

REPOSISI NILAI KEADILAN DALAM PERLINDUNGAN HUKUM TERHADAP DEBITUR PADA POLITIK HUKUM KEPAILITAN

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Abstract

In its development, the business world requires the provision of capital lending services. However, the development of the need for capital in the business world has not been matched by protection for debtors. With Articles 55 and 56 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, the position of debtor protection in the implementation of bankruptcy by separatist creditors is weak, this is due to the absence of legal remedies that can be taken by the debtor during bankruptcy. has been declared applies to him. Therefore, the issues that will be discussed in this journal are the legal protection system for debtors in bankruptcy law politics, the weaknesses of the legal protection system for debtors in bankruptcy law politics, and problems related to finding solutions through reforming the legal protection system for debtors in bankruptcy law politics. . The purpose of this research is to analyze the legal protection system for debtors in the politics of bankruptcy law; to analyze the weaknesses of the legal protection system for debtors in the politics of bankruptcy law; to find solutions through reforming the legal protection system for debtors in bankruptcy law politics. The approach method used in this paper is a normative juridical approach. From the research that has been done, it can be concluded that the existence of Article 55 and Article 56 of Law Number 37 Year 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations has resulted in injustice to the debtor in the implementation of bankruptcy against the debtor committed by the creditor; So it is necessary to carry out reforms in the implementation of debtor protection in the implementation of bankruptcy against debtors by implementing the debtor protection system in the implementation of bankruptcy against debtors based on Pancasila.

Keywords: *Debtors, Value of Justice, Legal Protection, Political Law,*

Repositioning, Bankruptcy

1. Introduction

In its development, the business world becomes one of the horns for the progress of a country's economy, therefore the progress of the business world is also highly expected in various countries. This is because the progress of business in a country can support economic growth and prosperity.² Therefore, healthy capital lending activities are an important instrument in the progress of the business world which also needs attention. Accounts receivable with guarantees becomes the realization of this basic idea. However, it is not uncommon in the development of the world of capital lending and receivables to experience various problems, especially problems in the settlement of receivables by debtors. So that in order to overcome this problem, various legal regulations related to bankruptcy were born.

In Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, the meaning of a creditor is a person who has a debt due to an agreement or law that can be collected in court. However, in the elucidation of Article 2 paragraph (1) of Law Number 37 of 2004, the definition of creditor in this paragraph is either concurrent creditors, separatist creditors or preferred creditors. Particularly with regard to separatist creditors and preferred creditors, they can apply for a bankruptcy statement without losing the collateral rights for the property they own against the debtor's assets and their right to take precedence.

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2 Sri Endah Wahyuningsih, Anis Mashdurohatun, Abd Syakur, *Protection against Wrongs in Criminal Justice Proceedings in Indonesia Based on the Humanitarian Value*, International Journal of Innovation, Creativity and Change. www.ijcc.net. Volume 13, Issue 7, 2020. P.1788.

Although between creditors and debtors have ties, in reality, the rights of separatist creditors are often detrimental to debtors in determining and executing the bankruptcy of a debtor in the world of dependency law in Indonesia. This problem occurs due to the provisions of Article 55 of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, which state that by paying attention to the provisions in Article 56, Article 57, and Article 58, every creditor holding a pledge, fiduciary security, rights dependents, mortgages, or other collateral rights on property, can exercise their rights as if there was no bankruptcy.

This statement can clearly result in unilateral execution by the creditor of the debtor even though the debtor has the ability to pay. This is further increased by the existence of Article 56 of Law Number 37 Year 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, which states that after the issuance of the debtor's bankruptcy statement made by the creditor, there is a 90 day period of suspension of debt payment. This means that the debtor who has been declared bankrupt by the creditor will experience losses due to the confiscation of various important assets and declared bankrupt by the creditor, and must experience legal uncertainty for 90 days related to the use of his assets. This has clearly resulted in the disposition of justice in the implementation of legal protection for debtors from the rights of separatist creditors in the case of bankruptcy in Indonesia.

2. Problems

In connection with the various kinds of explanations above, a number of issues can be formulated that will be discussed in this journal, these issues are related to problems that exist in the implementation of legal protection for debtors from the rights of separatist creditors related to the bankruptcy execution carried out by creditors. separatists against current debtors. As well as issues related to the repositioning of justice in the issue of implementing legal protection for debtors in the current bankruptcy law politics.

