

ANALYSIS OF THE BALANCE OF INTEREST PROTECTION OF DEBTORS AND CREDITORS IN THE BANKRUPTCY LAW

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Abstrak

The Bankruptcy Law is intended to maintain business continuity, not only debtors but also creditors and parties who are indirectly involved in the bankruptcy case. The purpose of the Bankruptcy Law is not to impoverish debtors and creditors and other parties but to ensure how after the bankruptcy decision the parties can resume their business or start a business again from scratch. The research approach used in this research is qualitative. The type of research is library research or normative juridical. Sources of data come from laws, journals, and books related to the Bankruptcy Law. The method of data collection is done through documentation in the form of books and journals. The data obtained were then processed and analyzed prescriptively and descriptively. Data processing is carried out by systematizing legal materials by classifying data to facilitate analysis and construction in normative legal research. The results of this study indicate that the Bankruptcy Law as far as possible maintains the balance of rights of debtors and creditors. Article 2 Paragraph (1) In simple terms, the procedure for bankruptcy of a person is also excluded if the debtor is hopelessly in debt or has no hope of continuing his business. Article 2 Paragraphs (2), (3), (4) and (5) provide limited access for certain lines to be bankrupt, seeing that these lines are in direct contact with the interests of the general public. Article 4 aims to maintain family harmony. Article 41 to maintain the continuity of the creditor's business when the debtor is in the process of bankruptcy.

Keywords: Debtor; Creditor; Bankruptcy Law

INTRODUCTION

Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, hereinafter abbreviated as the Bankruptcy Law, is a law issued for the benefit of the business world in resolving debt and credit problems in a fair, fast, open and effective manner, which is very much needed by legal instruments that support

it. This paper was appointed to discuss how this law has considered aspects of family harmony, co-worker relations, business continuity of bankrupt debtors, and fulfillment of creditors' rights and service users from bankrupt debtor companies.

When a company is declared bankrupt, many parties suffer the consequences. Bankruptcy does not only discuss how the company's business continues but also concerns the survival of debtors, creditors, and employees of companies that are declared bankrupt. In examining a bankruptcy case, a judge may not immediately pass a bankruptcy decision on a debtor, but must see whether the debtor is in a hopelessly in debt condition. This is regulated to limit judges in giving decisions considering the simple way to bankrupt a company (Article 2 Paragraph (1) of the Bankruptcy Law).

One example of a bankruptcy lawsuit with case registration number 4/PDT.SUS-PAILIT/2020/PN.NIAGA.MKS which was submitted but was rejected by the Panel of Judges because they considered that the legal relationship between the plaintiff and the defendant was not a debt relationship but an arisan relationship. Automatically Article 2 paragraph (1) of the Bankruptcy Law which the plaintiff argues that the defendant already has 2 creditors and the debt that has matured cannot be granted.

The objectives of the regulation regarding Bankruptcy are: first, to avoid the seizure of debtor's assets at the same time when creditors collect at the same time. Second, to avoid creditors taking over the debtor's assets against their rights. Third, to avoid fraud committed by debtors and creditors. For example, the debtor releases his responsibility to pay debts to creditors or debtors who only want to benefit one of the creditors.

Sularto¹ described that the provisions for the suspension of execution and the limitation of the execution period of guarantees in the Bankruptcy Law were not in line with the provisions of the guarantee law, thus potentially harming separatist creditors. Ida Ayu² wrote about legal protection for the interests of creditors from debtors' fraudulent actions. The results of the study indicate that the legal protection obtained by creditors is less than optimal because there are differences in the meaning of Article 41 of the Bankruptcy Law and Article 1341 of the Civil Code.

The research described above has not yet described the protection of debtors and parties related to debtors. Previous research was limited to discussing creditor protection, whereas in the case of bankruptcy it is not only creditors who are harmed. There is a deeper essence contained in the Bankruptcy Law which, when examined, shows how the Bankruptcy Law safeguards the interests of the parties involved in bankruptcy cases.

¹Sularto, "Perlindungan Hukum Kreditor Separatis dalam Kepailitan." *Mimbar Hukum Volume 24 Nomor 2* (2012).

²Ida Ayu Kade Winda Swari, *et al*, "Perlindungan Hukum terhadap Kepentingan Para Kreditor Akibat *Actio Pauliana* dalam Hukum Kepailitan." *Kertha Semaya Volume 02 Nomor 01* (Februari 2014).

