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Securities Bankruptcy Due to Failure to Make Payments in Repurchase Agreement Transactions

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Abstract. *The Central Jakarta Commercial Court granted the request for bankruptcy to a securities company, PT. AAA Securitas requested by individuals, in this case individuals are GM and AGH through Decision No. 08/Pdt.Sus.PAILIT/2015/ PN.Niaga.Jkt.Pst. The Central Jakarta Commercial Court then decided upon the request of bankruptcy requested by GM as Petitioner I and AGH as Petitioner II granted and issued Decision No. 08 / Pdt.Sus.PAILIT / 2015 / PN.Niaga.Jkt.Pst by looking to see Article 2 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations and Article 8 paragraph (4) of Law Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, the Central Jakarta Commercial Court granted the bankruptcy application completely and canceled the bankruptcy status for PT. Andalan Artha Advisido Sekuritas. This type of research used is normative research which is theoretical by interpreting and examining the application of the rules concerning conceptions, principles, doctrines and norms in positive law in force. Based on the results of the study it was found that the ruling was contrary to the provisions of Article 2 paragraph (4) of the Bankruptcy Law and SDPO because the party who has the right to submit a request for bankruptcy against PT. AAA Securities are Financial Services Authority (Otoritas Jasa Keuangan/OJK).*

Keywords: *Bankruptcy; Securities Company; Repo Transaction; Capital Market Law.*

1. Introduction

The bankruptcy case of PT Andalan Artha Advisindo (AAA) Sekuritas, hereinafter referred to as PT AAA Sekuritas, is an interesting example of the dynamics of capital market law and bankruptcy in Indonesia. PT AAA Sekuritas is a company engaged in securities trading intermediation and underwriting. In this case, the bankruptcy petition was filed by two individuals, Ghozi Muhammad and Azmi Ghozi Harharah (hereinafter referred to as GM and AGH), against PT AAA Sekuritas. The petition stemmed from alleged negligence by PT AAA Sekuritas in fulfilling its obligation to return funds from a Repurchase Agreement (Repo) transaction involving shares that had matured. A repo is a transaction involving the sale and repurchase of securities at a predetermined time

and price (Ginting et al., 2017; Rahmawati & Suhardini, 2019; Suhardini & Ramdania, 2024), and is commonly used as a short-term financing instrument. The issue arose when PT AAA Sekuritas failed to return the funds from the sale of shares in the repo transaction to GM and AGH. Feeling aggrieved, GM and AGH filed a bankruptcy petition with the Central Jakarta Commercial Court. The Panel of Judges subsequently accepted and granted the petition through Decision Number 08/Pdt.Sus.PAILIT/2015/PN.Niaga.Jkt.Pst. In the decision, PT AAA Sekuritas was declared bankrupt based on a petition filed by individual parties.

However, upon closer examination, there are legal issues in the decision. This is because Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy and SDPO Law), particularly Article 2 paragraph (4), states that a bankruptcy petition against a company operating in the financial services sector, such as a securities company, may only be submitted by the authorized institution, namely the Capital Market and Financial Institution Supervisory Agency (*Badan Pengawas Pasar Modal*/Bapepam). Since the enactment of Law Number 21 of 2011 concerning the Financial Services Authority (*Otoritas Jasa Keuangan*/OJK), the authority previously held by Bapepam has been fully transferred to OJK. OJK functions as an independent state institution that regulates and supervises activities in the financial services sector, including the capital market (Sari, 2018; Nurdin et al., 2024). Therefore, the filing of a bankruptcy petition against PT AAA Sekuritas by an individual is, in fact, contrary to the applicable legal provisions. OJK should be the sole authority entitled to file a bankruptcy petition against a securities company such as PT AAA Sekuritas (Pambudi et al., 2016; Ruslan, 2024). The decision to grant the bankruptcy petition filed by GM and AGH without involving OJK raises serious concerns about the consistency and accuracy of the panel of judges in applying the law. This decision can be considered legally flawed, as it fails to adhere to the provisions regarding who is authorized to file a bankruptcy petition against an entity that is specifically regulated and supervised by the state.