3. Research Objectives

The research objectives related to this writing are:

- a. To analyze the legal protection system for debtors in bankruptcy law politics;
- b. To analyze the weaknesses of the legal protection system for debtors in the politics of bankruptcy law;
- c. To find a solution through reforming the legal protection system for debtors in bankruptcy law politics.

4. The Approach Method Used

The approach used in writing this journal is the normative juridical approach, in which the discussion method used looks at the law in the perspective of statutory textuality, which is supported by field data.

5. Discussion

a. Debtor Protection In Current Bankruptcy Politics

On his way after the establishment of the Bankruptcy Law No. 4 of 1998 there are still many shortcomings and weaknesses and in line with the demands of community development, the provisions in Law No.4 of 1998 are deemed unable to meet the legal needs of the community,³ so it is necessary to make changes which are stipulated on 18 October 2004 through Law No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations.

Law No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (UUKPKPU) which was expected to be more comprehensive was not in accordance with what many previously expected, which did not change the principles of comprehensive bankruptcy but was only a tool to collect non-performing loans alone without taking into account the consequences of bankruptcy This is to the continuation of global corporate business in Indonesia and increases

3 Sri Endah Wahyuningsih, *The Implementation of Punishment Theories in the Verdict of Narcotics Case by Judge in Indonesia*, TEST Engineering and Management, ISSN 0193-4120 , Mach-April 2020, P 2797.

unemployment due to job losses.⁴

The current Bankruptcy Law can be a time bomb and a threat to companies that are operating well and existing and future investors in Indonesia because the UUKPKPU contains many weaknesses and loopholes that creditors and the company itself (debtors) can exploit.) to bankrupt itself.⁵

The weakness is due to the hasty formation so that it does not produce an adequate set of legal rules. As a result, there are many things that are not strictly regulated, and ultimately lead to various interpretations.

With these weaknesses, creditors can easily bankrupt a company using the Bankruptcy Law, for example, two creditors who have the smallest receivables can bankrupt large companies that are still solvent. In addition, if the debtor (company) is only one day late to pay debts to creditors, the creditor can file a lawsuit for bankruptcy. This is very risky and dangerous for the business continuity of the two creditors whose debts have been paid late by the debtors which can be a condition for them to go bankrupt. Even people who have one rupiah receivable can bankrupt the company.⁶

The main problem today, can be seen in Article 2 (paragraph 1) of Law Number 37 of 2004 concerning irrational bankruptcy requirements because bankruptcy applications can be filed and a bankruptcy decision by the Commercial Court can be handed down against debtors who are still solvent, (i.e. debtor whose total assets are greater than the total amount of debts). With such bankruptcy conditions, it is very difficult to achieve legal certainty and the objective of implementing the Fair Bankruptcy Law. In addition, Law Number 37 Year 2004 pays more attention to and protects the interests of bankrupt creditors than the interests of bankrupt debtors which should also be protected. This means that Law Number 37 of 2004 should pay attention to and provide balanced legal protection to the interests of creditors and debtors in accordance with the principle of bankruptcy in general, namely the principle of providing benefits and balanced legal protection between creditors and debtors and the principle of encouraging investment and business.⁷

The conditions for bankruptcy as referred to in Article 1 “Faillissements-Verordening” (Bankruptcy Law), which took effect on November 1, 1906, even though only provided the possibility to file a bankruptcy request against a debtor in disability (Van de voorziening in geval van onvermogen van kooplieden) or not being able to actually (kennelijk onvermogen) so that they are in a state to stop paying back their debts. This means that the debtor is insolvent (greater liabilities than assets and receivables),⁸ whereas for debtors who are still solvent (smaller liabilities than assets and receivables), the Curator should ask the debtor to jointly find solutions to pay off their obligations by fixing management, for example. Curators and debtors conduct independent audits to find out debtors’ problems so that curators do not immediately settle assets from bankrupt debtors.⁹

b. Issues that Exist in the Implementation of Legal Protection for Debtors in the Current Politics of Bankruptcy Law

Article 55 of Law Number 37 Year 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations clearly states that with due observance to the provisions in Article 56, Article 57, and Article 58, each creditor holds a pledge, fiduciary security, mortgage, or collateral rights

4 <https://www.hlplawoffice.com/perlindungan-hukum-seimbang-pada-kreditur-dan-debitur-pail-it/>, accessed on 4 July 2019

5 *Loc.cit.*

6 <https://www.hukumonline.com/pusatdata/detail/320/node/19/undangundang-nomor-4-tahun-1998/>, accessed on 4 July 2019

7 *Loc.cit.*

8 Iur. R. Soejartin, *Hukum Dagang I dan II*, Penerbit Pradnya Paramita, Jakarta, 2007, hlm. 263.

9 *Loc.cit*

over other objects, can carry out the exercise of their rights as if there was no bankruptcy.