Based on the background as described above, the problem studied is how the Articles in the Bankruptcy Law protect parties who are directly and indirectly involved in bankruptcy cases.

METHOD

The research approach used in this research is qualitative. The type of research is library research or normative juridical which examines various laws and regulations that apply or are applied to a particular legal problem.³ Sources of data come from laws, journals, and books related to the Bankruptcy Law.

The method of data collection is done through documentation in the form of books and journals. The data obtained were then processed and analyzed prescriptively and descriptively. Data processing is carried out by systematizing legal materials by making data classifications to facilitate analysis and construction in normative legal research.⁴

RESULTS AND DISCUSSION

A. Analysis of Art in Bankruptcy Law

Article 1 Number 1 reads “Bankruptcy is **a general confiscation of all assets** of the Bankrupt Debtor whose management and settlement is carried out by the Curator under the supervision of the Supervisory Judge as regulated in this Law.” Why is bankruptcy referred to as general confiscation? Because the confiscation is not for the benefit of one person or several creditors but for the benefit of everyone. In addition, to prevent confiscation of executions requested by individual creditors. It is inconceivable how brutal it would be if the confiscation by creditors was not regulated by law. The picture that is often seen in soap operas relates to how brutally creditors pay off debtors in front of their family and neighbors which can lead to ostracism from society.

All of the assets referred to are regulated in Article 22, namely:

1. Objects, including animals that are really needed by the Debtor in connection with his work, equipment, medical equipment used for health, bedding and equipment used by the Debtor and his family, and food for 30 (thirty) days for the Debtor and his family, who were in that place;

³Soejono dan Abdurrahman, H, *Metode Penelitian Hukum*, Jakarta: Rineka Cipta, 2003, p. 56.

⁴Soerjono Soekanto, *Pengantar Penelitian Hukum*, Jakarta: UI Press, 2012, p. 251.

2. Everything obtained by the Debtor from his own work as a salary from a position or service, as wages, pensions, waiting fees or allowances, to the extent determined by the Supervisory Judge; or
3. Money given to the debtor to fulfill an obligation to provide a living according to the law.

All assets referred to are company assets, not personal assets of the bankrupt debtor. This is to prevent the debtor from being unable to finance the continuity of family life after the bankruptcy decision. It is conceivable that if the debtor's personal wealth is also included in the bankruptcy estate, then the place of residence, children's and wife's livelihood cannot be fulfilled, which can result in high divorce cases and an increase in the dropout rate for children. The obligation to provide a husband's support to his children and wife is regulated in Article 80 paragraph (2) and paragraph (4) of the Compilation of Islamic Law jo. Article 34 paragraph (1) of the Marriage Law. This article is also in line with the concept of a Limited Liability Company which limits the liability of its shareholders, personal assets of shareholders in a juridical and administrative manner cannot be referred to as company assets.

The phrase "all wealth" also not only protects the debtor and the debtor's family but also guarantees the payment of salaries of workers from the bankrupt company. Workers include preferred creditors based on the Constitutional Court Decision No. 67/PUU-XI/2013 which states that the payment of Workers' Wages takes precedence over all types of claims and other creditors. In addition, other workers' rights are paid in advance of all claims and other creditors, unless the debtor has a separatist creditor. This decision is issued again and again to maintain the family's survival of workers and workers' wages cannot be abolished or reduced.

Article 2 paragraph (1) reads "A debtor who has two or more creditors and does not pay off at least one debt that has matured and is collectible, is declared bankrupt by a court decision, either at his own request or at the request of one or more creditors". Article 2 Paragraph (1) provides an explanation regarding the elements that a person can be bankrupt. These elements can be described in the following review:

1. Debtors who have two or more Creditors

Creditors in this paragraph are concurrent creditors, separatist creditors and preferred creditors. Specifically regarding separatist creditors and preferred creditors, they can apply for a declaration of bankruptcy without losing their collateral rights over the property they have on the Debtor's assets and their right to take precedence.

2. Not paying off at least one debt

Bankruptcy is not only unable to pay, but there can be a situation where the debtor does not pay off the debt that has fallen due.

3. It's past due and can be billed

What is meant by "debt that has matured and is collectible" is the obligation to pay debts that have matured, either because it has been agreed upon, because of the acceleration of the collection time as agreed, due to the imposition of sanctions or fines by the competent authority, or because of a court decision, arbitrator, or arbitral tribunal.