In addition to the issue of authority, another important aspect highlighted in this case is the legal status of the Repo transaction itself. In the Indonesian legal system, Repo transactions have not been explicitly recognized as a form of debt that can serve as the basis for a bankruptcy petition (Nugroho, 2018; Hartini, 2020; Disemadi & Gomes, 2021). Although the OJK has regulated Repo transactions through OJK Regulation Number 9/POJK.04/2015 concerning Guidelines for Repurchase Agreement Transactions for Financial Services Institutions, this regulation functions more as a technical guideline and does not explicitly state that the obligations arising from Repo transactions constitute a form of debt that can be used as legal grounds for filing for bankruptcy. This indicates that there is still ambiguity in the legal framework regarding Repo transactions in the context of bankruptcy. In practice, however, Repo transactions involve substantial financial obligations and can have significant consequences if not fulfilled (Anbil & Senyuz, 2022). The lack of clarity regarding the legal status of Repo transactions in bankruptcy proceedings is one of the reasons this topic merits further study, particularly by practitioners and academics in the field of capital market law.

The case of PT AAA Sekuritas opens up a broad space for discussion regarding the integration of capital market law and bankruptcy law in Indonesia. In this context, it is important to emphasize the role of the OJK as the sole authority in handling legal issues related to securities companies, including the filing of bankruptcy applications. Additionally, there is a need for regulatory updates or a more assertive legal

interpretation regarding the status of repo transactions as debt in bankruptcy, to avoid multiple interpretations in the future. For the author, this case is not only interesting from a legal perspective but is also highly relevant for deeper study, as it touches on fundamental aspects of economic law enforcement in Indonesia. The relationship between the authority of state institutions, the clarity of the legal status of capital market transactions, and the application of the principle of justice in court decisions are critical issues that must continue to be addressed. Through studies like this, it is hoped that contributions can be made to improve the legal system to become more accountable, fair, and consistent in responding to the dynamics of modern financial transactions, including cases involving the bankruptcy of securities companies.

This study aims to analyze the causes of bankruptcy of securities companies that fail to fulfill payment obligations in Repurchase Agreement (repo) transactions, as well as review the legal implications in the context of capital market regulations and the Bankruptcy and SDPO Laws, in order to provide a more comprehensive legal understanding.

2. Research Methods

The type of research used in this study is normative legal research, which is theoretical in nature and involves interpreting and examining the application of rules concerning legal concepts, principles, doctrines, and norms in applicable positive law (Diantha, 2016). This type of normative research is also known as doctrinal legal research, which aims to provide systematic explanations and information about the legal rules governing specific areas, analyze the relationships between legal rules, and serve as the foundation for analytical research on statutory regulations (Syahrum, 2022; Rifa'i, 2023; Adriaman, 2024). The research adopts a statutory approach and a conceptual approach. The statutory approach prioritizes legal materials in the form of legislation relevant to the legal issues being examined, making these materials the primary sources for analysis (Bhat, 2019; Hamzani et al., 2023). This approach involves reviewing all laws related to the legal issue at hand and serves as an analytical tool to answer the research problems, which include: first, whether Repurchase Agreement (repo) shares are categorized as debt in bankruptcy; second, the judge's consideration of the OJK's role as the authorized party to file for bankruptcy against securities companies in Decision Number 08/Pdt.Sus.PAILIT/2015/PN.Niaga.Jkt.Pst; and third, the judge's legal reasoning in granting the bankruptcy petition in the same decision. The conceptual approach is applied when existing legal regulations do not specifically address the issue being studied. In this approach, researchers rely on legal principles, concepts, and doctrines that are relevant to the issue, particularly the bankruptcy petition filed against PT. AAA Sekuritas due to its failure to fulfill payment obligations in a repo transaction.