This article has made the debtor vulnerable to bankruptcy by the creditor, even though the debtor has the ability to pay his debt to the creditor. Then Article 56 of Law Number 37 Year 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations states that after the pronouncement of the debtor's bankruptcy statement made by the creditor, there will be 90 days of postponement of debt payment.

This article clearly results in a debtor who has been declared bankrupt by the creditor to suffer losses due to the confiscation of various important assets and declared bankrupt by the creditor, and must experience legal uncertainty for 90 days related to the use of his assets. This has clearly resulted in the disposition of justice in the implementation of legal protection for debtors from the rights of separatist creditors in the case of bankruptcy in Indonesia.

The electronic mass media site "cash" firmly states that throughout 2019 there were 411 bankruptcy cases, consisting of 297 PKPU cases and 194 bankruptcy cases. This clearly shows that there has been a surge in bankruptcy cases in 2019, in 2017 there were 353 bankruptcy cases, consisting of 238 PKPU cases and 115 bankruptcy cases.¹⁰

This situation clearly also resulted in an increasing number of domestic companies in 2019. Furthermore, the "cash" media also noted that the higher number of companies experiencing bankruptcy were manufacturing and property companies. The number of manufacturing companies that experienced bankruptcy cases consisted of 69 PKPU cases and 17 bankruptcy cases. Meanwhile, in the property sector, there were 69 PKPU shirts and 22 bankruptcy cases.¹¹ Meanwhile, the company sector that experienced the least bankruptcy problems in Indonesia in 2018 was information technology companies, namely only 6 PKPu cases and 3 bankruptcy cases.¹² Then Kontan.co.id stated that most bankruptcies were filed by separatist creditors against debtors, not originating from debituur restructuring applications.¹³

This is clearly unfair for debtors considering that the provisions related to debtor bankruptcy are based on a separatist credit authority, which is that even after the determination of bankruptcy has been granted for at least 20 days, the debtor is only given protection measures in the form of submitting a proposal for restitution. However, if the debtor's reconstruction proposal is rejected by the separatist creditor, the debtor cannot do much to protect the bankrupt debtor's position. So it is clear that this situation will actually cause a debtor to experience losses and bankruptcy.

In addition to the problems described above, the implementation of bankruptcy against debtors by separatist creditors can also be seen in Article 2 (paragraph 1) of Law Number 37 Year 2004 regarding irrational bankruptcy requirements because bankruptcy applications can be filed and bankruptcy decisions by The Commercial Court may be handed down against debtors who are still solvent, (i.e. debtors whose total assets are greater than the total amount of debts). With such bankruptcy conditions, it is very difficult to achieve legal certainty and the objective of implementing the Fair Bankruptcy Law.

In addition, Law Number 37 Year 2004 pays more attention to and protects the interests of bankrupt creditors than the interests of bankrupt debtors which should also be protected. This means that Law Number 37 of 2004 should pay attention to and provide balanced legal protection to the interests of creditors and debtors in accordance with the principle of bankruptcy in general, namely the principle of providing benefits and balanced legal protection between creditors and debtors and the principle of encouraging investment and business.¹⁴

10 Anggar Septiadi, *Sepanjang 2018, Jumlah Kasus Kepailitan Melonjak*, Diakses melalui kontan.co.id, Pada 12 Mei 2019

11 *Loc, cit.*

12 *Loc, cit.*

13 *Loc, cit.*

14 <https://www.hukumonline.com/pusatdata/detail/320/node/19/undangundang-nomor-4-ta->

