

Legal Protection of Separated Creditors in Executing Mortgage Rights on Bankrupt Assembled as Seen in the Face of Dignified Justice

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Abstract : *Problem in Article 56 related creditors separatist and preferential is suspension execution goods guarantee for 90 days after debtor stated insolvent , which then can shortened to 2 months . The main obstacles faced creditors separatist is ambiguity about product insolvency — including determination and statement —which causes difficulty in do execution. Theory of justice dignified emphasize importance certainty law and accessibility information as part from solution practical For problem This is for overcome obstacle mentioned , it is suggested existence reformulation in product insolvency and increase transparency as well as accessibility minutes , so that creditors separatist can utilise 2 month period with more effective . Legislators are expected can add editorial regarding the deadline delivery information insolvency as well as ensure easy and transparent access For increase justice in the process of execution guarantee.*

Keywords : *Bankruptcy, Separated Creditor*

Abstrak : Permasalahan pada Pasal 56 terkait kreditur separatis dan preferen adalah penangguhan eksekusi barang jaminan selama 90 hari sejak debitur dinyatakan pailit, yang selanjutnya dapat dipersingkat menjadi 2 bulan. Kendala utama yang dihadapi kreditur separatis adalah ketidakjelasan tentang produk kepailitan — termasuk penetapan dan pernyataan— yang menyebabkan kesulitan dalam melakukan eksekusi. Teori keadilan bermartabat menekankan pentingnya kepastian hukum dan aksesibilitas informasi sebagai bagian dari solusi praktis. Untuk mengatasi kendala tersebut, disarankan adanya reformulasi dalam produk kepailitan dan meningkatkan transparansi serta aksesibilitas berita acara, sehingga kreditur separatis dapat memanfaatkan jangka waktu 2 bulan dengan lebih efektif. Pembuat undang-undang diharapkan dapat menambahkan redaksi mengenai batas waktu penyampaian informasi kepailitan serta memastikan akses yang mudah dan transparan untuk meningkatkan keadilan dalam proses eksekusi jaminan.

Kata kunci : Kepailitan, Kreditur Terpisah



I. INTRODUCTION

Legal development national in frame realize public fair and prosperous based on Pancasila and the 1945 Constitution of the Republic of Indonesia must can support and guarantee certainty , order , enforcement and protection the law that is based on justice and truth . The more rapid development economy and trade more and more Lots debt problems that arise in society that are difficult to resolve. As one of the means law For debt settlement is Constitution about Bankruptcy regulated in Law Number 37 of 2004 concerning Bankruptcy and Delay Obligation Debt Payment (Hereinafter abbreviated as KPPU Law). Bankruptcy is a process where a debtors who have difficulty finance For pay his debt , stated bankrupt by the court . In the event This Court Commerce , due to debtor the No can pay his debt .¹

Bankrupt is condition debtor No perhaps not capable For fulfil his obligation For do debt payment to creditor ². Debtor No pay debt No only Because debtor No capable but there is reasons debtor No Want to pay debts.² Bankruptcy Actions is action foreclosure riches The debtor will become treasure bankruptcy managed by the Curator with supervised by the Supervising Judge . Principle bankruptcy the is embodiment in Articles 1131 and 1132 of the Civil Code , is material right owned by Debtor become collateral together for all Creditors from results auction and also its sales are divided in accordance with type creditors with principle balance .³

Statement bankrupt or No bankrupt , a company must be with decision court . Bankruptcy a effort law that can carried out by creditors to the debtor . Protection for creditors as anticipation if it turns out company debtor experience difficulty in operate his efforts so that No capable pay his debts , then creditors must to obtain certainty that results sale collateral or results liquidation on treasure company assets debtor the with through decision bankrupt from Court The trade that will be can used as source settlement alternative . Of course from results sale collateral or liquidation treasure riches the stated company bankrupt it is also possible that the treasure riches guarantor (borg) as party third can used For source company debt settlement (debtor). Source settlement alternative This in the banking world called second way out.⁴

In the case of a person/ business entity that is stated bankrupt Actually statement bankrupt a debtor No too important for creditors separatists and creditors prefer , because they can execute object guarantee as if No There is bankruptcy , thing as there is

