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Juridical Analysis of Debt Settlement Through Bankruptcy (Study of Decision 24/Pdt.Sus-Bankrupt/2019/PN Niaga Sby)

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Abstract
Every bankruptcy has legal consequences for both the debtor and the creditor, one of which is the ability to represent the bankrupt debtor in property law matters. As a result, the authority of the debtor is very limited. Therefore, the debtor remains liable for outstanding debts in the event of bankruptcy, and the creditor must use all reasonable efforts to collect outstanding debts. Regarding debt settlement through bankruptcy (Decision of the Surabaya District Court Case PT. Sinar Pembangunan Abadi) to find out the basis for the considerations of the Panel of Judges in case number: 24/Pdt.Sus-Pailit/2019. This case was originally with the bankruptcy respondent having debts to the bankruptcy applicants that were due and could be collected for severance/compensation payments. This study uses the method of literature review. This type of research data is secondary data. The normative approach to analyzing juridical legal analysis is to resolve issues related to debt settlement difficulties in the consideration that the Commercial Court at the Surabaya District Court has stated that it is proven that it has not fulfilled the legal or debt obligations mentioned above, then the legal consequences (legal consequences) of the bankruptcy respondent can be declared negligent law (ingebreke stelling) can be declared negligent or default on their obligations (counter-performance) in accordance with the provisions of Article 1238 of the Civil Code.
Keywords: Bankruptcy, Debt, Maturity

INTRODUCTION

Bankruptcy has traditionally been considered a criminal punishment because debtors avoid or are reluctant to pay their creditors. Bankruptcy is a punishment for debtors who do not pay their debts, also for debtors who deceive creditors and prevent creditors from collecting their debts by placing assets. (Nurdin: 2012) Bankruptcy is also seen as a debtor's fault, because the cause of failure is a lack of effort, which results in the debtor's inability to pay his creditors. Debtors who are unable to pay their debts will be jailed, and their land will be taken and sold at auction to pay off their debts. In subsequent developments, bankruptcy is no longer seen as a punishment or humiliation for the debtor, but rather as the debtor's misfortune, causing them to experience financial difficulties. Modern bankruptcy laws were created as bailouts for borrowers who are experiencing financial distress not to be constantly billed to pay their creditors, and at the same time provide access for creditors to be able to own the debtor's assets as debt repayment, even though this is inadequate. Thus, bankruptcy no longer functions as a punishment, but as a way out to resolve debt problems to creditors.

The 1997 financial crisis had an adverse effect on the nation's economy, making it difficult for businesses to pay their bills and continue their operations; this had a negative effect on society as a whole. Most business actors are unable to pay their debts so they are declared bankrupt (Sinaga & Nunuk: 2016). However, the individual can prioritize and defer his obligations. Business actors who are still able to pay off their obligations are usually referred to as "solvable" business actors, which means they have the financial ability to do so. The term

"insolvable" refers to the behavior of entrepreneurs who are unable to pay their debts. Because default can be considered as a debt in bankruptcy law, the definition of debt in bankruptcy law is very broad, resulting in a default that should have been resolved through the legal process of the agreement being transferred to be resolved through the bankruptcy law process. This is due to the relatively lax requirements for making a bankruptcy declaration, which do not emphasize what kind of financial condition can be used as a basis for filing a bankruptcy declaration. Several factors cause a bankrupt company to comply with a number of regulations, and corporate arrangements can lead to delayed payment of obligations for debt repayment, among other things:

1. If more than one creditor demands that the debtor immediately pay off his obligations, then the debtor can defend his assets by postponing the risk of having the creditors' assets taken away.
2. Defending creditors. if there are creditors who have agreements with significant collateral to be executed in advance for the benefit of creditors and debtors.
3. Refrain from inappropriate behavior that will help one of the creditors or even the debtor. such as giving special treatment to certain debtors who intentionally harm other people who could be debtors can embezzle assets in an effort to get out of avoiding obligations to their creditors

Even in the provisions of the Bankruptcy Law between creditors and debtors, where there are provisions governing reconciliation, there must be reconciliation in the settlement of debts and receivables, as well as in civil procedural legal proceedings where there is reconciliation made by a Court judge between the plaintiff and the defendant present at the the judge. Bankruptcy is described as the confiscation and execution of all the assets of the debtor (debtor) for the benefit of all creditors (debtor). Bankruptcy in this case is a way out for the company from financial problems that cannot be overcome. Bankruptcy can be a pathway to financial distress, whose characteristics include: poor company performance, loss of market share, and a tendency to be on the defensive against any economic changes. The term financial distress can be understood as a situation where the cash flow from the company's operations cannot meet its debt payment obligations.