3. Results and Discussion

3.1. Repurchase Agreement or Repo stock transactions as debt in Bankruptcy.

The bankruptcy of a company is indeed very unfortunate; however, it is a possibility that can occur in the business world. The number of companies facing bankruptcy filings is also increasing. The definition of debt is regulated in Article 1, number 6 of the Bankruptcy and SDPO Law, which states: "Debt is an obligation that is stated or can be stated in an amount of money, either in Indonesian currency or foreign currency, whether due immediately, in the future, or contingent, arising from an agreement or by law, and which must be fulfilled by the debtor; if not fulfilled, it gives the creditor the right to obtain fulfillment from the debtor's assets." Debt should be interpreted broadly, encompassing not only obligations to make payments in a specified amount of money that arise from debt agreements but also those that stem from other agreements resulting in the debtor's obligation to pay a predetermined sum (Lontoh et al., 2001; Damlah, 2017; Mantili & Dewi, 2021). In other words, the definition of debt includes both direct obligations arising from debt agreements and obligations to pay money that result from other types of agreements (Bandem et al., 2020; Tiodor & Tjahyani, 2023; Gelpern et al., 2023). Additionally, payment obligations may arise from a debtor's negligence in fulfilling payment duties under a sale and purchase agreement or other contracts, which ultimately require the debtor to pay a predetermined amount of money (Hutami et al., 2023).

Another opinion is presented by Sugarda (2002) and Putra & Joesoef (2020), who state that the definition of debt in the Bankruptcy Law and SDPO should not be interpreted narrowly. It should not be limited to obligations arising solely from debt agreements, but should also encompass any obligation of the debtor to pay a certain amount of money to the creditor regardless of the reason, whether it arises from an agreement that is not strictly a debt agreement, from statutory provisions, or from a court decision that has obtained permanent legal force. From the creditor's perspective, the debtor's obligation to pay constitutes the right to receive a specific amount of money, also known as the right to payment.

If the right namely, the right to payment does not arise, then the debtor's debt cannot be considered a creditor's right that can be registered for verification in the debtor's bankruptcy. Furthermore, if there is no agreement between the debtor and the creditor regarding the debt, then the existence and amount of the debt must first be determined by the Commercial Court, which has the authority to decide on the certainty of the debt. The repo transaction itself is based on an agreement, which naturally requires each party to fulfill their respective obligations as agreed. The parties' compliance in executing the transaction agreement is grounded in the principle of *pacta sunt servanda*, as stipulated in Article 1338 of the Civil Code, which states that agreements are binding on the parties who make them and have the force of law. More specifically, the agreement related to repo transactions is governed by Articles 1519 to 1532 of the Civil Code, which regulate sale and purchase agreements with the right of repurchase.

The most common risk faced by investors in stock repo transactions is default, which occurs when the repo seller fails to return the investor's funds or repay the repo holder at maturity. In such a situation, the seller is considered to be in default (Ginting et al., 2017; Rahmawati & Suhardini, 2019; Suhardini & Ramdania, 2024). Default refers to the

failure to fulfill obligations or performance as stipulated in a contract, whether the contract arises from an agreement or is imposed by law (Adati, 2018; Bandem et al., 2020; Paendong, 2022). It can take four forms: not doing what was agreed upon, performing the obligation but not as promised, performing the obligation late, or committing an act that is prohibited under the agreement (Ramadhani, 2012; Slamet, 2013; Ginting et al., 2017; Rahmawati & Suhardini, 2019). If the repo seller is still unable to fulfill their obligation to pay the repurchase price, the Financial Services Authority (OJK) has the authority to impose sanctions. These sanctions may include placing the repo seller on a blacklist, which would prohibit them from conducting further activities in the Indonesian capital market.

The Repurchase Agreement or Repo is regulated under Financial Services Authority Regulation Number 9/POJK.04/2015 concerning Guidelines for Repurchase Agreement Transactions for Financial Services Institutions, which states that a Repurchase Agreement or Repo transaction is a sale or purchase contract (Keuangan, 2015). From this understanding, a Repurchase Agreement or Repo transaction is a form of contract or agreement that creates an obligation for the party carrying out the transaction. Meanwhile, the definition of debt is regulated in Article 1, number 6 of the Bankruptcy and SDPO Law, which states that debt is an obligation arising from an agreement or law. From this understanding, debt in bankruptcy arises due to an agreement or law, and such agreements can take many forms, including those found in Repurchase Agreement or Repo transactions.