¹J. Djohansah , “ The Court " Commerce " in Rudy Lontoh (Ed.), Debt Settlement through Bankrupt or Delay Obligation Debt Payment (Bandung: Alumni, 2001). Page 23, see also Article 1 of Law No. 4 of 1998, read also Article 1 paragraph 1 of Law No. 37 of 2004 concerning Bankruptcy and Suspension Obligation Debt Payment

²I Wayan Wesna Astara, 2015, Postponement Obligation Debt Payment in Bankruptcy (Analysis To Decision Court Commerce Number 20/ Bankruptcy /2011), Journal of Law Masters in Law and Notary , Faculty of Law, Udayana University, Denpasar, p.409. Accessed May 22, 2019

³I Putu Yoga Putra Pratama , Legal Protection Against Creditors on Depreciation of Object Value Collateral Guarantee in Debt Agreement , Kertha Semaya : Journal of Legal Studies , Udayana University, Vol 7 No 6, May, 2019, p. 3.

⁴Royke A. Taroreh , RIGHTS OF SEPARATED CREDITORS IN EXECUTING THE COLLATERAL OBJECTS OF BANKRUPT DEBTORS, Vol.II /No.2/January-March /2014 Edition Special , p.105

explanation in Article 2 paragraph (1) and confirmed return in Article 55 paragraph (1) UUKPKPU⁵.

However when reading Article 56 then there is problem Again Because in chapter said , creditors separatists and creditors preference holder guarantee No can direct do execution goods guarantee Because so stated bankrupt to creditors holder right guarantee affected by stay or suspension execution goods guarantee for 90 days and 90 days time That can shortened by 2 months after Debtor stated insolvent .⁶ If 90 days and/ or 30 days (2 months) term insolvent the has passed , then must handed over to curator .⁷ And in things that become factor inhibitor Creditors Separatist after Debtor stated insolvent by the supervisory judge , product insolvency the No There is clarity in the form of what and when accepted by creditors separatist , so that creditors separatist difficult For do execution Because cut off the time it should take is 2 months Can utilized For execution itself . In research This will analyzed using the Theory of Justice dignified where can to examine practice , enforcement or activity from law positive That solve issues humans and society daily from a perspective law , until to the deepest essence , the essence that goes beyond knowledge senses .⁸ Theory of justice dignified put forward by Teguh Prasetyo . Theory of justice dignified , called dignified Because theory meant is is a form adequate (scientific) understanding and explanation regarding coherence from concepts law in rules and principles applicable law as well as the true doctrines is face , structure or composition and content as well as spirit or the spirit of society and nation within system law based on Pancasila, which is explained by the theory justice dignified That Alone .⁹ Specifically in matter problem execution creditors separative in a period of insolvency . From the background behind This seen existence the absence of norms in certainty law When product insolvency That given For Can executed by creditors separatist .

Summary Problem

From the background the researcher lift formulation problem that is how is it protection law creditors separatist in do execution right liability on property bankrupt reviewed from justice dignified ?

II. RESEARCH METHODS

The type of research used in this study is normative with a conceptual approach by analyzing the material associated with dignified justice and a legislative approach, namely focusing on analyzing the Law. Number 37 of 2004 concerning Bankruptcy and Suspension Obligation Debt Payments and material other relevant laws .

III. DISCUSSION

Understanding bankruptcy based on provisions of Article 1 number 1 of Law Number 37 of 2004 concerning Bankruptcy and Suspension Obligation Debt Payment ,

⁵Article 55 paragraph (1) UUKPKU " With still notice provision as intended in Article 56, Article 57, and Article 58, respectively creditors holder pawn , collateral fiduciary , right liability , mortgage , or right collateral on material others , can execute his rights as if No happen bankruptcy ”

⁶Article 59 (1) With still notice provisions of Article 56, Article 57, and Article 58, Creditors holder right as meant in Article 55 paragraph (1) must carry out his rights the in term no later than 2 (two) months after the beginning condition insolvency as meant in Article 178 paragraph (1).