Two ways can be taken to make a company declared bankrupt by the Commercial Court, among others by filing a bankruptcy application by the company itself (voluntary bankruptcy), or through filing a bankruptcy application with intentional bankruptcy. Filing for bankruptcy itself (voluntary bankruptcy) is a type of bankruptcy in which a bankrupt debtor brings a petition to the court to request that he (both individuals and legal entities) be declared bankrupt. Involuntary bankruptcy occurs when one or more creditors submit a request to the court for the debtor to be declared bankrupt. Article 2 paragraph 1 of the Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt (hereinafter referred to as Law No. 37/2004) stipulates the conditions for a bankruptcy application to be granted by the Court, including having at least two creditors and not able to pay at least one debt that has matured and is collectible.

If the court grants the bankruptcy petition, the debtor loses the right to control his assets. The Curator takes over control of the Debtor's assets. After the Commercial Court declares bankruptcy, the Curator or the Balai Harta Peninggalan will carry out the settlement by liquidating the bankrupt bankrupt, followed by a distribution of the proceeds from the bankrupt bankrupt sale (after deducting the bankrupt bankrupt fees and debts). In this case, the procedure for dividing the proceeds from the sale of bankruptcy assets is carried out in accordance with the principles of crematorium paritas, pari passu pro rata parte, and

structured creditors, as described in Articles 1131 and 1132 of the Indonesian Civil Code. Bankruptcy can occur in a limited liability company due to mistakes made by company organs (Directors and Commissioners) or because the company's financial situation is no longer able to pay all debts to creditors. If the company's losses that cause the company to go bankrupt are the result of the personal mistakes of the Directors and Commissioners (ultra vires), then the company must bear these losses. Members of the Board of Directors and Board of Commissioners can take refuge behind the notion of Business Judgment Rules (abbreviated as BJR) to avoid liability on the basis of supra vires claims.

BJR is basically the most important standard of legal judgment in company law, to protect the Board of Directors from lawsuits, unless it can be sufficiently proven that the Management has violated the duties assigned to it or the decision making process taken has violated the principle of independence and the principle of avoiding personal interests. BJR is a legal doctrine that protects Directors from personal responsibility for the corporate decisions they have made. BJR provides legal protection for the Directors personally for all decisions, policies and business transactions that are detrimental to the corporation they lead, as long as they are carried out in good faith, prudence, and the authority and responsibility of the Directors. The application of the BJR doctrine in bankruptcy law in Indonesia still contains confusion due to the different interpretations of law enforcers.

In the case of claims regarding the personal responsibility of the Directors of the PT Company who are declared bankrupt, the party submitting the application for bankruptcy statement must prove the existence of a debt that cannot be denied by the Debtor, the burden of proof in this case is borne by the Bankruptcy Petitioner (both Creditors and Debtors) to be able to prove the existence of 'facts or the existence of elements of article 2 paragraph 1 in a simple way. They admitted asking the Board of Directors for personal responsibility for the bankruptcy of the company, in this case, it would be difficult to briefly implement it through the Commercial Court. Because lawsuits regarding the responsibilities of the Board of Directors are more focused on the actions of the Board of Directors which due to their mistakes or negligence caused the Company's Limited Liability Company to be declared bankrupt.

The proof of concept in Article 8 paragraph 4 of Law Number 37 of 2004 focuses more on events and circumstances regarding the minimum requirements of two creditors and one bill that is due. Because the proof of the fault and negligence of the Board of Directors is not in accordance with the provisions of Article 8 paragraph 4 of Law no. 37 of 2004, the Company's bankruptcy lawsuit cannot be filed through the Commercial Court. To hold the Board of Directors personally responsible for the bankruptcy of a Limited Liability Company, the plaintiffs (whether Shareholders representing 1/10 of the total shares with voting rights, other Directors, Board of Commissioners, Third Parties, and/or Public Prosecutors, for the public interest) must first use the Company's inspection mechanism. Based on Article 138 paragraph 1 of Law no. 40 of 2007, an examination of the Company can be carried out to obtain data or information if there is an allegation that:

1. The Company has committed an unlawful act which is detrimental to shareholders or third parties;
2. Members of the Board of Directors or Board of Commissioners commit acts against the law that harm the Company, shareholders or third parties.