4. The Debtor application or at the request of one or more creditors.

This clause illustrates the dilemma of the creditor, because the debtor can file for bankruptcy on himself to get out of debt. That is why many creditors are also afraid if their debtors apply for bankruptcy voluntarily. This article explains the simple conditions for a person to be bankrupt, but it does not necessarily mean that a person can be bankrupt. The judge only renders a bankruptcy decision if a person is **hopelessly in debt**. Continuity of business for the debtor must be considered in insolvency of a person. If they do not meet the conditions stipulated in Article 2 paragraph (1), they are declared bankrupt.

Article 2 paragraph (2) reads "Application as referred to in paragraph (1) may also be submitted by the public prosecutor's office". Article 2 Paragraph (2) The application as referred to in paragraph (1) may also be submitted by the public prosecutor's office. Public interest is intended to prevent debtors from running away, embezzling assets, debtors having debts to BUMN or other business entities that collect funds from the public such as insurance, stock exchanges, or banking. In addition, the debtor is considered to have no good faith in resolving the debt problem that has matured or in other cases the prosecutor considers that there are other things that make the debtor interfere with the public interest.

Article 2 paragraph (3) reads "In the event that the Debtor is a bank, the application for a declaration of bankruptcy may only be submitted by Bank Indonesia". This article provides a limit for creditors not to file an application for bankruptcy at the bank. Likewise, Article 2 paragraph (4) reads "In the event that the Debtor is a Securities Company, Stock Exchange, Clearing Guarantee Institution, Depository and Settlement Institution, the application for a declaration of bankruptcy can only be submitted by the Capital Market Supervisory Agency". Article 2 paragraph (4) reads "In the event that the Debtor is an Insurance Company, Reinsurance Company, Pension Fund, or State-Owned Enterprise operating in the field of public interest, the application for a declaration of bankruptcy can only be submitted by the Minister of Finance".

This article really underlines the interests of the people. Because the world of banking, securities companies, and insurance is a living line of public trust and collects public funds at large. Thus, in order to safeguard the public interest and maintain the level of public trust, a bankruptcy petition can only be filed by certain institutions as regulated in the Bankruptcy Law. It is inconceivable that the social shocks that will occur if creditors can freely bankrupt these 3 lines without considering the people who save funds. Article 2 of the Bankruptcy Law takes into account the financial health of the debtor. So, when the debtor's finances are solvent, it is not automatically declared bankrupt by the court.

Article 4 paragraph (1) "In the event that an application for a declaration of bankruptcy is submitted by a debtor who is still bound in a legal marriage, the application can only be submitted with the approval of the husband or wife". However, it is excluded in Article 4 paragraph (2) that "The provisions as referred to in paragraph (1) do not apply if there is no unity of property". This article is to maintain the relationship between husband and wife in maintaining communication in the household. The consequence of the merger of assets requires husband and wife to ask each other for permission if they want to carry out legal events in civil matters, such as polygamy, credit applications, to bankruptcy applications.

The philosophical meaning can be studied from the notion of marriage which is regulated in Article 1 number 1 of the Marriage Law that "Marriage is an inner and outer bond between a man and a woman as husband and wife, with the aim of forming a happy and eternal family (household) based on God Almighty One". From the article, it is concluded that there is a principle that between husband and wife there is a very close bond, which includes not only the physical bond but the wife is united both in material and spiritual terms.⁵

Article 41

- (1) In the interest of the bankruptcy estate, the Court may request the cancellation of all legal actions of the Debtor which have been declared bankrupt which harm the interests of the Creditor, which was carried out before the decision on the declaration of bankruptcy was pronounced.
- (2) The cancellation as referred to in paragraph (1) can only be made if it can be proven that at the time the legal action was taken, the Debtor and the party with whom the legal action was carried out knew or should have known that the legal action would result in a loss to the Creditor.

⁵Kholil Nawawi, "Harta Bersama Menurut Hukum Islam dan Perundang-undangan di Indonesia." *Mizan; Jurnal Ilmu Syariah Volume 1 Nomor 1* (2013), p.11.

(3) Exceptions from the provisions as referred to in paragraph (1) are legal actions of the Debtor which must be carried out based on an agreement and/or by law.

Article 41 relates to *Actio pauliana*. *Actio pauliana* is a legal effort made by a creditor to cancel the debtor's actions that harm the creditor through the court and it can be proven that when a legal action is carried out, the debtor or with whom the legal action was carried out knows that the act is detrimental to the creditor. Because this article mentions for the sake of the bankruptcy estate, the submission is made by the curator as the supervisor of the assets and has the authority related to the interests of the bankrupt property.