⁷Article 59 paragraph 2 of the KPPU Law

⁸ *Ibid* . p. 25

⁹ Steadfast Prasetyo , 2015, Justice Dignity , Legal Theory Perspective , Bandung: Nusamedia , p. 63

next abbreviated as UUK-PKPU, is confiscation general on all riches Debtor Bankruptcy management and / or the settlement conducted by the Curator under supervision of the Supervising Judge . Based on definition or the understanding given by the scholars above so can withdrawn conclusion that bankruptcy is a condition Where a debtor stop pay his debts to creditor . Debtor That can stated bankrupt by court business on application statement bankruptcy filed by the debtor That Alone or creditors . Against decision on application statement bankrupt said , the court business can pointing Curator For do management and/ or settlement to treasure debtor bankrupt . Curator Then share treasure debtor bankrupt to creditors in accordance with their respective receivables.

The term bankruptcy different with term delay obligation debt payment (PKPU). PKPU is a condition Where a debtor No can or estimate No will can continue pay off his debts that have been fall time and can charged . However , in thesis This Writer No discuss regarding PKPU but only discuss about bankruptcy and insolvency .

Arrangement about bankruptcy in Indonesia has There is since enactment of the Commercial Code (*Wetboek van Koophandel*) Book III concerning Inability Traders who only applicable for traders and the Civil Procedure Code (*Reglement op de Rechtsvordering Staatblads* 1847-52 jo. 1849-63) Book III Chapter VII on Condition Really Incapable applies for people not trader . Two rules bankruptcy the Then removed and replaced with Constitution about Bankruptcy (*Faillissements*) *Verification of State Gazette* 1905 Number 217 in conjunction with *State Gazette* 1906 Number 348) which is in force for everyone , good trader and also No trader , good individual or legal entity .¹⁰

This KPKPU Law have coverage more wide Good from normative aspect , space scope material , as well as the process of debt settlement . More coverage wide the required Because existence development and needs law in public whereas provisions that have been in place for This applicable Not yet adequate as means law For finish debt problems in a way fair , fast , open and effective . Some main material new set up in this KPKPU Law among other things regulated in a way firm about limitation in definition of debt and definition fall time , regarding terms and procedures application statement bankruptcy and PKPU application including giving term time in a way Certain for taking decision on application statement bankruptcy and PKPU, therefore That Constitution This Still applicable until Now Because in accordance with need law public .¹¹ The purpose of issuing the KPKPU Law is For :¹²

- a. Avoid conflict if several creditors at the same time request payment of their receivables from the debtor;
- b. Avoiding creditors who want to obtain special rights, who demand their rights by taking control of the debtor's property without considering the interests of the debtor or other creditors;
- c. Avoiding fraud committed by the debtor himself, such as running away with the debtor's assets to escape responsibility towards creditors;

¹⁰ Purwosutjipto , HMN. *Definition Principles of Indonesian Commercial Law Bankruptcy and Suspension Payments* , Volume 8, Djambatan , Jakarta, 2002, p . 103.

¹¹ Prodjohamidjojo , Martiman . *Bankruptcy Process* , Mandar Maju, Bandung, 1999, p . 72.

¹²Ibid., p . 73

- d. Distributing the debtor's assets fairly and equally according to the size of each creditor's receivables.

In Law no. 37 of 2004 concerning Bankruptcy and Suspension Obligation Debt Payments include: understanding creditors is a person who has receivables Because agreement or The law that can billed in advance court ¹³. Above has it is said that creditor is a person who has receivables . In case this is the person who has receivables can in the form of people or legal entity , Bank, Financing Institution , Pawnshop or Guarantee Institution Other .

However in Explanation of Article 2 paragraph (1) of Law No. 37 of 2004 provides the definition in question with creditors in paragraph This is Good creditors concurrent , creditor separatist and also creditors preferen . Special about creditors separatists and creditors prefer , they can submit application statement bankrupt without lost right collateral on the things they have have to treasure debtors and their rights For comes first. While Debtor is a person who has debts because agreement or the law whose payment is due can billed in advance court ¹⁴.