The definition of an agreement or contract is regulated in Article 1313 of the Civil Code. Article 1313 reads: "An agreement is an act by which one or more parties bind themselves to one or more people." An agreement is valid if it meets the requirements outlined in Article 1320 of the Civil Code. According to Article 1320, an agreement must meet the following requirements to be considered valid: an agreement between the parties (subjects), the ability or capacity of the subject to make the agreement, a certain object, and a lawful cause (Al-Khawarizmi, 2011). Based on these provisions, the repo agreement or transaction is a valid agreement because it meets the requirements for a valid agreement outlined in Article 1320 of the Civil Code (Romli, 2021; Pinem et al., 2022). First, there is an agreement between the parties, as indicated by the signatures affixed to the standard contract made by the parties. Second, the subject's ability to make an agreement is evident in the creation of the standard agreement, which in this case concerns the sale and purchase of shares with the right to repurchase, and there is freedom for the parties to accept or reject the agreement without coercion. Third, there is a certain object, which in this case is the company's shares being traded. Finally, there is a lawful cause, as indicated by the existence of a purpose that is not contrary to the law, namely transferring ownership of goods or certain objects legally. However, this agreement is not clearly explained in the Civil Code like other agreements (such as sale and purchase, exchange, lease, work agreement, and other agreements regulated in the Civil Code and Commercial Code), so it is categorized as an anonymous agreement. Even so, anonymous agreements are still regulated in Article 1319 of the Civil Code. Another basis is in Article 1338 of the Civil Code concerning the freedom of contract, which is recognized by everyday practice and jurisprudence.

In general, stock repo is an instrument in the capital market used to obtain short-term funding (Suhardini, 2021; Wardani, 2023). Repo transactions are carried out through the buying and selling of securities, where the seller and the buyer enter into an agreement

that binds both parties. The agreement requires the seller to repurchase the securities sold to the buyer based on the agreed price and time. The repurchase price paid by the seller includes interest based on the agreed rate of return. Therefore, this repo transaction is often referred to as a secured/collateralized loan (a loan secured by securities) (Mentari et al., 2023; Karamoy & Suyawan, 2023).

The Financial Services Authority has issued regulations on repo transactions. The Decree of the Chairman of Bapepam-LK Number KEP-132/BL/2009 concerning the Accounting Treatment of Repurchase Agreements (Repo) Using a Master Repurchase Agreement (MRA) defines a repo transaction as the sale of securities with a promise to repurchase them at a predetermined time and price. Meanwhile, from the perspective of the buyer of securities or the provider of funds, the term "repo" is referred to as a reverse repo. This means that a reverse repo is the opposite of a repo transaction, where the transaction involves buying securities with a promise to sell them back at a predetermined time and price. There are two different perspectives on repo transactions. First, from a legal perspective, this type of transaction is considered the buying and selling of securities based on a binding agreement for the seller to repurchase the securities. The second perspective, based on economic substance, views a repo transaction as equivalent to a loan transaction with collateral in the form of securities.

3.2. OJK's Authority in Filing for Bankruptcy against Securities Companies Not Considered in Decision Number 08/Pdt.Sus.PAILIT/2015/ PN.Niaga.Jkt.Pst

Every human being, as a legal subject, has their own rights and obligations without exception, and these rights and obligations are referred to as legal authority (Disemadi & Jaya, 2019; Kälin & Künzli, 2019; Svensson-McCarthy, 2021). A person who has legal authority to possess rights and obligations does not necessarily have the authority to carry out every action related to those rights and obligations. The provisions in Article 1, number 1, of the Bankruptcy and SDPO Law define bankruptcy. A debtor can be considered bankrupt if they are unable to pay or settle debts owed to creditors that have matured. The parties who are authorized to file a bankruptcy application are listed in Article 2 of the Bankruptcy and SDPO Law, including the debtor themselves, two or more creditors, Bank Indonesia, the Prosecutor's Office for the public interest, the Capital Market Supervisory Agency, and the Minister of Finance.