The elements that must be proven by the Creditor in relation to *Actio pauliana* are:

1. The debtor has committed a legal act, meaning that a legal act is any human act that is done intentionally to give rise to rights and obligations. A legal act is every act of a legal subject (person and legal entity) whose consequences are regulated by law, because that result can be considered as the will of the person carrying out the law.⁶
2. The legal action is not mandatory for the debtor, meaning that the legal action is not for the fulfillment of the agreement or the fulfillment of the mandate of the law.
3. The legal action referred to has harmed the creditor in the sense that the legal consequences arising from legal actions carried out by the debtor are things that are detrimental to the creditor.
4. At the time of carrying out the legal action it will harm the creditor and the legal action is carried out knowing or ought to know that the legal action will result in a loss to the creditor.

It is excluded in Article 41 paragraph (3) that *Actio pauliana* becomes invalid if the debtor's actions are based on the fulfillment of agreements and/or laws such as tax payments. This exception is intended to prevent the debtor from being sued for default or not carrying out the law under the pretext of *Actio pauliana*. In other words, the action is taken not for the personal interest of the debtor, but for the health of the company.⁷

B. Analysis of Bankruptcy Principles

Sudikno Mertokusumo stated that principles are legal principles, or legal principles are not concrete legal regulations but are basic thoughts that are general in nature or are the background of concrete regulations contained in or behind every legal system that is

⁶R. Soeroso, *Pengantar Ilmu Hukum*. Jakarta: Sinar Grafika, 2015, p. 291.

⁷Elisabeth Nurhaini Butarbutar, "Pembuktian terhadap Perbuatan Debitur yang Merugikan Kreditur dalam Tuntutan *Actio Pauliana*." *Jurnal Yudisial Volume 12 Nomor 2* (Agustus 2019), p. 217.

incarnated from statutory regulations and judge decisions which are positive law and can be found by looking for general properties in the concrete rules.⁸

The Bankruptcy Law aims to resolve bankruptcy cases more quickly, fairly and openly. The Bankruptcy Law provides fair protection for creditors and debtors where creditors can fulfill their demands for their debts and debtors can guarantee business continuity. Therefore, the Bankruptcy Law stipulates that bringing bankruptcy cases to court is not the only way to settle debts.

To achieve this goal, the Bankruptcy Law implements the principles in the settlement of bankruptcy cases. The principles of bankruptcy are as follows:⁹

1. The Principle of Justice

The application of the principle of justice in bankruptcy is not only limited to text but also provides legal protection against the repayment of receivables to creditors and also legal protection for debtors from forced settlements or creditors competing to claim debtor assets without mapping whether the property is the personal property of the debtor or not.¹⁰ Debtors are declared bankrupt not only based on looking at the interests of creditors but also looking at the interests of the debtor. In other words, the principle of justice is intended to protect the interests of creditors, but must not harm the interests of the debtor.

2. The Principle of Sentencing is not as an *Ultimum Remidium*

This principle goes hand in hand with the going concern principle. This means that in issuing a bankruptcy decision, the judge must pay attention to whether the business still has hope to rise and build its business or not. Another consideration needs to be given to the condition for bankruptcy of a company by measuring the company's financial statements whether the debtor is in an insolvent position, meaning that the debtor has more debt than assets. Debtors who have smaller assets than debt but still have hope of paying debts in the future are given the opportunity to continue their business.¹¹ *Ultimum* is the final step. Bankruptcy is not a last resort. The court will not impose a sentence if the debtor still has a business opportunity. Bankruptcy can be done if the debtor is **hopelessly in debt**. This means that the debtor really has no more opportunity to continue his

⁸Sudikno Mertokusumo, *Mengenal Hukum (Suatu Pengantar)*. Yogyakarta: Liberty, 1991, p. 45.

⁹Tata Wijayanta, *Undang-Undang dan Praktik Kepailitan: Perbandingan Indonesia dan Malaysia*, Yogyakarta: Gadjah Mada University Press, 2016, p. 73 – 76.

¹⁰Serlika Aprita dan Rio Adhitya, "Penerapan "Asas Keadilan" dalam Hukum Kepailitan sebagai Perwujudan Perlindungan Hukum bagi Debitor." *Jurnal Hukum Media Bhakti Volume 3 Nomor 1* (Juni 2019), p. 46.