The application for inspection of the Company mentioned above was filed through the District Court (vide article 138 paragraph 2 of RI Law No. 40 of 2007 concerning Limited Liability Companies). Furthermore, in court, the Head of the District Court will issue a determination of the examination by submitting a maximum of three experts to be examined in

order to obtain the necessary data or information. For the work that has been done, the Experts will submit a report to the chairman of the District Court, and then a copy of the results of the examination will be submitted to the Petitioner. From the results of the inspection, the Petitioner can determine his next attitude towards the Company. If the results of the examination reveal elements of error and/or negligence by the Board of Directors that caused the Company to go bankrupt, then based on Article 104 paragraph 2 of Law Number 40 of 2007, the results of the examination can be used by the Applicant to submit a declaration of bankruptcy to the Commercial Court.

Filing a bankruptcy application for personal Directors and Management Commissioners based on ultra vires cannot be submitted before the company for the inspection procedure as referred to in Article 138 paragraph 2 of Law Number 40 of 2007 concerning Limited Liability Companies. The results of the company's inspection became the basis for suing the directors and the Board of Commissioners for bankruptcy. If the Bankruptcy application for the Board of Directors and the Board of Commissioners is not based on ultra vires accompanied by the results of a company audit which is legalized by the Regent of the Court, the application for bankruptcy must be declared inadmissible because its application was premature.

In accordance with the guidelines for the articles mentioned above, the creditor has the authority to conduct an auction on the debtor's assets if the debtor fails to fulfill his obligations or achievements. Depending on the remaining outstanding balance of each creditor, the creditors must receive a fair and equitable share of the proceeds from the sale (auction). When a debtor owes two or more creditors and is unable to settle at least one debt that is due and collectible, the debtor is considered bankrupt. Based on Article 3 of Law no. 37/2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt, the Commercial Court which has jurisdiction over the place of residence of the debtor will decide on the application for a declaration of bankruptcy. The purpose of Law no. 37/2004 concerning Bankruptcy and Postponement of Debt Payment Obligations is to ensure prompt, fair, transparent and effective debt settlement. However, legal institutions provide an opportunity for parties to try to reach an agreement before filing for bankruptcy by deferring the obligation to pay debts in full or by postponing debt restructuring, which requires renegotiation of obligations between debtors and creditors as well as other civil relationship difficulties.

Based on the results of the work agreement, many employees who have worked at PT Sinar Pembangunan Abadi claim the right to fulfill their budgetary obligations in the form of severance pay/compensation which must be fulfilled by the company's obligations. pay these debts, then the application for a bankruptcy statement must be granted. The following details the debt of the bankrupt respondent:

No	Name	Debt	Paid off	Insufficient Payment
1	SUYATNO	Rp.21.319.870,00	Rp. 6.117.651,42	Rp. 15.202.218,58
2	EDI RIYANTO	Rp. 4,235,297,13	Rp. 10,524,612,87	Rp. 10,524,612,87
3	SUGENG	Rp. 21,319,870,00	Rp. 6,117,651,42	Rp. 15,202,218,58
4	RUDIANTO	Rp. 6,559,960,00	Rp. 1,882,354,28	Rp. 4,677,605,72
5	SOLIKIN	Rp. 21,319,870,00	Rp. 6,117,651,42	Rp. 15,202,218,58
6	ALAM DARMA R	Rp. 21,319,870,00	Rp. 6,117,651,42	Rp. 15,202,218,58
7	AHMAD SOIM	Rp. 21,319,870,00	Rp. 6,117,651,42	Rp. 15,202,218,58
8	SAMPURNO	Rp. 1,639,990,00	Rp. 470,588,57	Rp. 1,169,401,43
9	NUR CAHYO	Rp. 21,319,870,00	Rp. 6,117,651,42	Rp. 15,202,218,58
10	SUTAJI	Rp. 21,319,870,00	Rp. 6,117,651,42	Rp. 15,202,218,58
11	FARIS FAHRURI	Rp. 14,759,910,00	Rp. 4,235,297,13	Rp. 10,524,612,87
	TOTAL	Rp. 186,958,860,00	Rp. 53,647,097,04	Rp. 133,311,762,96

For the other 29 in the amount of IDR 643,348,653, On December 19 2019, the Surabaya District Court announced its decision Number 24/Pdt.Sus-Pailit/2019/PN Niaga Sby which declared Prudential bankrupt with all the legal consequences. At the same time, PT Sinar Pembangunan Abadi declared bankruptcy with all the legal consequences. The Panel also appointed DIDIT WICAKSONO, S.H., M.H., and ANDIKA HENDRAWANTO, S.H., M.H., as Curators, while Agus Salim was the attorney of the respondent in this case.