The provisions of the article state that if the debtor is engaged in the capital market sector, the bankruptcy petition must be submitted by Bapepam. Therefore, if the bankruptcy petition is submitted by someone other than Bapepam in the case of a debtor involved in the capital market sector, that party does not have the authority to submit the petition. The explanation of Article 2 of the Bankruptcy and SDPO Law further emphasizes the authority to submit a bankruptcy petition when the debtor is engaged in the capital market sector. According to the Explanation of Article 2 of the Bankruptcy and SDPO Law, Bapepam is the authorized entity to submit such petitions, as outlined in Article 2 paragraph (4) of the Bankruptcy and SDPO Law. This regulation thus limits the opportunity for other parties to file a bankruptcy petition against a debtor in the capital market sector.

Guidance, regulation, and supervision by the Capital Market Supervisory Agency, through various authorities, are carried out to ensure the creation of orderly, fair, and efficient capital market activities, as well as to protect the interests of investors and the public.

This is a mandate from the Capital Market Law. The functions, duties, and authorities in the capital market sector, previously held by Bapepam, were changed and transferred to the Financial Services Authority following the issuance of the OJK Law. These provisions are regulated in Article 55 of the OJK Law, which states that:

a. "Since December 31, 2012, the functions, duties, and authority for regulating and supervising financial services activities in the Capital Market, Insurance, Pension Fund, Financing Institutions, and other Financial Services Institution sectors have been transferred from the Minister of Finance and the Capital Market and Financial Institutions Supervisory Agency to the OJK.

b. Since December 31, 2013, the functions, duties, and authority for regulating and supervising financial services activities in the banking sector have been transferred from Bank Indonesia to the OJK."

The authority to file a bankruptcy application against a debtor company operating in the capital markets sector, and which meets the requirements for bankruptcy pursuant to Article 2 paragraph (4) of the Bankruptcy and SDPO Law, rests solely with the Financial Services Authority.

The establishment of the Financial Services Authority originated from issues related to the supervisory function of Bank Indonesia, as raised by several parties. Additionally, other reasons behind the formation of the Financial Services Authority included the development of the financial services industry, concerns regarding cross-sectoral interactions within the industry, and the mandate outlined in Article 34 of Law Number 3 of 2004 concerning Amendments to Law Number 23 of 1999 on Bank Indonesia.

The Financial Services Authority is a state institution established under the OJK Law (Susanto, 2021; Fitriyanti & Hanifah, 2023). It functions to regulate and supervise activities across all financial services sectors, including the banking sector, capital market sector, and non-bank financial services sector namely insurance, pension funds, and other financial institutions (Keuangan, 2015). The Financial Services Authority is also an independent state institution, similar to Bank Indonesia, and is free from external interference. This independence ensures that the institution can carry out its functions, duties, and authority such as supervision, examination, and investigation as regulated by the OJK Law.

The function of the Financial Services Authority is to establish a regulatory and supervisory system for activities carried out by all financial services sectors, including the banking sector, capital market sector, and non-bank financial services sector namely insurance, pension funds, financing institutions, and other financial services institutions which are also regulated under the Bankruptcy and SDPO Law (Mamuaya, 2022; Njatrijani et al., 2024). In accordance with Article 2 paragraph (4) of the Bankruptcy and SDPO Law, the role of the Financial Services Authority in conducting examinations of the capital market sector is explained. This article, when linked to the objectives of the Financial Services Authority as stated in Article 4 of the Financial Services Authority Law, shows a close connection. These objectives reflect an effort to safeguard national interests, including human resources, control, management, and ownership within the financial services sector.

Based on the provisions of the above rules, the Applicants in Decision No. 08/Pdt.Sus.PAILIT/2015/PN.Niaga.Jkt.Pst cannot file a lawsuit directly against the Respondent, namely PT AAA Securities, in court. Instead, they must do so through the Financial Services Authority, which has the legal standing to file a bankruptcy petition against a securities company, as regulated by law. In accordance with these provisions, the Applicants must first report the issues or losses they have experienced due to PT AAA Securities. Subsequently, the Financial Services Authority will take legal action by filing a bankruptcy petition based on the losses incurred by the Applicants.

