

The Legal Protection of Creditors Who Do Not Respond to Payment Offers in Bankruptcy Settlement

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Abstract. *This study aims to find out and explain legal protection for creditors who have never responded to offers of cash payments in bankruptcy settlements, and settlement of accounts payable against these creditors based on case studies of Central Jakarta District Court Decision Number 364/Pdt.P/2020/PN. Jkt. Pst. The approach method uses normative juridical methods. The research specifications are analytical descriptive. The type of data is secondary legal data, consisting of primary legal materials, namely the 1945 Constitution, statutory regulations and court decisions; secondary legal materials such as books and journals, as well as tertiary legal materials. Data collection method is done by literature study or document study. Methods of data analysis using qualitative data analysis method. The results of the study show that legal protection for creditors who do not respond to offers of cash payments must be pursued through curators, namely submitting offers of cash payments on deposit/consignment, and requesting approval from the court if the creditors still do not respond; court institutions, through judges, clerks and bailiffs according to their duties and authorities; and the existence of written regulations as a basis in efforts to protect the law against these creditors. If the creditor does not respond, then Article 1404 jo. 1381 of the Civil Code, and the cash payment offer was ratified by the District Court.*

Keywords: *Bankruptcy; Consignment; Payment Offer; Protection.*

1. Introduction

Bankruptcy is one of the legal problems in Indonesia. A company in carrying out its business or business may experience bankruptcy due to various factors, including intense business competition with other companies, lack of management skills, not anticipating increasingly modern technological advancements, such as sales through online applications, economic difficulties or unfavorable market conditions. not good, such as the result of the covid-19 pandemic, decreased people's purchasing power, and so on. These things greatly

affect and can cause a big risk for the company to experience bankruptcy because it cannot carry out its business activities.

Bankruptcy can have a negative impact not only on bankrupt company partners, but also on the national and even global economy, depending on the scale and type of business of the bankrupt companies. Bankruptcy institutions are one of the basic needs in business activities considering that bankruptcy status is one of the reasons business actors leave the market. Once entering the market, business actors play in the market, so that if business actors are no longer able to play in the market arena, they can leave the market or are forced to, or even forced out of the market. It is in cases like this that the bankruptcy institution plays a role.¹

One of the legal products that aims to guarantee certainty, order, law enforcement and protection that contains justice and truth that is needed at this time to support national economic development is the regulation regarding bankruptcy and postponement of debt payment obligations.²

The main purpose of the regulation in question, among other things, is to provide a balance between debtors and creditors in dealing with bankruptcy problems, such as facilitating the settlement of debts and receivables in a fast, fair, open and effective manner, and providing legal certainty regarding the time process, responsibility for managing bankrupt assets and procedure.³

Indonesia as a rule of law also views the issue of bankruptcy as an important issue. Bankruptcy regulations are regulated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as the "Bankruptcy Law and PKPU") and its derivative regulations. In addition, the purpose of promulgation of the Bankruptcy Law and PKPU is to realize a fast, fair, open and effective settlement of debt problems.⁴

Article 1 point 1 of the Bankruptcy Law and PKPU states that: "Bankruptcy is a general confiscation of all assets of a bankrupt debtor whose management and settlement are carried out by a curator under the supervision of a Supervisory Judge as stipulated in this Law". In essence, bankruptcy is an act of curator in the

¹Rahayu Hartini. 2007. Revised Edition of Bankruptcy Law. UMM Press. Poor p. 3

²Imam Magribi, Dewi Tuti Muryati and Supriyadi. "Legal Protection for Creditors in Relation to Bankruptcy Applications Filed by Debtors Case Study at PT. Bank CIMB Niaga Against PT. Sumatera Persada Energi", *Humani Journal* Volume 7, No. 2 (2017) p. 120

³Agustina Ni Made Ayu Darma Pratiwi and Putu Sekarwangi Saraswati. "Juridical Review of Law Number 34 of 2004 Concerning Bankruptcy and PKPU Regarding PKPU in the Case of Bankrupt Debtors During Covid 19", *Justice Media: Journal of Law Science* Volume. 12, No. 1 (2021), p. 62

⁴Widjanarko. "Impact of Bankruptcy Law Implementation on the Banking Sector", *Journal of Business Law* Volume 8 (1999), p. 73

form of a general confiscation of all the assets of the debtor which has been determined by a decision of the Commercial Court and the division of each creditor's receivables based on their level according to the law in order to settle the debtor's debts.⁵ In general, when a bankruptcy process occurs, creditors will try to ensure that all rights to payment or receivables can be paid/settled in full. However, it is possible that some creditors will not respond at all, which can affect the duration of the bankruptcy process, fulfillment of curator's obligations under the law, and legal certainty.