¹¹Maruli Simalango, "Inkonsistensi Persyaratan Permohonan Pailit dihubungkan dengan Asas Kelangsungan Usaha (*Going Concern*) dalam Undang-Undang No. 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang." *Syar Hukum Jurnal Ilmu Hukum Volume 15 Nomor 1* (2017), p. 63.

business because the assets of the company are used up to pay off the company's debts.

The Bankruptcy Law has indeed given special rights to workers whose companies where they work are declared bankrupt, but the fulfillment of other workers' rights must also not go unnoticed. Therefore, judges in issuing bankruptcy decisions must prioritize the *ultimum remidium* principle in order to guarantee workers' rights. In addition, the principle of *ultimum remidium* must be put forward so that the bankruptcy of a company does not result in an economic vacuum in society, especially consumers.¹²

3. The Principle of Openness

The process of the bankruptcy application being registered with the court, at the time of examination in court and during the management of the bankruptcy estate by the curator or BHP must be known by the general public through the mass media. The principle of openness as an embodiment of protection for the public so that the public knows that a company is in the process of bankruptcy proceedings. This principle is also a control mechanism so that the public or investors do not enter into legal relations with the company that is in the bankruptcy process.

4. Quick Case Resolution

The settlement of cases is carried out in the Commercial Court. There is no appeal but an immediate cassation at the Supreme Court if it still requires legal action. The time limit for the examination of cases is not more than 60 days. While the review is for 30 days.

5. Simple Proofing

A decision on bankruptcy must be made by a judge if there are facts or circumstances that are simply proven that the requirements for bankruptcy have been met. The facts or circumstances that are proven simply are the facts of two or more creditors and the fact that debts have matured according to Article 2 paragraph (1). The difference in the amount of debt argued by the bankruptcy applicant and the bankruptcy respondent does not prevent the issuance of a bankruptcy declaration decision. However, back again to the going concern principle and the *ultimum remidium* principle. This principle is also in line with the principle of quick settlement of cases.

The going concern principle mandates that business actors who still have hope of getting back up cannot just go bankrupt. The judge must see the business opportunities that are open to business actors. Companies are state assets which when bankrupt, the state will lose a source of income from the tax sector.

¹²Niru Anita Sinaga dan Nunuk Sulisrudatin, "Hukum Kepailitan dan Permasalahannya di Indonesia." *Jurnal Ilmiah Hukum Dirgantara Volume 7 Nomor 1* (September 2016), p. 170.

Meanwhile, if the assets of a bankrupt company are sold, it will not be sold considering that other parties are also surviving.¹³

The above principles are the basis for the formation of articles in the Bankruptcy Law. The basic analysis above aims to explain the balance of protecting the interests of Debtors and Creditors in the Bankruptcy Law. Whereas the Bankruptcy Law does not only look at the creditor aspect but also debtors and even third parties apart from debtors and creditors.

The Bankruptcy Law provides the concepts of justice, expediency, and legal certainty by implementing the principles in the settlement of bankruptcy cases. The principle of justice is a manifestation of the concept of justice. The principle of imposing punishment is not as an *Ultimum Remidium* and the principle of openness is a manifestation of the concept of benefit. The principle of quick settlement of cases and the principle of simple proof are manifestations of the concept of legal certainty.¹⁴

CONCLUSION

The purpose of the Bankruptcy Law is not to impoverish debtors, not only to pay creditors but how after this bankruptcy decision the debtor can still rebuild his business. So, to go bankrupt a person or company is not only looking at the trial of the case but also seeing what will happen after the decision. Therefore, the bankruptcy decision is not only carried out immediately, but also sees whether after the decision the risk can be minimized.

In order for the purpose of the Bankruptcy Law to be realized, the Bankruptcy Law stipulates the principles of bankruptcy, namely the principle of justice, the principle of imposing punishment not as an *Ultimum Remidium*, the principle of openness, the principle of quick settlement of cases, and the principle of simple proof.

¹³Catur Irianto, "Penerapan Asas Kelangsungan Usaha dalam Penyelesaian Perkara Kepailitan dan Penundaan Kewajiban Pembayaran Utang (PKPU)." *Jurnal Hukum dan Peradilan Volume 4, Nomor 3* (November 2015), p. 408.

¹⁴Tata Wijayanta, "Asas Kepastian Hukum, Keadilan dan Kemanfaatan dalam Kaitannya dengan Putusan Kepailitan Pengadilan Niaga." *Jurnal Dinamika Hukum Volume 14, Nomor 2* (Mei 2014), p. 225.

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