The fact is, the Central Jakarta Commercial Court did not examine the relevant provisions governing the case. As a result, in Decision No. 08/Pdt.Sus.PAILIT/2015/PN.Niaga.Jkt.Pst, the Court granted the bankruptcy petition filed by individuals, namely GM and AGH, against PT. AAA Sekuritas. The panel of judges failed to consider Article 2 paragraph (4) of the Bankruptcy and SDPO Law, which stipulates that only the Financial Services Authority (OJK) is authorized to file a bankruptcy petition against a securities company. In its decision, the judges' legal reasoning focused solely on the requirements for filing a bankruptcy petition, without addressing who is authorized to file such a petition. Moreover, the decision made no mention of the authority vested in the Financial Services Authority. This authority specifically pertains to securities companies and the financial services sector within the capital market, as regulated under Article 6 and Article 55 paragraph (1) of the OJK Law.

3.3. Legal Considerations of the Judge in Decision Number 08/Pdt.Sus.PAILIT/2015/PN.Niaga.Jkt.Pst That Granted the Bankruptcy Application

The Panel of Judges, in its decision, considered that the bankruptcy petition had met the necessary requirements and therefore declared the respondent, PT AAA Securitas, to be in a state of bankruptcy along with all its legal consequences. The judges provided several legal considerations in support of this decision. They noted that the Applicants and the Respondent had entered into a Repo transaction, obligating the Applicants to deposit funds amounting to Rp 24,000,000,000 to the Respondent for the purchase of shares as outlined in several Repo Confirmations. These include Repo Confirmation Ref. No. 004/RC/FI/Nov/14 dated November 24, 2014, involving BRI INDO shares under the name GM with a principal value plus interest of Rp 5,050,416,687 and a settlement date of December 29, 2014; Repo Confirmation Ref. No. 002/RC/FI/Nov/14 dated November 12, 2014, involving FRN Garuda shares under the name AGH with a principal value plus interest of Rp 6,060,500,000 and a settlement date of December 15, 2014; Repo Confirmation Ref. No. 003/RC/FI/Nov/14 dated November 24, 2014, again for BRI INDO shares under the name GM with a principal value plus interest of Rp 5,050,416,667 and a settlement date of December 29, 2014; and Repo Confirmation Ref. No. 001/RC/FI/Nov/14 dated December 2, 2014, for FRN Garuda shares under the name AGH with a principal value plus interest of Rp 8,080,666,667 and a settlement date of January 5, 2015. It was also considered that the Respondent had agreed to return the aforementioned shares no later than two weeks from December 29, 2014.

The Applicants had issued warnings through electronic media (emails) between December 29 and 30, 2014, and through a formal letter, No. 10/Somasi/KH-DAM/III/2015 dated March 10, 2015. The court acknowledged that the Applicants had submitted evidence marked P-1 to P-7 with sufficient stamp duty, and that no other

creditors were presented in the case. Furthermore, the Respondent did not submit a response, provide evidence, or exercise the right to self-defense in court. Lastly, the judges affirmed that the legal criteria for bankruptcy under Article 2, paragraph (1) of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations had been fulfilled, which stipulates that a debtor with two or more creditors who fails to fully pay at least one due and collectible debt can be declared bankrupt by court decision.

The Central Jakarta Commercial Court Decision Number 08/Pdt.Sus.PAILIT/2015/PN.Niaga.Jkt.Pst presents a legal issue, namely the judge's consideration in deciding that the applicants, GM and AGH, were not authorized to file a bankruptcy petition against the securities company. This issue is the main problem because the parties filing the bankruptcy petition, namely individuals, did not have the authority to do so, as regulated in Article 2, paragraph (4) of the Bankruptcy and SDPO Law. According to the considerations mentioned by the judge, all elements in Article 2, paragraph (1) of the Bankruptcy and SDPO Law had been fulfilled. Therefore, in light of the provisions of Article 8, paragraph (4) of the Bankruptcy and SDPO Law regarding simple proof, the bankruptcy petition should have been granted. Consequently, the Panel of Judges of the Central Jakarta Commercial Court, in its ruling, granted the bankruptcy petition of the applicants and declared the company, PT. AAA Securities, bankrupt.