The conditions for bankruptcy as referred to in Article 1 “Faillissements-Verordening” (Bankruptcy Law), which took effect on November 1, 1906, even though only provided the possibility to file a bankruptcy request against a debtor in disability (Van de voorziening in geval van onvermogen van kooplieden) or not being able to actually (kennelijk onvermogen) so that they are in a state to stop paying back their debts. This means that the debtor is insolvent (greater liabilities than assets and receivables),¹⁵ whereas for debtors who are still solvent (smaller liabilities than assets and receivables), the Curator should ask the debtor to jointly find solutions to pay off their obligations by fixing management, for example. Curators and debtors conduct independent audits to find out debtors’ problems so that curators do not immediately settle assets from bankrupt debtors.¹⁶

c. Reform of the Legal Protection System for Debtors in the Politics of Bankruptcy Law

In order to realize the implementation of legal protection for debtors from the rights of separatist creditors in connection with the bankruptcy execution by separatist creditors against fair debtors, it is necessary to reform the debtor legal protection system in the politics of bankruptcy law.

In order to realize this idea, bankruptcy law politics should return to the mandate of the fifth principle of Pancasila which requires social justice for all groups of Indonesian society who uphold human values so that they are also able to realize Article 28 D paragraph (1) of the 1945 Constitution so that in the end mandate as set out in the preamble to the Bankruptcy Law is able to materialize properly.¹⁷

As for the purpose of realizing a reorientation of the political value of bankruptcy law related to legal protection for the debtor, several things need to be done, namely:

1. Implement a bankruptcy system that is carried out by separatist creditors against debtors based on Pancasila. The first principle of Pancasila calls for a balance between the realization of the values of justice, humanity, and legal certainty in order to realize humanitarian law or based on human rights in order to realize social justice for all groups of Indonesian society in various aspects of community life both socio-cultural, legal, political, and economy. This includes the implementation of bankruptcy carried out by separatist creditors against debtors which must also contain a balance between justice, certainty and legal usefulness, in addition to the principles of respect and guarantee of Human Rights, so that the implementation of the bankruptcy system carried out by creditors separatists against debtors can be equitable for both debtors and creditors; and
2. In order to realize the views in the first point above, the implementation of the bankruptcy system carried out by separatist creditors against debtors must be based on a judge’s decision which is permanent and also based on the principle of fair consumer protection, as well as maintaining the mandate as contained in Article 2 of the Law Number 37 of 2004 concerning Bankruptcy and Postponement of Responsibility for Debt Payment. Article 2 of Law Number 37 Year 2004 basically provides pre-conditions for bankruptcy to debtors, while the prerequisites are: 1) The debtor owes at least two creditors; 2) The debtor does not pay any creditor even though the debt is due; and 3) Creditors submit a bankruptcy application to the local court. An additional requirement is that bankruptcy can be filed if there have been prior legal remedies outside the court to reach a legal settlement peacefully between the two parties. There needs to be a re-examination related to the understanding that debtor’s debt cannot be repaid with good ethics to creditors.

hun-1998/, accessed on 4 July 2019.

15 Drs. Iur. R. Soejartin, *Hukum Dagang I dan II*, Penerbit Pradnya Paramita, Jakarta, 2000, hlm. 263.

16 *Loc.cit*

17 Jarot Jati Bagus Suseno, Repositioning the Value of Pancasila in the Politics of Commercial Law in the Era of Globalization, Article submitted at the Dharma Dyaksa FGD event on June 12, 2013.

6. Closing

a. Conclusion

Based on the various explanations above, several things can be concluded, namely:

- a) The existence of Articles 55 and 56 of Law Number 37 Year 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, has resulted in injustice to debtors in implementing bankruptcy against debtors by creditors;
- b) So it is necessary to reorientation of justice in the implementation of debtor protection in the implementation of bankruptcy against debtors by implementing the debtor protection system in the implementation of bankruptcy against debtors based on Pancasila, releasing Article 2 of Law Number 37 of 2004 concerning Bankruptcy and Postponement. Liability for Payment of Debt by adding other pre-conditions in the form of bankruptcy can be filed if there have been other legal remedies outside the court beforehand to reach an amicable legal settlement between both parties. There needs to be a re-examination related to the understanding that debtor's debt cannot be repaid with good ethics to creditors

b. Suggestion

It is necessary to make a special article that regulates the provisions of debtor protection in the implementation of the bankruptcy system against debtors carried out by creditors in Indonesia, especially by priority creditors.

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