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Legal Analysis of Corporate Insolvency: A Case Study of the Insolvency Resolution Process

Warmiyana Zairi Absi[1], Marsudi Utoyo[2]
Sekolah Tinggi Ilmu Hukum Sumpah Pemuda, Indonesia[1,2]
Email: warmiyana5973@gmail.com[1], mutoyo68@gmail.com[2]

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ABSTRACT
Bankruptcy is a situation that can be experienced by all who run their business, bankruptcy is a debtor who is in an unfavorable state because all his assets are not enough to meet his needs to pay all his debts. So that legal problems arise when a company experiences financial difficulties, in Indonesia bankruptcy law is regulated in Law number 37 of 2004. The purpose of the study is to analyze bankruptcy law, especially the bankruptcy settlement process. The research method used in this study is the descriptive qualitative method. Data collection is carried out through literature studies (library research), then the collected data is analyzed through three stages, namely data reduction, data presentation, and conclusions. The results showed that Law Number 37 of 2004 can provide legal protection to creditors, debtors, and the public fairly and equitably. The bankruptcy settlement process can be carried out through two stages, namely the PKPU stage or postponement of debt payment obligations and the bankruptcy settlement process. The bankruptcy settlement process consists of several stages, namely the first bankruptcy application, the examination of the bankruptcy application, the bankruptcy statement decision, the appointment of a receiver, the distribution of debtor's assets, and then the last stage of the bankruptcy closing decision.

INTRODUCTION

A company's business life does not always run smoothly; at one time, there is an increase, and at another time, there is a decrease. The company's condition is in 2 states, namely profit and loss. If the company is in a state of profit, it develops and continues to develop to become a giant company. Conversely, if the company's condition suffers losses, its lifeline declines, and often its financial condition is such that the company can no longer pay its debts or goes bankrupt (Do, 2022; Gopalakrishnan & Mohapatra, 2020; Kliatskova et al., 2023; Tolmie, 2013).

Bankruptcy is an unfavorable debtor situation because the debtor's assets are not enough to meet the debtor's needs to pay all the debts (Fauzi, 2018). Bankruptcy can significantly impact the company, employees, and creditors. An insolvent company may have to cease operations, leading to layoffs and job losses, so debtors may be unable to pay off their debts, which can cause financial problems (Gopalakrishnan & Mohapatra, 2020; Li et al., 2023; Yu & Chen, 2023).

The condition of this bankrupt company raises a series of legal problems. A series of legal issues that arise when a company experiences financial difficulties are conflicts between shareholders and management, as well as majority and minority shareholders, and conflicts between the company and its

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creditors (Elsayed et al., 2022; Kimani et al., 2021). So, a law is needed that regulates company bankruptcy. Insolvency law is primarily or even exclusively a debt collection law, that is, as an instrument to meet the interests of creditors when debtors are in situations of financial difficulty (Eidenmüller, 2023).

According to Toha & Retnaningsih, (2020), bankruptcy was initially considered a verdict on a criminal act because debtors were evading or unwilling to pay their debt to creditors. Bankruptcy is a penalty for debtors who do not pay their debts and for the debtor's bad faith that deceives and prevents creditors from collecting their debts by hiding assets. The debtor who cannot pay his debts will be put in jail, and his property will be taken and sold to pay off his debts to creditors. In later developments, modern bankruptcy law was created to prevent debtors experiencing financial difficulties from being continuously billed to pay creditors. At the same time, it provided access for creditors to own debtors' assets as repayment of their debts, although often insufficient. Thus, bankruptcy no longer serves as a punishment but as a solution to creditors' debt problems (Guan et al., 2021; Olujobi, 2021; Stef & Bissieux, 2022).

Bankruptcy law exists in each country with different policies and pros and cons. In Indonesia, bankruptcy law is regulated in Law 37 of 2004 concerning bankruptcy and suspension of debt payment obligations. This law is one of the legal means that becomes the basis for the settlement of receivables and is closely relevant to the bankruptcy of the business world, including regulations on the suspension of debt payment obligations (Closset et al., 2023; Kaya, 2022).

