-utang-i> diakses pada tanggal 1 Juli 2021 pukul 14:43 wib.

⁶¹ Pasal 240 ayat (3) Undang- Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang

⁶² Risiko Hukum Jabatan direksi, terdapat dalam <http://www.hukumonline.com/klinik/detail/lt5179f6b041989/risiko-hukum-jabatan-direksi- diakses pada tanggal 25 Juni 2021 pukul 15:05 wib>.

⁶³ Pasal 255 ayat 1 Undang- Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang

Any possibility of the debtor's actions in managing his assets during the PKPU period can occur considering that PKPU gives the debtor the right to continue to manage and manage his assets. Losses that occur due to the debtor's actions can occur because the debtor is negligent in managing his assets, carries out actions without the permission of the management, or the debtor deliberately acts in bad faith and tries to harm his creditors.

Losses to the debtor's assets during the PKPU period can also come from the actions of the PKPU management. If you remember the provisions in Article 239 paragraph 1 of UUK regarding the administrator's duty to report the condition of the debtor's assets periodically, this makes the administrator the party who best understands the condition of the debtor and his assets.⁶⁴

⁶⁴ Lihat Pasal 239 ayat (1) Undang- Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang

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