In practice, a case can be found where some creditors do not respond and act passively in the bankruptcy process after a bankruptcy decision from the Commercial Court, such as in the Decree of the Central Jakarta District Court Number 364/PDT.P/2020/PN.JKT.PST. November 13, 2020. The case is related to the bankruptcy process of PT. Geo Cepu Indonesia which has been going on for a long time, which is more than 3 years since the debtor's decision was declared bankrupt so that the applicant (curator) intends to end bankruptcy immediately. In an effort to end the bankruptcy, 17 creditors (respondents) remained unresponsive, with a total of IDR 42,446,270.45. Even though the implementation of the payment offer has been carried out officially by the District Court bailiff, However, the Respondents did not provide a response or take the payment to which they were entitled. Therefore, the curator then submitted a request to the Central Jakarta District Court, which basically requested that the court declare the offer to the defendants valid and declare that it has accepted and authorized the consignment (safekeeping) of payment money to the defendants.

2. Research Methods

The approach method in this study uses a normative juridical method, which is carried out by examining library materials or secondary data. The specification of the research used is analytical descriptive, which aims to provide an overview or description of the data in the form of facts, laws and regulations and symptoms that are actually related to the material being discussed. The method of data collection in legal research is carried out by means of literature studies or document studies of legal materials, both primary legal materials, secondary legal materials, and tertiary legal materials. The data analysis method used is qualitative data analysis, namely analyzing data by describing, explaining, and explaining legal facts along with provisions, legal norms relating to the problems in this study.

3. Results and Discussion

⁵Yuhelson. 2019. Bankruptcy Law in Indonesia. Publishing Ideas. Gorontalo p. 14

3.1. Legal Protection for Creditors Who Do Not Respond to Offers of Payment in Settlement of Bankruptcy Cases

According to M. Hadi Shuban, bankruptcy is a condition in which the debtor is unable to make payments on the debts of his creditors. This condition of not being able to pay is due to the debtor's financial condition (financial distress) and the debtor's business is experiencing setbacks. Meanwhile, bankruptcy is a court decision resulting in general confiscation of all the assets of the bankrupt debtor, both existing and those that will exist in the future. Management and settlement of bankrupt assets is carried out by a curator under the supervision of a supervisory judge with the main objective of the sale proceeds to pay all debts of the debtor in proportion (*prorate parte*) and in accordance with the creditor structure.⁶

In the bankruptcy process, it is only natural that curators and creditors actively cooperate with each other in order to settle debts and receivables in order to resolve the bankruptcy as well as possible, so that the curator's duties can be completed by completing the distribution and payment of bankruptcy assets to all creditors who are entitled. Conversely, if the creditors do not respond to the offer of payment in bankruptcy, it will result in a delay in completing the implementation of the court's decision, and also hinder the settlement of bankruptcy and the responsibility of the curator.

In examining the case above, there are several possibilities that the creditors did not respond to the payment offer, including:

- a. The amount or value of receivables is considered relatively small. Total receivables from 17 creditors, which are all companies, is IDR 42,446,270.45, which ranges from a minimum of IDR 28,838 to a maximum of IDR 12,432,771. Each creditor as a company certainly has their own views and rules regarding the value of these receivables, meaning whether the value is economically effective in terms of costs compared to benefits for the company's finances as a whole.
- b. The debt is a right. Receivables to be paid to creditors are rights, so they assume no obligation whether the receivables are taken or not. In general, there is no obligation for creditors to accept the debtor's performance, and indeed there is no general provision in legislation that contains such an obligation. As a consequence, the owner of the rights in principle cannot be

⁶M. Handi Shubhan. 2008. *Bankruptcy Law: Principles, Norms and Practice in Court*. Kencana Prenadamedia Group. Jakarta p. 1

forced to use his rights, he is free to waive his rights and thereby frees the debtor from his engagement obligations.⁷

c. Dissatisfaction or disapproval of the amount of the distribution of receivables received.

Ideally, every company certainly expects income or achievements in the form of payment of money that is balanced with the achievements that have been given according to the agreement. However, it turned out that the amount of receivables paid due to bankruptcy was far from what was expected.