Seeing the calculation of the maturity or maturity of the legal obligations or debts of the APPLICANTS FOR BANKRUPTCY, it has been determined that they have not fulfilled and/or have not fulfilled the legal obligations or debts mentioned above, then legal consequences will result. negligent (ingebreke stelling) which determines the time when the REFUSED BANKRUPT as a Debtor can be declared negligent or default on his obligations (counter-performance) in accordance with the provisions of Article 1238 of the Civil Code.

Problem Formulation: How are debt settlement regulations applied to overdue debtors in the context of bankruptcy law? What are the obstacles in carrying out settlement of debtors' debts against creditors who are in arrears in the context of bankruptcy law? What are the legal considerations that form the basis of judges in settling debtor obligations to creditors in bankruptcy proceedings based on District Court Decision Number 24/Pdt.Sus-Pailit/2019/PN Niaga Sby?

RESEARCH METHODS

Normative and empirical legal research methodologies are used. Legislation that contains legal norms is a topic of normative legal research. This study examines, evaluates, explains, and analyzes laws and regulations related to research objectives. This research is descriptive in nature. The purpose of descriptive research is to define precisely the characteristics of a person, a condition, a symptom, or a particular group. This research can also be used to assess the prevalence of a symptom or its dominance in society, or the frequency of certain associations among symptoms. The statutory approach strategy is used in this study. Collection of basic research data is one of the stages that must be carried out. Data collection focused on the most crucial aspects to prevent conflicts or misconceptions from occurring in the research discussion.

Data analysis includes organizing, sorting, grouping, classifying, and categorizing data to identify problems and working hypotheses given as substantive theories. This study uses a qualitative methodology to develop theory from data by connecting the study with legal norms contained in laws, regulations, and court decisions as well as norms that have existed and changed over time in society. The last step of this data analysis is drawing conclusions, drawing conclusions using the inductive method, namely using data to analyze the data collected by interpreting or describing general conclusions in particular.

RESEARCH RESULTS AND DISCUSSION

Debt Settlement Arrangements Against Debtors Who Have Matured in the Perspective of Bankruptcy Law

The Head of the Commercial Court who has authority over the area where the Debtor lives, must accept the application for a declaration of bankruptcy. If the conditions for declaring bankruptcy are met, namely the debtor has at least two creditors and does not pay even one debt bond that is due and collectible, then the application for a bankruptcy declaration is granted. According to the Bankruptcy Law, debtors who cannot predict that they will be able to continue paying debts that are past due and collectible, have the option of submitting a request for suspension of payments to the commercial court (surceance van betaling or suspension of

payments). The aim is to submit a settlement plan that includes an application for a suspension of payments and an offer to pay all or part of the debt to concurrent creditors. If the debtor has several creditors and is believed to be unable to pay his debts, PKPU can be filed against them.

Under bankruptcy law, debtors who have filed for bankruptcy have the option to apply for a PKPU to suspend the process while they renegotiate their financial obligations to creditors. Or in other words, PKPU tries to prevent debtors from being declared bankrupt because of certain conditions because it hopes that if the debtor is given time, he can pay off his debts. Therefore, it is hoped that by giving time and opportunity to the debtor, the debtor can continue to run his business and ultimately pay off his obligations through corporate restructuring and/or debt restructuring.

Debtors who are unable or believe that they will not be able to continue paying their debts which are due and collectible may apply for suspension of debt payment obligations by legal means (or legal remedies) Suspension of Debt Payment Obligations (PKPU), with general provisions. present a liquidation plan that includes an offer to pay all or part of the debt to concurrent creditors. In bankruptcy law, when the debtor has or will go bankrupt, bankruptcy law offers two options to avoid liquidating the debtor's assets. As for the following ways:

1. Submitting a Letter of Termination of Payment (PKPU), which is also called a surety bond, which is made before the debtor is declared bankrupt. If the PKPU is filed first and before filing for bankruptcy, the debtor cannot apply for bankruptcy. In the event that the commercial court considers filing for bankruptcy early, PKPU can be submitted if it has already been made. In the event that a PKPU is filed while the bankruptcy case is still being examined by the commercial court, the consideration of the application must be stopped
2. Submitting a peace agreement in which the debtor is officially declared bankrupt by the court, with his creditors. Because bankruptcy has occurred, this peace cannot avoid bankruptcy but if peace is reached, the debtor's bankruptcy, as decided by the commercial court ends. In other words, even though bankruptcy has received court approval, the debtor can still prevent his assets from being liquidated in this way. Debtor bankruptcy can end through peace.