The term creditor also often raises questions multi-interpretable . Moreover, in the era of Law No. 4 of 1998 there were 3 (three) creditors who were known in the Civil Code , namely as following :

1. Concurrent creditors

Creditors concurrent This set up dam origin 1132 of the Civil Code . Creditors concurrent are the creditors with Passau pie rights and pro rata, meaning the creditors in a way together to obtain settlement (without there is a priority) that is calculated based on the size respective receivables are compared to receivables they in a way overall , against all over treasure riches debtor said . With Thus , the creditors concurrent have equal position on debt settlement from treasure debtor without there is something that comes first .

2. Preferred creditors

Creditors preferred (which is given priority) namely creditors who are by law , solely Because characteristic his receivables , get settlement moreover formerly . Creditors preference is creditors who have right special , namely a rights by law given to somebody in debt so that the level more tall from the creditor others , solely based on characteristic his receivables .

3. Separatist creditors

Creditors separatist That is creditors holder right guarantee property in rem, which in the Civil Code called with the name of pawn and mortgage . Important rights to have creditors separatist is right For can authority Alone sell / execute object collateral , without decision court (parate execution).

The rights For :

¹³Article 1 number 2 of Law No. 37 of 2004 concerning Bankruptcy and Suspension Obligation Debt Payment

¹⁴Article 1 number 2 of Law No. 37 of 2004 concerning Bankruptcy and Suspension Obligation Debt Payment

- a. Pawn
Regulated in Articles 1150 to 1160 of the Civil Code which apply to movable objects. In the pawn guarantee system, a pawnbroker (debtor) is obliged to relinquish control of the object to be pledged to the pawn recipient (creditor).
- b. Mortgage
Mortgage applies to ships with a minimum size of 20 m³ and are registered with the harbor master and aircraft .
- c. Mortgage right
Mortgage rights are regulated in Law No. 4 of 1996 concerning Mortgage Rights over Land and Objects related to the Land, which is a guarantee for certain land rights along with objects attached to the land.
- d. Fiduciary guarantee
Fiduciary rights are regulated in Law No. 42 of 1999 concerning Fiduciary Guarantees, the object of which is guaranteed by pledge, mortgage and security rights.

In terms of This right and also obligation from creditors is give loan to a debtor in the form of money or maybe capital for A business from debtor or other uses that will be used from the loan of money . In case This right creditors have obligation help Who only one will do loan . And as instead creditors entitled withhold goods or object valuable owned by debtor as guarantee to creditors For do settlement his debt . In case institution borrowing is a Pawn then valuable things as the guarantee like gold . In case guarantee fiduciary which is agreement special held between debtors and creditors For foretell things as following :¹⁵

1. Collateral of a material nature, namely the existence of a certain object that is used as collateral.
2. A guarantee of an individual or personal nature, namely the existence of a certain person who is able to pay or fulfill the debtor's obligations if the debtor breaks his promise.

Creditors separatist is creditors who have the highest position Because hold right guarantee property used by the debtor , if debtor bankrupt so creditors separatist own right For execute right guarantee material the in accordance with Article 55 of the Bankruptcy Law However right the cut by Article 56 of the Bankruptcy Law which suspends time from execution right the maximum guarantee is 90 days , article 56 becomes contradictory article remember No only contradictory with Article 55 only but also contradictory with the law of rights liability and rights law fiduciary .

According to Bentham, the proposition *the greatest happiness of the greatest number* will play an important role in the legislative process specifically arrangement certainty law for creditors separatist For can execution with easy in protect his rights on consequence get specialized creditors . From the matter this is a good legislator in the PKPU Law and rule its operation in PP form or existing one namely PMK Number: 109/KMA/SK/IV/2020 concerning enforcement book guidelines settlement case bankruptcy and delay obligation debt payment book II settlement process case bankruptcy and delay obligation debt payment (PKPU) after decision statement bankruptcy and verdict delay obligation debt

¹⁵Andreas Albertus, 2010. “ Fiduciary Law ”, Selaras Publisher , Malang. Page 31

payment (PKPU) which can try For create optimal happiness for all over creditors specifically Creditors separatist with road create reconstruction . For That the need existence addition editorial when is the deadline information insolvency the given , letter information That intended for For other agencies such as what and its formation access easy and transparent insolvency minutes to creditors specifically creditors separatists so they can optimize 2 months after insolvency That For do auction in a way independent which is right they as privileged creditor (creditor) separatist).