Even though the creditors do not respond to the curator's offer of payment, as in the bankruptcy case described above, these creditors must be given legal protection. Satjipto Rahardjo defines legal protection as providing protection for human rights that are harmed by other people and this protection is given to the community so that they can enjoy all the rights granted by law.⁸ Meanwhile, Philipus M. Hadjon argues that legal protection is an action to protect or provide assistance to legal subjects, by using legal instruments.⁹

Legal protection for creditors who do not respond to payment offers in bankruptcy settlement can be done as follows:

1. Curator

The bankruptcy declaration decision results in the debtor losing "civil rights" to control and manage assets that have been included in the bankruptcy estate as stated in Article 24 of the Bankruptcy Law and PKPU.¹⁰ The duties and powers of the curator in essence are to manage and or settle bankrupt assets; announce the judge's decision regarding the bankruptcy declaration in the State Gazette and newspapers stipulated by the Supervisory Judge; rescuing the bankrupt's assets, including confiscating jewelry, securities, securities and money, and sealing the bankrupt's assets with the approval of the supervisory judge;

⁷J. Satrio. 1996. Engagement law regarding the cancellation of the engagement, part I. PT. Image Aditya Bakti. Bandung p. 266

⁸Marulak Togatorop. 2020. Protection of Indigenous Peoples' Land Rights in Land Procurement for Public Interests. STPN Press. Yogyakarta p. 24

⁹Philipus M. Hadjon. 2011. Introduction to Indonesian Administrative Law. Gajah Mada University Press. Yogyakarta p. 10

¹⁰Yuhelson, Op. Cit, p. 129

compiling an inventory of bankrupt assets; and compiling a list of debts and receivables of bankruptcy assets.¹¹

Efforts to protect the law against creditors who do not respond to the payment offer can be carried out by the curator in accordance with the scope of his duties and authorities, namely:

1) The curator offers to pay in cash followed by safekeeping at the court. This effort was first carried out by submitting an offer of cash payment by placing a deposit of money (consignment) at the Registrar of the District Court in accordance with article 1404 of the Civil Code. Consignment in terms of terminology and understanding based on daily practice can be referred to as safekeeping or delivery of goods by the owner to another party and is carried out based on an agreement between the party owning the goods and certain parties to be sold by giving a commission.¹² According to Aartje Tehupeiory, consignment is a procedural legal institution provided by law for debtors to carry out their obligations with the help of public officials, namely courts or notaries.¹³

2) The curator submits an application for validation of the cash payment offer followed by deposit with the District Court. If previous attempts to offer cash payments were unsuccessful, the curator may submit an application to the District Court for validation of the offer for payment of bankruptcy assets to creditors for consignment at the District Court. With the ratification of the payment and safekeeping offer from the district court, based on Article 1409 of the Civil Code, if the debtor himself has obtained a Judge's decision that has obtained definite legal force, and the offer he has made has been declared valid, then he can no longer take back what was deposited. . This aims to provide legal guarantees that creditors' rights, in the form of money regardless of value, from the distribution of bankruptcy assets will not be lost, and can be taken whenever they want.

2. Court

Efforts to protect the law against creditors who do not respond to offers of payment can be carried out by the court, in this case including its organs or apparatus, especially judges, as well as clerks and bailiffs in accordance with their

¹¹Moh. Kurniawan. "Duties and Functions of the Semarang Treasure Hall as Curator of Bankruptcy Based on Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt", Journal of Daulat Hukum Volume 1, No. 1 (2018) p. 69

¹²Aartje Tehupeiory. 2017. Meaning of Land Procurement Consignment for Public Interest. Achieve Asa Success. Jakarta p. 14

¹³Ibid., p. 27

respective duties and authorities, which must be seen as one unit as an institutional action. court according to statutory regulations.

Judges have a very important role to provide legal protection for creditors who do not respond to payment offers. The role of the judge is carried out by examining, adjudicating and passing a stipulation on the application for validation of the offer of payment by safekeeping with all the legal consequences. The judge's decision must consider both the interests of the curator and creditors, including creditors who do not respond to the payment offer made by the curator.

The role of the judge is very decisive in seeking, interpreting and finding the law that must be applied in a case and becomes the basis for his decision. This also needs to be done, including in cases where there are no provisions in statutory regulations as positive law that are directly related to the case being tried.

In the Bankruptcy and PKPU Laws there are no strict provisions in terms of creditors who do not respond to payments by the curator. In this case the role of judges is very important in interpreting and implementing the Principle of Integration in the Bankruptcy Law and PKPU which implies that the formal legal system and its material law are an integral part of the civil law system and national civil procedural law.