The decision issued by the panel of judges still has shortcomings in resolving the case between GM and AGH as Applicants, with PT. AAA Sekuritas as the Respondent. The case concerns a bankruptcy petition against a securities company. In Decision No. 08/Pdt.Sus.PAILIT/2015/PN.Niaga.Jkt.Pst, the panel of judges first analyzed the requirements for filing a bankruptcy petition filed by the Applicants. The panel of judges concluded that the bankruptcy petition met the requirements for filing, as regulated in Article 2, paragraph (1) and Article 8, paragraph (4) of the Bankruptcy and SDPO Law. Focusing on the legal basis, the panel of judges stated that the provisions in Article 2, paragraph (1) of the Bankruptcy and SDPO Law had been fulfilled. This article stipulates that the debtor must have at least two creditors, has not paid off at least one debt, and the debt is due or can be collected. Based on these provisions, it can be said that the panel of judges considered the evidence, statements, and applicable laws and regulations in the case. Consequently, the panel of judges issued Decision No. 08/Pdt.Sus.PAILIT/2015/PN.Niaga.Jkt.Pst. However, in its considerations, the panel of judges decided that the bankruptcy petition was submitted by a party that did not have the authority to file a bankruptcy application.

The author disagrees with the considerations issued by the panel of judges in Decision 08/Pdt.Sus.PAILIT/2015/PN.Niaga.Jkt.Pst because the decision still does not fulfill all the provisions governing the case. The panel of judges has considered the available evidence, but they did not take into account the party who has the authority to file a bankruptcy petition against the securities company, resulting in inconsistency in law enforcement. Inconsistency refers to non-compliance with changing rules and actions that go beyond the established framework (Efendi et al., 2018). The application of the law by the panel of judges failed to consider Article 2, paragraph (4) of the Bankruptcy Law, which should have been applied in filing a bankruptcy petition against PT. AAA Securities. Specifically, Bapepam, which has been replaced by the Financial Services Authority, is the responsible party, as regulated in Article 55, paragraph (1) of the OJK Law. With the existence of Article 2, paragraph (4) of the Bankruptcy and SDPO Law, the two creditors, GM and AGH, do not have the authority to file a bankruptcy petition

against the securities company, PT. AAA Securities, because the bankruptcy petition can only be granted if the party filing it is the Financial Services Authority.

The case should also consider the provisions of Article 2, paragraph (4) of the Bankruptcy and SDPO Law, which is further supported by Article 55, paragraph (1) of the OJK Law. This provision is actually an important point in filing a bankruptcy petition. If the panel of judges had examined the legal standing of the applicants from the outset, it would have provided sufficient grounds for the panel to reject the bankruptcy petition filed by the applicants, GM and AGH, as the petition was filed for PT. AAA Securities, which operates in the stock exchange sector.

4. Conclusion

Based on the previous discussion, it can be concluded that the Repurchase Agreement (repo) transaction is not explicitly mentioned in the Bankruptcy and SDPO Law. However, through OJK Regulation Number 9/POJK.04/2015 and its relation to Law Number 8 of 1995 concerning Capital Markets, a repo is an agreement that creates obligations for each party and can be categorized as debt, as regulated in Article 1, Number 6 of the Bankruptcy and SDPO Law. In Decision No. 08/Pdt.Sus.PAILIT/2015/PN.Niaga.Jkt.Pst, the judge only considered the formal requirements in Article 2, paragraph (1) in conjunction with Article 8, paragraph (4), but did not address who the authorized party is to file a bankruptcy petition. However, Article 2, paragraph (4) of the Bankruptcy and SDPO Law and Article 55, paragraph (1) of the OJK Law state that the authorized party to file a bankruptcy petition against a securities company is Bapepam, which has now been replaced by OJK. Thus, although the judge's legal considerations in granting the bankruptcy petition appear to align with the provisions of the law, there was an error in assessing the authority of the applicant. Therefore, it is recommended that OJK re-clarify the legal position of repo transactions, both as part of the capital market and as debt in bankruptcy cases, because the provisions in POJK No. 9/POJK.04/2015 are still inadequate. Additionally, the panel of judges should reject the bankruptcy petition from the applicants (GM and AGH) due to the discrepancy with the applicable provisions, where OJK should be recognized as the authorized party to file a bankruptcy petition against PT AAA Sekuritas in accordance with the existing legal regulations.

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