Interest law is take care of rights and interests human , so that law own authority highest For determine interest human being in need regulated and protected . Protection law must see stages namely protection law born from a provision law and everything regulation laws that are given by society which are basically is agreement public the For arrange connection behavior between members society and between individual with the government is considered represent interest public .¹⁶ Dalm draft protection This so can concluded must existence protection law debtor moreover interest creditors that is injured party Because No get fulfillment achievement . For That must existence certainty law for creditors For do execution of the mortgage rights for the benefit together . Benefit , according to Jeremy Bentham, comes from of two things that is pain and pleasure , which cause desired state is condition pleasure free from the so -called trouble happiness (Principle of Utility).¹⁷ The value of utility found in individuals , groups and also society , so that according to Bentham the goal law is in accordance with the Principle of Utility or For achieve and guarantee happiness for as much as possible (greatest happiness of the greatest number)¹⁸ . Certainty , according to Gustav Radbruch There are 2 (two) types understanding certainty law namely : Certainty law because of law give task another law , namely law must still useful ; whereas certainty law in law achieved if law the as much as possible in law , the law the made based on legality (state of affairs) real law) and deep Constitution the No there is terms that can be interpreted in a way different .¹⁹

Which is very important from his view is opinion that justice must understood in understanding similarities . However, Aristotle made distinction important between similarity numerical and similarity proportional .²⁰ Similarities numeric to equate every man as one unit. This is what it is now normal We understand about similarities and what we have mean when We say that all inhabitant is same in front law . Equality proportional give each person what becomes his rights in accordance with his abilities , his achievements , and so on . From the distinction This is Aristotle presenting Lots controversy and debate around justice . More continue , he differentiate justice become type justice distributive and justice corrective . The first one applicable in law public , the second in law civil and criminal . Civility distributive and corrective You're welcome prone to to problem similarity or equality and only Can understood in its framework . In the

¹⁶Ibid., p . 54

¹⁷Atip Latipulhayat , "Treasures: Jeremy Bentham," Padjadjaran Journal Legal Science : Volume 2, No. 2 (2015), p . 416. As quoted from Jeremy Bentham, An Introduction to the Principles of Morals and Legislation, (Kitchener: Batoche Books, 2000), p . 14

¹⁸ Ibid

¹⁹Muhammad Ridwansyah , " Realizing Justice , Certainty and Legal Benefits in the Aceh Flag and Emblem Qanun ," Constitution : Volume 13, No. 2 (June 2016), p . 286.

²⁰ Tengker , F. *The Law of a approach Elementary* , Nova Publisher , Bandung, 2003, p . 102

realm of justice distributive, the important thing is that equal rewards are given on equal achievement.

According to Kelsen, law is a system of norms. Norms are statements that emphasize the aspect of "should" or *das sollen*, by including several regulations about what should be done. Norms are products and deliberative human actions. Laws that contain general rules become guidelines for individuals to behave in society, both in relationships with other individuals and in relationships with society. These rules become limitations for society in burdening or taking action against individuals. The existence of these rules and the implementation of these rules create legal certainty.²¹

Protection law is an effort to protect interest from somebody with allocate a Basic Right Man power to that person For act in frame its interests.²² In carrying out execution right collateral pledged by the debtor to creditors separatist get protection law from Article 55 paragraph (1) of the Bankruptcy Law which in essence state creditors separatist can execute right guarantee materiality. With notice provision Articles 56, 57 and 58. Provisions the in its meaning as if No happen bankruptcy. This can also it is said that treasure guarantee material held his rights by creditors separatist No is the slug bankrupt. If the results execution from guarantee material the No cover all debts then, creditors separatist will to collect the rest to debtor segbai creditors concurrent. Different with execution If guarantee material debtor more so creditors separatist must For return the rest to debtor. In addition creditors separatist get protection law in Article 21 of the Mortgage Rights Law states holder right liability still can do all his rights although debtor Already stated bankrupt. This matter to mean Article 55 of the Bankruptcy Law Already in accordance with Article 21 of the Mortgage Rights Law, which states that If debtor default or bankrupt so creditors separatist can do all right guarantee one of the objects he was holding that is right liability the For fulfil obligations that must be fulfilled fulfilled by the debtor.²³