In accordance with the principles of administering judicial power in Law no. 48 of 2009 concerning Judicial Power, the court must assist justice seekers and try to overcome all obstacles and obstacles in order to achieve a simple, fast and low-cost trial; and must explore, follow, and understand the legal values and sense of justice that live in society. This should also be applied in the administration of justice in bankruptcy matters, so that the bankruptcy settlement process is not protracted which consumes energy, time and money and there are certain limits that must be set in order to achieve legal certainty, justice and expediency.

The role of the court (judge) in realizing legal certainty, justice and benefit can be seen, among others, from the decisions that have been handed down. The judicial process is very dependent on the judge in court with regard to how the judge carries out his duties and functions. The role of the judge is very noble and honorable in society and the state. Judges have the duty to uphold truth and justice and in their duties must always uphold the law. Therefore, in order to enforce the law effectively, adequate law enforcement organs are needed.¹⁴

¹⁴Syafrudin Prosperous. "Bankruptcy Legal Certainty for Creditors and Debtors at the Indonesian Commercial Court", Mizan: Journal of Sharia Studies Volume 4, No 2 (2016), p. 340.

In addition, in order to provide legal protection for creditors who do not respond to offers of payment, court clerks who are responsible for keeping all the money deposited by the curator guarantee payment of debts to these creditors in accordance with court orders, and also as a party that will hand over the money deposited if the creditor concerned wants to collect it.¹⁵

Meanwhile, court bailiffs make efforts to protect the law against creditors who do not respond to payment offers in accordance with the scope of their duties, namely by ensuring that all notifications of decisions or court orders are officially delivered to the creditors concerned.¹⁶ Actions to be taken by creditors in the future against their rights based on court decisions will be determined if the notification is officially received by the creditors concerned.

3. Legislation

The Bankruptcy Law and PKPU are the main regulations in regulating bankruptcy issues. The Bankruptcy and PKPU Laws aim to provide legal protection for creditors in dealing with bankruptcy problems. In the Bankruptcy and PKPU Laws there is no regulation regarding how to deal with and resolve problems with creditors who do not respond to offers of payment to end a bankruptcy. In this case, the legal basis that can be used by judges to provide legal protection for these creditors is article 1404 jo. 1381 of the Civil Code regarding the offer of payment by consignment and the cancellation of the agreement as stated in the court order.

The use of the articles or provisions contained in the Civil Code is a solution needed to resolve bankruptcy, because these provisions are relevant to conditions where the creditor does not respond to payment offers, while the curator really needs to fulfill his obligations and can relieve himself of the obligation to wait for payment settlement without certainty. The factor of the existence of laws and regulations that regulate the settlement of debts and creditors for creditors who do not respond to payment offers, as well as ending bankruptcy, is an important part in the context of providing a basis for legal protection for creditors and achieving legal certainty.

Thus it can be concluded that in this bankruptcy settlement, legal protection for creditors can be interpreted as an effort or protective action carried out by legal instruments based on applicable law, to help and protect creditors' rights as a

¹⁵See Articles 58, 59 and 63 paragraph 91) Law no. 2 of 1986 jo. Law Number 49 of 2009 Concerning General Courts

¹⁶See Article 65 paragraph (1) and (2) of Law no. 2 of 1986 jo. Law Number 49 of 2009 Concerning General Courts

result of bankruptcy. These efforts are made in order to guarantee legal certainty so that creditors who do not respond to payment offers can obtain their rights, regardless of value, and also achieve legal certainty in implementing judge's decisions.

3.2. Settlement of Accounts Payable Against Creditors Who Do Not Respond to Offers

Settlement of accounts payable against creditors aims to end a bankruptcy, where this is related to several interests, namely among others:

1) Fulfillment curator's obligations

After the two main tasks of the curator, namely management and settlement, are completed, then there are also stages of completion carried out by the curator, namely: making an accountability report to the Supervisory Judge, returning the debtor's personal letters; and announced the end of bankruptcy in two newspapers and the State Gazette of the Republic of Indonesia. Every action taken by the Curator must obtain approval from the Supervisory Judge.¹⁷

2) completion implementation of court decisions on bankruptcy

A court decision on bankruptcy must be fully implemented, in the sense that a court decision in a bankruptcy case that has legal force can still be fully implemented in its entirety so that it can be beneficial and end all legal issues or disputes for the parties involved in it.