In this case of bankruptcy, settlement is carried out by peace or distribution of bankruptcy assets ending bankruptcy. If during bankruptcy the Debtor submits a reconciliation plan that is approved by the Creditor in accordance with the applicable provisions and gets approval based on a court decision that has permanent legal force, while the reconciliation is being negotiated, then bankruptcy can be resolved by deliberation. (accord).

Bankruptcy settlement by settlement of bankruptcy assets occurs if the debtor does not submit a reconciliation plan while in bankruptcy, or if the debtor submits a reconciliation plan but is rejected by the creditor, or if the debtor submits a reconciliation plan and the creditor accepts it but does not obtain approval for ratification based on a court decision that has permanent legal force. Completion of a peace agreement (akkoord) ends bankruptcy due to liquidation, while bankruptcy due to settlement of bankruptcy assets ends when the creditors have paid off their receivables in full or when the list of distributions is closed, which is legally obligatory.

Number 1 of the Law on Bankruptcy and Suspension of Payment of Debt. The principle of debt collection focuses on the debtor's debt which must be repaid immediately with the debtor's property to avoid the debtor's bad faith by hiding and denying his property as collateral for repayment to the creditor. In the past this principle was embodied in the form of slavery, dismemberment of the debtor's body, and imprisonment, however, in the modern era of bankruptcy law, the principle of debt collection has shifted to the form of liquidating assets.

Bankruptcy law in Indonesia does not recognize the principle of debt forgiveness, which means that bankruptcy is a legal order that is used as a way to ease the debtor's burden due to financial difficulties which results in the inability to pay his debts that are due, by providing debt relief through writing off the remaining debt. , so that debtors can continue their business without being burdened with previous debts. The principle of debt forgiveness is implemented by providing debt relief for debtors who are unable to pay off their debts (discharge of indebtedness); and bankruptcy for debtors to give new life opportunities and start new businesses without being burdened by past debts.

Article 204 of the Law on Bankruptcy and Suspension of Payment of Debt states that after the list of distributions becomes final and binding, the creditor has the right of coercion against the debtor's assets to cover his unpaid bills. Thus, if the liquidation has been carried out by the curator, there are still debts owed by the debtor. Even if the bankruptcy estate has been sold and can be divided up, the debtor is obliged to repay the creditor who is still entitled to collect the remaining receivables. This condition will certainly make it difficult for bankrupt debtors, especially individual bankrupt debtors, to get up and try again, because individual bankrupt debtors will continue to be overshadowed by previous debts to creditors, as long as these debts have not been repaid. The remaining debt will continue to haunt individual bankrupt debtors, even allowing the debtor to go bankrupt a second time.

This is not the case with bankrupt debtors in the form of legal entities such as limited liability companies. According to Article 142 paragraph 1 letter d of Law Number 40 of 2007 concerning Limited Liability Companies, if the bankrupt assets are not sufficient to cover debts, then the bankrupt company is dissolved by law so that it is not burdened with paying off the remaining debts after the bankruptcy ends. Individual debtors will of course feel this condition is unfair because they will be tormented with the remaining debt until it is paid off. Meanwhile, debtors in the form of legal entities can dissolve themselves when declared bankrupt and no longer bear the burden of remaining debts. This is considered inconsistent with the thinking underlying the making of the Bankruptcy and Suspension of Obligations for Debt Payment, as stated in the elucidation. The Law on Bankruptcy and Suspension of Obligations for Payment of Debt is said to be based on the concepts of balance, fairness, corporate sustainability and integration.

The Indonesian Bankruptcy Legal System adheres to the concept of debt collection through general confiscation of the debtor's assets as collateral for debt repayment by the bankruptcy institution. According to the concept of debt collection, bankruptcy is the process of liquidating debtors' assets to enable a fair distribution of debt payments among creditors. As a communal process, bankruptcy law is required. Without bankruptcy law, creditors will compete individually for control of the debtor's assets, which is in the best interest of each creditor. As a result, bankruptcy law deals with so-called collective action issues, which are the result of the interests of individual creditors. Bankruptcy law provides a mechanism for creditors to come together in evaluating whether or not the debtor can continue to operate. Bankruptcy is used to force creditors to fulfill their rights through the liquidation of the debtor's assets. Bankruptcy is seen as a mechanism to collect debtors' debts through the liquidation of the debtor's assets, therefore bankruptcy focuses on debt settlement through the liquidation of the debtor's assets.