Normative legal certainty is when a regulation is made and enacted with certainty because it regulates clearly and logically. Clear in the sense that it does not cause doubt (multiple interpretations) and is logical. Clear in the sense that it becomes a system of norms with other norms so that it does not clash or cause norm conflicts. Legal certainty refers to the implementation of clear, permanent, consistent and consequent laws whose implementation cannot be influenced by subjective circumstances. Certainty and justice are not merely moral demands, but factually characterize the law. An uncertain and unjust law is not simply a bad law.²⁴

Legal certainty is a guarantee of law that contains justice. Norms that advance justice must truly function as regulations that are obeyed. According to Gustav Radbruch,

²¹ Peter Mahmud Marzuki, *Introduction Knowledge Law*, To n c a n a, Jakarta, 2008, hlm. 158

²² Ida Bagus Adi Wiradharma, 2016, Legal Protection Against Curator in Implementation Task Management and Settlement Treasure Debtor Bankruptcy, Law Journal of the Faculty of Law, Udayana University, vol. 4 no. 1

²³ Kadek Septian Dharmawan Prastika, Position Creditors In The Agreement Credit With Guarantee of Land Ownership Rights Based on Constitution Number 4 of 1996 Concerning Mortgage Rights Along with Related Objects With Land, Kertha Semaya: Journal of Legal Studies, Udayana University, Vol 5 No 1, May, 2018, p. 6.

²⁴ Cst Kansil, Christine, ST Kansil, Engelen R, The place where And God bless you N M a m a h i t, K a m u s Term Law, Jakarta, 2009, Page 10385.

justice and legal certainty are permanent parts of the law. He argues that justice and legal certainty must be considered, certainty must be maintained for the sake of security and order in a country. Finally, positive law must always be obeyed. Based on the theory of legal certainty and the values to be achieved, namely the values of justice and happiness.²⁵ It is also emphasized with Article 27 paragraph (3) of the Guarantee Law Fiduciary which is essentially state creditors separatist hold fiduciary comes first his rights and not is lost his rights Because existence bankruptcy, thing the to mean strong position from creditors holding right guarantee.

Happiness according to Bentham is defined as as a use or utility (*utility*) as something that can owned and can bring in benefits, advantages, pleasure, and happiness, or something that can prevent the occurrence damage, inconvenience, crime, or unhappiness. Value of utility This is at the level individual who produces individual happiness (*happiness of individual*) as well as happiness *of community*.⁹ For Bentham, morality a action determined with to consider its uses For reach happiness all human, not happiness selfish individual as embraced by hedonism classic. This is what then give birth to argument Bentham's classic on happiness: *the greatest happiness of the greatest number* (happiness the biggest For majority).²⁶

Utilitarian theory is basically want to ensure happiness as if to humans in the greatest possible number. In principle based on theory utility aiming law is benefit For give results in the form of pleasure or happiness the biggest For large number of people. Jeremy Bentham as observer theory utilities is heavy theory adjacent so that Utrecht at the moment respond theory utilities convey 3 things that is as following:²⁷

- I. Without giving a position in an effort to consider various concrete matters fairly,
- II. Only pay attention to something that is useful and therefore its substance has a general nature,
- III. Very individualistic and without giving any regard to legal feelings

In the case of a person/ business entity that is stated bankrupt Actually statement bankrupt a debtor No too important for creditors separatists and creditors prefer, because they can execute object guarantee as if No There is bankruptcy, thing as there is explanation of Article 55 paragraph (1) UUKPKPU which reads " With still notice provision as intended in Article 56, Article 57, and Article 58, respectively creditors holder pawn, collateral fiduciary, right liability, mortgage, or right collateral on material others, can execute his rights as if No happen bankruptcy ”.