In previous research by Karlesta, (2019) entitled Analysis of bankruptcy law against BUMD holdings, the result of the analysis is that the status of BUMD, which has the status of a Company, can be equated with a private Limited Liability Company (PT). because there is capital participation provided, Thus, state wealth is included for the formation of BUMD, the country's wealth becomes BUMD's wealth. With the participation of capital from state assets that are used as BUMD assets and then re-included as assets for the formation of subsidiaries, the assets included can be confiscated by the court and used as bankruptcy asset settlement. Meanwhile, research by Syuhada, (2023) entitled Company legal analysis in the bankruptcy case of a subsidiary of a Negata Owned Enterprise (Holding company) resulted in the first, even though a holding company was formed, the parent company and subsidiaries as the existence of separate legal entities and limited liabilities limited separate and independent companies in carrying out their respective activities. Second, the bankruptcy of subsidiaries included in SOE holding companies can occur, and the form of responsibility of the parent company, which is a BUMN, is limited to the shares it owns. If it is known that in the management of financial management, the parent holding of SOEs participates in causing the subsidiary to go bankrupt, then responsibility can expand.

Although a lot of literature has discussed bankruptcy law analysis, the update of this research is found in the object studied, namely bankruptcy law analysis, especially the bankruptcy settlement process. Bankruptcy law is a mechanism to resolve debt problems that cannot be resolved voluntarily. Bankruptcy law is expected to provide justice for all parties involved, namely debtors, creditors, and the community**.** So, this study aims to analyze the provisions of company bankruptcy law, especially about the bankruptcy settlement process.

METHODS

This research uses descriptive qualitative research, according to Hennink et al. (2020), qualitative research is an approach that allows to examine people's experiences in detail or learn their natural things by trying to understand or interpret phenomena in relation to the meaning given by people using a series of methods. This study uses the literature review method (library research), where researchers collect materials related to research derived from books, journals, scientific articles, literature, mass media reports and legislation by describing and describing the data. Then, it will be analyzed using data reduction

presented in descriptive form, and conclusions can be drawn regarding the legal analysis of company insolvency: a case study on the bankruptcy resolution process.

RESULTS

The business world without credit is impossible to imagine; suppliers, banks, financial institutions, and financial investors give a huge amount of credit annually. Credit can facilitate the smooth running and expansion of a business and can also influence a company to increase its profits by doing more business than using its own funds. The higher the level of borrowed funds, the greater the profit; this is not a problem if trading income exceeds the loan repayment cost. Of course, when trading volumes become unprofitable, the obligation to pay debts will add to losses and accelerate bankruptcy. Bankruptcy exists because of the inability to pay its debts. Therefore, bankruptcy arises from the provision of credit because, without credit, there will be no debt (Goode, 2011).

The word bankruptcy can be interpreted as the debtor being unable to make payments on debts from his creditors. Bankruptcy is a court decision that results in a general confiscation of all assets of the bankrupt debtor, both existing and future (Shubhan, 2015). The management and settlement of bankruptcy is regulated in bankruptcy law, where the receivership carries out the settlement under the supervision of the supervisory judge with the main purpose of using the proceeds of the sale of the assets to pay all debts of the bankrupt debtor proportionally and in accordance with the creditor structure.

In Indonesia, bankruptcy law is regulated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy Law and PKPU). In detail, the Bankruptcy Law regulates the following matters: bankruptcy procedures, which include filing a bankruptcy application, examining bankruptcy applications, and determining bankruptcy. The process of managing and settling bankruptcy assets includes collecting, managing, and selling bankruptcy assets to be distributed to creditors. Third, the rehabilitation of bankrupt debtors is the process of restoring the financial and business condition of the bankrupt debtor. This Law also implies the purpose of resolving bankruptcy problems in Indonesia. This law protects creditors, debtors, and the public fairly and equitably. According to Hartono (1999) and Shubhan, (2020), the bankrupt institution can prevent or avoid two unfair actions that can harm all parties. These two things are first to avoid mass execution by debtors or creditors and second to prevent dishonesty by debtors.