3) Termination legal relationship from the agreement between the bankrupt debtor and the creditor

The end of bankruptcy is related to the settlement or termination of legal relations arising from agreements between the bankrupt debtor and creditors, so that legally there is no longer any problem of default, or mutual claims regarding the rights and obligations between the two parties.

4) Enabling the fulfillment of creditor obligations, both internally and externally

The internal interests of the company are related to the rules or procedures that are made and bind the company itself, such as the responsibilities of the directors/management as usually stated in the articles of association,

¹⁷Moh. Kurniawan, op cit, p.74

including the company's financial statements. External interests related to creditor obligations determined based on laws and regulations, such as the obligation for companies to submit annual financial reports, and in relation to the field of taxation as regulated in laws and regulations.¹⁸

Cooperation between the curator and the creditor is needed in terms of settlement of accounts payable in order to end bankruptcy. Cooperation in bankruptcy must be real and based on clear and firm evidence. Therefore, cooperation between curators and creditors in bankruptcy cannot be carried out secretly or which causes various interpretations. The curator has an obligation to make payments to creditors in relation to agreements or agreements that have occurred between bankrupt debtors and creditors. The curator must ensure and prove that the creditors as the entitled parties have received the payment of the debt, so that the agreement can be terminated.

Based on article 1381 of the Civil Code, one way to cancel an agreement is because the cash payment is followed by safekeeping or consignment. The offer of cash payment by consignment is regulated from articles 1404 to 1412 of the Civil Code. Article 1404 of the Civil Code stipulates that if the creditor refuses payment, then the debtor can make an offer to pay in cash for what he has to pay, and if the creditor also refuses, then the debtor can deposit his money or goods with the court. Such an offer frees the debtor and applies to him as payment, as long as the offer is made according to law, while what is deposited in this way is at the creditor's expense.

Consignment occurs if in the agreement the creditor refuses to accept the debtor's performance. Defaults from creditors are called creditor mora. If the creditor refuses the debtor's performance, the debtor can demand the fulfillment of the creditor's achievement to release him from the agreement; the debtor can make a cash payment offer followed by safekeeping of money or goods at the District Court (consignment).¹⁹Besides that, J. Satrio stated that if the debtor has an interest in the creditor providing cooperation to receive payments from the debtor, then based on good faith and propriety there is a possibility that the creditor will be considered negligent if the creditor still refuses to accept the delivery after being properly informed.²⁰In dealing with a problem where the debtor has an interest in paying to be free from the engagement while the creditor does not respond or reject it, even though the

¹⁸See, among others, Government Regulation No. 24 of 1998 jo. Government Regulation no. 64 of 1999 concerning the Company's Annual Financial Information, Law no. 6 of 1983 jo. UU no. 16 of 2009 concerning General Provisions and Tax Procedures.

¹⁹Suyanto. 2020. Elimination of Land Rights as a result of Custody of Compensation in Land Procurement for Public Interests. CV. Jakad Publishing Surabaya. Surabaya p. 186

²⁰J. Satrio, op cit, p. 270

creditor is not obliged to provide cooperation, the legislators have provided provisions in article 1404 and subsequent of the Civil Code.²¹

Thus, if the creditor does not respond to efforts to pay by the curator to settle accounts payable in bankruptcy, a cash payment offer by deposit/consignment can be applied. This can be seen in the District Court's decision to adjudicate such situations, by applying article 1404 jo. 1381 of the Civil Code, where an offer of payment followed by safekeeping or safekeeping has the power of "payment", and is therefore seen as able to cancel the agreement. Thus if the creditor does not receive what has been consigned/entrusted, then with a valid/valuable statement from the court the debtor is definitively free and the agreement is null and void.

4. Conclusion

In bankruptcy settlement, legal protection for creditors can be interpreted as an effort or protective action carried out by legal instruments based on applicable law, to help and protect the rights of creditors as a result of bankruptcy. Efforts to protect the law against creditors who do not respond to offers of payment are carried out through: (a) The curator offers cash payments with safekeeping, and if that has not been successful then submits a request for a court order to validate the offer for payment; (b) the court with its organs or instruments, namely judges, clerks and bailiffs, in accordance with their duties and authorities; and (c) laws and regulations in which efforts to protect the law against the curator must be through a regulated mechanism or based on written regulations. In the context of settlement of accounts payable to end bankruptcy where the creditor does not respond for any reason, the curator may submit an offer for cash payment by deposit at the District Court in accordance with article 1404 jo. 1381 Civil Code. If it is not successful, it must be legalized through a court order.

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²¹Ibid.

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