However when reading Article 56: (1) Right of execution Creditors as meant in Article 55 paragraph (1) and rights party third For demand his wealth is there in mastery Debtor Bankrupt or Curator, suspended For term maximum time 90 (nine) days twenty) days since date decision statement bankrupt spoken. Then there is problem Again

²⁵ *Ibid*, hlm 95

²⁶ Axiom fundamentals This appear First time in work Be n tham Which titled “A Fragme n t on Go v ernme n t ” in 1776, see t J. H. Burns and HLA Hart (eds.), *A Comme n t on the Comme nt aries and A F ragme n t on Governme n t*, *The Collec t ed W or k s of Jere m y Be n tham*, The A thlone P r ess, London, 1977, p . 393. See also L y ons , *Op.cit* ., p . 12.

²⁷ Muhammad Ridwansyah, 2016, Realizing Justice, Certainty and Legal Benefits in the Aceh Flag and Emblem Qanun, Journal Constitution, Volume 13 No 2, June 2016, <https://media.neliti.com/media/publications/113189-ID-mewujudkan-keadilan-kepastian-dan-kemanf.pdf> p. 291, accessed 21 April 2018

Because in chapter said , creditors separatists and creditors preference holder guarantee No can direct do execution goods guarantee Because so stated bankrupt to creditors holder right guarantee affected by stay or suspension execution goods guarantee for 90 days and 90 days time That can shortened by 2 months after Debtor stated insolvent based on Article 59 paragraph 1 which reads : .

With still notice provisions of Article 56, Article 57, and Article 58, Creditors holder right as meant in Article 55 paragraph (1) must carry out his rights the in term no later than 2 (two) months after the beginning condition insolvency as meant in Article 178 paragraph (1).

If 90 days and/ or 30 days (2 months) term insolvent the has passed , then must handed over to the appropriate curator Article 59 paragraph 2 :

After past term time as referred to in paragraph (1), Curator must demand handed over the thing that becomes collateral For furthermore for sale in accordance with method as meant in Article 185, without reduce right Creditors holder right the on results sale collateral the .

And in things that become factor inhibitor Creditors Separatist after Debtor stated insolvent by the supervisory judge , product insolvency the No There is clarity in the form of what and when accepted by creditors separatist , so that creditors separatist difficult For do execution Because cut off the time it should take is 2 months Can utilized For execution myself . From the background behind This seen existence the absence of norms in certainty law When product insolvency That given For Can executed by creditors separatists . In overcoming emptiness law the The Supreme Court issued decision that is .²⁸

16.2 Legal disclaimer treasure bankrupt is at in condition insolvency stated in a way firmly by the Supervising Judge in Meeting Creditors and poured in the Minutes, no need with Determination (Article 178 of the PKPU Law);

16. 3. When there is agencies that need description insolvency then Clerk remove description insolvency referring to the Minutes of the Meeting Creditors ;

16. 4. Judge Supervisor to order Clerk Replacement For input and uploading the Minutes of Insolvency to in the Court Information System , as well as report to Secretariat Commerce For noted in Register Book ;

In this KMA decision say product main insolvency in the form of a Certificate Insolvency , not again determination or insolvency proceedings . Until us must do application to PTSP for in writing deep Application Description of the Letter of Intent Insolvency aimed at Head Court place The trial that is interesting PKPU matters and more special to The secretariat is delegative carry what is included in the KMA.

Whereas in enter letter application Alone No Can go out instantly that's also because No there are SOPs and/ or No in a way firm formulated in KMA in general

²⁸ Number: 109/KMA/SK/IV/2020 concerning enforcement book guidelines settlement case bankruptcy and delay obligation debt payment Book II completion process case bankruptcy and delay obligation debt payment (PKPU) after decision statement bankruptcy and verdict delay obligation debt payment (PKPU).

special When must issuance of a Certificate Insolvency So that Creditors separatist hang up their HT execution is limited to 2 months by Article 59 paragraph 1 of the PKPU Law regarding PTSP administration in charge on certainty . In practice Lots creditors separatists complain duration Issuance of Certificate of Information Insolvency said , there are the fastest 4 days , even there are 7 days or even there are 10 days up to 1 month . Not a few who let it application That Because because of that long and not will time to act carry on from the Certificate Insolvency That For he did execution independent in KPKNL because limited time .