The Bankruptcy and Suspension of Debt Payment Law does not recognize debt forgiveness. Article 204 concerning the Bankruptcy and Suspension of Debt Payment Law states that after the list of distributions becomes final and binding, the creditor has the right of coercion against the debtor's assets to cover his unpaid bills. Thus, after the bankruptcy ends, and there are still unpaid debts, the creditor has the right to collect the remaining debt from

the debtor. The remaining debt must be paid by the debtor to the creditor who has the right to collect the remaining debt even though the debtor's assets are sold out. That is, the debtor will not get debt relief. The remaining unpaid debt will continue to follow the debtor until the debt is paid off. Thus, the Bankruptcy and Suspension of Debt Payment Law does not recognize debt relief, because the creditor still has the right to collect receivables that have not been paid by the debtor even though the bankruptcy has ended. This debt cannot be written off with a debt relief mechanism and the bankruptcy system in Indonesia can provide a clear individual bankruptcy debtor status for all old debts.

Unlike the bankruptcy law in the United States, the Netherlands, and Singapore. In the United States, there are two policies attached to the Bankruptcy code which grant debtors bankruptcy status through debt relief and fair distribution of wealth between debtors by creditors through liquidation. Debt relief is granted by the court. This means that the debtor no longer has a legal obligation to pay off the debts he has released, although this does not eliminate the debtor's moral obligation to pay off debts. The Bankruptcy and Suspension of Obligation for Payment of Debt Laws, which amended the bankruptcy laws made by the colonial government and deemed inconsistent with the spirit of the Indonesian nation, became the basis for bankruptcy law reform in Indonesia. In response to societal demands and changing circumstances, the law was changed to a more comprehensive bankruptcy law. The debtor and creditor filed a request for a declaration of bankruptcy with a deed of reconciliation with number 120/Pdt.Sus-PHI/2017/PN.Sby based on the results of research conducted at the Surabaya Commercial Court office. According to the law, the Bankrupt Respondent must pay severance pay or compensation of Rp. 696,995,750,- (six hundred ninety six million, nine hundred ninety five thousand, seven hundred fifty rupiah).

Whereas based on the amount of legal obligations imposed on the Bankruptcy Respondent I to pay severance pay/compensation in accordance with point 3 (three), the Bankrupt Respondent only paid the first term of Rp. 200,000,000.- (Spoken: Two Hundred Million Rupiah) and even then it was not on time because with the first subpoena and repeated requests and where until this request was made the next term, namely the Second Phase of Rp. 496,995,750.- (four hundred ninety six million nine hundred ninety five thousand seven hundred and fifty rupiah) has not been paid until this application is filed, even though it is due. Whereas the calculation of the maturity or maturity of the legal obligations or debts of the bankrupt respondent has been determined based on the Decision of the Industrial Relations Court at the Surabaya District Court 120/Pdt.Sus-PHI/2017/PN.Sby, the legal consequences of the bankruptcy respondent can be declared legally negligent, i.e. there is a statement of negligence (ingebreke stelling) which determines when the respondent goes bankrupt a) The debtor's non-fulfillment of payment obligations to creditors results in the creditors believing that the settlement that was previously negotiated has been reneged on. As a result, the creditors were forced to submit an application for cancellation of the peace agreement to the commercial court. The Commercial Court decided that the request for cancellation of the peace agreement was partially granted after examining the evidence and witnesses.

Obstacles in the Implementation of Debtor Debt Settlement Against Creditors that are Past Due in the Perspective of Bankruptcy Law

Some of the obstacles in settling debts of debtors to creditors through bankruptcy include the following:

1. There are no funds for the costs of managing and settling bankruptcy assets. That bankruptcy settlement is very expensive. So, as soon as the custodian receives the bankruptcy decision, he must plan ahead for the presentation of securities to creditors and the announcement of

the summary of the bankruptcy statement decision and the deadline for submitting invoices for the holding of accounts receivable matching meetings. With Article 107 paragraph (1), UUK has really planned for the potential difficulties/obstacles that may occur for the curator in financing the implementation of the management and settlement of bankrupt assets. Selling bankrupt assets takes time as they must be sold at the highest possible price to prevent asset damage, and judge approval is also required. The need for supervision that requires a permit takes time, while financial obligations must be fulfilled immediately.