Bankruptcy institutions have various objectives of insolvency institution protection, including the importance of creditors. The interests of creditors take precedence over the interests of all other groups from when the company appears to be in financial trouble or can be inferred to maximize creditors' profits (Armour, 2001). Bankruptcy law aims to protect creditors so that they can obtain fair and equitable repayment of their receivables. In the event of bankruptcy against debtors, the principle of creditorum parity will apply, which means that all creditors have equal rights to debt payments and that the proceeds of bankruptcy assets will be distributed proportionally to the size of their bills (Diza & Wiradirja, 2018). This is done by collecting all assets of bankrupt debtors and then dividing them proportionally to creditors according to the amount of their respective receivables.

Apart from being creditor protection, bankruptcy institutions can also ease the burden on debtors through the repayment of receivables. Creditors can only take from what the debtor has while in bankruptcy, meaning that after the debtor's assets are completely exhausted, the debtor must be released from the remaining debts that he cannot pay (Fauzi, 2018). This Bankruptcy Law also aims to protect debtors' interests so they can start a new life after bankruptcy. This is done by providing opportunities for bankrupt debtors for rehabilitation, namely the process of recovering the financial and business condition of the bankrupt debtor.

The bankruptcy law does not escape the aim of protecting the public interest so that there is no disruption to economic stability. Professor Warren (2013) argues that bankruptcy law's purpose is to provide a forum where all interests can be heard. Trusted bankruptcy law can increase public confidence to invest. People will feel more confident that their investment will be safe, even if their company is declared bankrupt. This is because the bankruptcy law provides fair legal protection for all parties involved in the bankruptcy process.

The bankruptcy settlement process can be carried out through the PKPU stage or the postponement of debt payment obligations. If most creditors do not approve the PKPU proposal, then the PKPU process will end with the dissolution of the PKPU. In this case, the debtor will be declared bankrupt, and the second stage of the process of managing and settling the bankrupt assets will begin.

The implementation of PKPU is one way to prevent debtors from the bankruptcy process (Sihotang, 2021), PKPU is a process provided by law through a commercial judge decision where during which creditors and debtors are given the opportunity to negotiate ways to pay their debts by providing plans (offering), paying all or part of their debts, including if needed to be able to restructure the debt. Based on Article 222, paragraph 2 of the Bankruptcy Law and PKPU, debtors who are unable or expected to be unable to continue paying their overdue and collectible debts can apply for PKPU to submit a peace plan containing an offer to pay all or part of the debt to creditors.

The objectives of PKPU itself are as follows Sitohang, (2021) first, debtors get enough time to fix their difficulties, and finally, they can pay or pay off their debts in the future. Second, it is possible for creditors to get full payment of their receivables so as not to harm them. Third, it is possible for creditors to get full payment of their receivables so as not to harm them. PKPU applications are made by debtors and creditors who estimate that debtors cannot continue to pay their overdue and collectible debts. This shows that PKPU is not only intended for the interests of debtors but also for the interests of creditors.

Suppose there is no other way for creditors and debtors to solve the problem. In that case, this peace is hoped to eliminate and resolve the debtor's bankruptcy, provided all creditors follow and approve it (Al Kautsar & Muhammad, 2021). The permanent suspension of debt repayment obligations, determined by the court, is based on the agreement of more than half the number of concurrent creditors present and represents at least 2/3 of all recognized or provisionally recognized bills. If a dispute arises regarding the voting rights of these creditors, the settlement is decided by a supervisory judge. If creditors approve the peace plan, then the commercial court will issue a homologation ruling. Homologation is a ratification of peace by a judge upon an agreement between debtors and creditors to end bankruptcy (Purba et al., 2019). Once the homologation verdict is issued, then the peace plan must be implemented. The implementation of the peace plan will be supervised by PKPU management. However, if creditors reject the PKPU, the debtor will lose the opportunity to maintain his business and pay his debts to creditors. The debtor will be declared bankrupt, the receivership will manage his assets, and the second stage of managing and settling the bankrupt assets will begin.