Actually in the KNKNL auction SOP for to register auction still made possible the release of the Insolvent Event News clerk substitute as an alternative when not yet exit description insolvency that which reads in point 1. a document that is specifically delivered at the moment application auction consists of from letters (v. determination / description from the Supervisory Judge about the beginning situation insolvency and/ or Minutes of Meeting Creditor signed by the Curator and Supervising Judge who states the beginning situation insolvency . However when ask product insolvency proceedings at the Registrar's office Substitute them say products produced is a Certificate Insolvency issued by KPKNL in accordance with with KMA.

If the KMA analysis is carried out explained 16.2 Legal disclaimer treasure bankrupt is at in condition insolvency stated in a way firmly by the Supervising Judge in Meeting Creditors and poured in the Minutes, no need with Determination (Article 178 of the PKPU Law), from here should be Curator Debtors and Creditors must given copy minutes based on principle transparency in institution justice , and even then is right from the parties For get it as proof the realization of due process of law and transparent justice . Then in 16.3. it states If There is agencies that require information insolvency so Clerk emit information insolvency which refers to the Minutes of Meeting Creditors . These other agencies no clear and concrete mentioned Who aja and what definition other agencies referred to . The parties in case should be No categorized other agencies because they is the party in dispute and has the right voice For intervention path and results trial . If you look at it more of course if creditors considered agency other , how if creditors That is individual ? Does that mean they No Can get product information insolvency the .

Law is understood by theory justice dignified until to nature , essence , or the substance of thought . The law in perspective theory justice dignified No just seen , or understood through knowledge results catch sensory or just physical , but more in from just understanding law through knowledge sensory that , theory justice dignified trace and capture with reason knowledge the true law , namely knowledge the underlying law all knowledge sensory . With Thus , the theory justice dignified understood No only as a theory law . More than that , theory law dignified is also a philosophy identical law with a system law positive .²⁹ For That required existence reformulation product insolvency Good determination , minutes and information that can be accessed with easy and full certainty law in order to be able to beneficial in a way direct in create justice in a way concrete .

²⁹ Steadfast Prasetyo , 2015, Justice Dignity , Legal Theory Perspective , Nusamedia , Bandung p. 24.

IV. CONCLUSION

In Article 56 there is problem Because creditors separatists and creditors preference holder guarantee No can direct do execution goods guarantee Because so stated bankrupt to creditors holder right guarantee affected by stay or suspension execution goods guarantee for 90 days and 90 days time That can shortened by 2 months after Debtor stated insolvent . If 90 days and/ or 30 days (2 months) term insolvent the has passed , then must handed over to curator . And in things that become factor inhibitor Creditors Separatist after Debtor stated insolvent by the supervisory judge , product insolvency the No There is clarity in the form of what and when accepted by creditors separatist , so that creditors separatist difficult For do execution Because cut off the time it should take is 2 months Can utilized For execution Alone .

Theory of justice dignified trace and capture with reason knowledge the true law , namely knowledge the underlying law all knowledge sensory . With Thus , the theory justice dignified understood No only as a legal theory but practical legal solutions . For realize justice dignified to obstacle creditors separatists facing absence certainty in execution object guarantee in case of insolvency required existence reformulation product insolvency Good determination , minutes and information that can be accessed with easy and full certainty law in order to be able to beneficial in a way direct in create justice in a way concrete . From the thing this is a good legislator in the PKPU Law and rule its operation in PP form or existing one namely PMK Number: 109/KMA/SK/IV/2020 concerning enforcement book guidelines settlement case bankruptcyand delay obligation debt payment book II settlement process case bankruptcy and delay obligation debt payment (PKPU) after decision statement bankruptcy and verdict delay obligation debt payment (PKPU) which can try For create optimal happiness for all over creditors specifically Creditors separatist with road create reconstruction . For That the need existence addition editorial when is the deadline information insolvency the given , letter information That intended for For other agencies such as what and its formation access easy and transparent insolvency minutes to creditors specifically creditors separatists so they can optimize 2 months after insolvency That For do auction in a way independent which is right they as privileged creditor (creditor) separatists).

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