2. Bankrupt debtors are not cooperative. According to Article 100 paragraph 1 UUK, "the curator is required to settle bankrupt cases no later than 2 (two) days after receiving the decision to appoint him as curator," and to comply with this provision, the curator requires information about the debtor's assets. When a bankrupt debtor refuses to constructively submit asset information, the curator will experience difficulties in recording bankruptcy assets. The bankruptcy debtor's absence at the scheduled receivables matching meeting results in the accounts receivable matching meeting being postponed. The presence of the bankrupt debtor is required by Article 121 paragraph 1 UUK, so that if the bankrupt debtor does not attend the meeting of the matching of receivables, the meeting cannot be continued and the Supervisory Judge will adjourn it. Postponing the accounts receivable matching meeting will extend the time needed to resolve bankruptcy cases.
3. The bankrupt debtor sells/hides his assets before being declared bankrupt. The curator's duties are the obligation to administer and/or liquidate the bankrupt assets, therefore if the bankrupt debtor's assets are sold before bankruptcy, the curator is responsible for deciding when and to whom the sale will be made. If you find a bankrupt debtor's assets that have been sold or hidden, it takes time and money to carry out the release. This clearly becomes an obstacle to the debtor's ability to pay off his debt to creditors through bankruptcy.

However, these obstacles occur due to a lack of legal protection for debtors. The Bankruptcy and Suspension of Debt Payment Act should provide legal protection not only to creditors to obtain repayment of their receivables from the debtors' assets, but also to debtors who are unable and in good faith to pay off their debts, freed from the rest of their debts after the bankruptcy ends. This will provide an opportunity for the debtor to return to fulfilling his obligations and obtain the minimum possible material well-being such as food, drinking water and housing in order to improve individuals who have fallen after bankruptcy.

It cannot be denied that the development of legal politics that underlies bankruptcy law in Indonesia cannot be separated from the transformation of this law from a colonial product to a national product as a way to settle political debts in a fast, fair, transparent and efficient manner. All government agency policies can have a legal basis originating from legal policy, which is a component of state policy regarding the laws and regulations that apply in a country. In order to determine the type and direction of law enforcement, legal policy also involves the process of making and enforcing laws. The direction, format and content of future laws and regulations will be determined by Indonesian legal policies towards bankruptcy law. The importance of politics in the process of making laws is very important to underline. The political life of society, which is based on law, will be governed by the application of law.

The general elucidation of the Bankruptcy Law and Suspension of Debt Payment states that the Bankruptcy Law was created to prevent misuse of bankrupt institutions by creditors and debtors with bad intentions. Therefore, the law must protect debtors in good faith. In the United States, the Netherlands, and Singapore, there are good faith requirements for debt relief. Debt relief is the legal embodiment of the idea of a new start. Bankruptcy in Bankruptcy is a relief for debtors who are honest and don't do things to avoid debt.

The new initial philosophy is designed to forgive and give debtors a chance to reintegrate into society. Substantially, the new beginning frees debtors from their debts after they file for bankruptcy and hand over bankruptcy assets to be distributed to creditors, but not enough to pay off the debt. In Indonesia, the provisions for debt relief have not been regulated in the Bankruptcy and Suspension of Debt Payment Act. However, in other economic laws it has been regulated, for example in the banking sector, which stipulates provisions for writing off books and canceling payments. Policies regarding debt forgiveness are also provided for BLBI cases through "Release and Discharge".

Arrangements for writing off receivables are also regulated in Government Regulation No. 14 of 2005, which was amended by Government Regulation No. 33 of 2006 concerning procedures for writing off state/regional receivables. Credit losses were also regulated through a joint agreement between the Governor of DIY, Bank Indonesia, and Commission VI of the Indonesian House of Representatives on February 11, 2011, which in essence was credit clearing for small and medium enterprises affected by the 2006 earthquake. risk of business bankruptcy, especially in the case of force majeure causing the debtor to go bankrupt, it is necessary to regulate norms regarding debt relief in the Bankruptcy and Suspension of Debt Act.

In connection with the granting of bankruptcy status in bankruptcy law in Indonesia, it is necessary to enact a forthcoming bankruptcy law, so that the political direction of bankruptcy law in the future is regulated to provide legal protection to bankrupt debtors who are bankrupt and have good faith. Through the concept of a fresh start in the Bankruptcy and Suspension of Debt Payment Law, it is hoped that in the future the law will be able to provide not only creditors, but also debtors with good faith and bankruptcy, so that debtors do not continue to pursue the remaining unpaid debts after bankruptcy, but also provide legal certainty and a sense of justice to debtors after the bankruptcy liquidation process is complete. It is hoped that debt relief can be regulated as a form of bankruptcy for individual bankrupt debtors in the forthcoming bankruptcy law, so that it will provide balanced protection, not only to creditors in obtaining loan repayment, but also to individual debtors who are bankrupt and have good faith by providing certainty law and justice for the debtor's remaining debts to creditors after the bankruptcy ends.

Judge's Legal Considerations in Settlement of Debtor's Debt Against Creditors in Bankruptcy Cases Based on District Court Decision Number 24/Pdt.Sus-Pailit/2019/PN Niaga Sby

In Decision Number 24/Pdt.Sus-Bankrupt/2019/PN. The Supreme Court at the Surabaya District Court determined that a debtor who has two or more creditors and does not pay off at least one debt that is due and collectible has two or more debts that are due and collectible. Based on these legal considerations, the panel of judges stated that the bankruptcy applicant had succeeded in proving his application. According to the panel of judges of the Supreme Court, the value of the Bankruptcy Respondent's debts owed to the Bankruptcy Petitioners is due and can be collected in the form of bills on the rights of each Creditor represented by their Legal Counsel, namely the Bankruptcy Petitioners totaling 10 (ten) Creditors, considering, that in the argument of the Bankruptcy Petitioner it was stated that the Bankruptcy Petitioners totaling 10 (ten) Creditors.

If it is proven that he has not and/or has not fulfilled the legal obligations or debts, the Bankrupt Respondent may be subject to legal consequences, including in the form of a statement of negligence (ingebreke stelling), which stipulates the circumstances that cause the Respondent to Bankruptcy, as a Debtor, to be declared negligent or in default (default), in

accordance with the provisions of Article 1238 of the Civil Code. The Supreme Court is of the opinion that there are sufficient reasons to grant the cassation petition filed by the Employee Cassation Appellant against PT. Sinar Pembangunan Abadi with decision Number: 24/Pdt.Sus-Bankrupt/2019 based on the matters mentioned above. In accordance with the provisions of Article 15 paragraph (3) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt, the curator appointed must be independent, must not have a conflict of interest between debtors and creditors, and must not handle more than 3 (three) bankruptcy cases and a moratorium on payment obligations. The Supreme Court concluded after reviewing the letter of appointment of trustee that the applicant was cassation and bankrupt, so that the curator of Law and Human Rights as Curator of the a quo case had met legal standards so that he deserved to be granted according to the provisions of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, it is stipulated that the amount of services determined at the time they are paid to the curator will be decided in accordance with the guidelines stipulated by the decree of the minister whose duties and responsibilities are in the legal and civil fields.

CONCLUSION

Bankruptcy law and suspension of payment of debt apply the principle that debt cannot be written off by debt relief. Under the Indonesian Bankruptcy Law, the debts of individual bankrupt debtors will continue to follow until the debt is paid off. It even allows a bankrupt debtor to be declared bankrupt more than once. Thus, even though the bankruptcy has ended and there are still unpaid debts, the creditor has the right to collect the remaining debt from the debtor. That is, the debtor will not get debt relief. Through bankruptcy to debtors who are bankrupt and have good faith, with the opportunity to try again without being burdened. debts in the past through debt repayment after the bankruptcy ends. The following are some of the obstacles for debtors to pay their creditors through bankruptcy: There are no funds for the costs of managing and settling bankruptcy assets. Bankrupt debtors are not cooperative. Bankrupt debtors sell/hide their assets before being declared bankrupt. Through bankruptcy, individual bankrupt debtors will provide legal certainty for the remnants of past debts after the end of bankruptcy and guarantee justice to rise and try to return to continue life and be free from the fear of being chased by past debts. The Bankruptcy and Suspension of Debt Payment Act should be able to provide legal protection not only to creditors to get repayment of their receivables from the debtors' assets, but also to debtors who are unable and in good faith to pay off their debts, freed from the rest of their debts after the bankruptcy ends.

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