In the bankruptcy settlement process, bankruptcy law in Indonesia adheres to the principle of pari passu prorata parte, namely that assets owned by a person will be a guarantee for all creditors when the income generated from the collection of these assets is distributed evenly and proportionally unless there are creditors whose debts must be repaid according to law (Simaremare et al., 2021) which means payments to creditors are made proportionally, That is in accordance with the amount of each creditor's bill.

In bankruptcy proceedings, the debtor's assets will be sold to pay his debts. The curator sells the debtor's assets; the proceeds of the sale of the debtor's assets will be divided among creditors in order of

priority. Creditors who have short-term debt will be prioritized to receive payments. Law No. 53 of 2004 contains a bankruptcy settlement process consisting of several stages.

The first stage of the bankruptcy settlement process is a bankruptcy application, a bankruptcy application is an application submitted by a debtor or creditor to the commercial court to be declared bankrupt. An application for bankruptcy can be filed if the debtor meets the conditions prescribed by law. The requirements for filing a bankruptcy statement application against debtors can be seen in Article 2 (1) of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations which states that "Debtors who have two or more creditors and do not pay in full at least one debt that has fallen due and can be collected, is declared bankrupt by a court decision, either on his own application or on the application of one or more of his creditors.

This bankruptcy application can be filed by the debtor himself or by creditors. If the debtor files the bankruptcy application, then the application is referred to as a voluntary bankruptcy application. If creditors file the bankruptcy application, then the application is referred to as a forced bankruptcy application. The bankruptcy application must be submitted in writing to the competent commercial court. Article 5 explains that the application must contain the application for the name and residence of each pesero who is jointly bound to all debts of the firm.

Upon receipt of the bankruptcy application, the Commercial Court will examine the application within a period of no later than 3 (three) days after the date the bankruptcy declaration application is registered. A commercial court is a special court established within the district court. Commercial courts have absolute authority to examine and decide bankruptcy applications, postponement of debt payment obligations, and other matters (Hermawan et al., 2020). Thecourt studies the application and sets a hearing day, the examination of the bankruptcy application is carried out by a panel of judges.

The bankruptcy application that the panel of judges has examined is then carried out a hearing decision. The court decision on the application for bankruptcy statement must be pronounced no later than 60 (sixty) days after the date the application for bankruptcy statement is registered. Citing article 8 (4), an application for bankruptcy declaration must be granted if there are facts or circumstances that prove that the requirements for being declared bankrupt have been met. The Commercial Court will issue a bankruptcy declaration decision if the bankruptcy application is granted. This bankruptcy declaration decision has permanent legal force.

After the bankruptcy declaration decision is pronounced, the Commercial Court will appoint a receiver. A curator is an individual appointed by the court to manage and settle the bankrupt debtor's assets under the supervision of the supervisory judge (Widiarini & Anggoro, 2022). The duties of the receivership in more detail are as follows: conduct an inventory of the debtor's assets, both movable and immovable, both tangible and intangible, protect the debtor's assets from unauthorized use, seizure, or sale that harms creditors, manage debtors' assets, sell debtors' assets, pay debtors' debts to creditors, and resolve bankruptcy cases. Curators can be appointed from two sources: Balai Harta Warisan (BHP) and individuals. Curators appointed by BHP are called BHP curators, and curators appointed by natural persons are called private curators.

The curator has the authority to sell the debtor's assets after paying the debtor's debts to creditors. The distribution of assets of the bankrupt debtor is carried out based on the principle of pari passu pro rata parte. This principle means that all the debtor's assets become common security for all creditors. Payment to creditors is made proportionally, according to the amount of each creditor's bill. If the debtor's assets are insufficient to pay all creditors, payments will be made proportionately to all creditors, including privileged creditors. The distribution of assets of insolvent debtors is a complex and time-consuming process. The

receivership must work closely with the supervising judge and creditors to complete this process in a manner that is reasonable and benefits the creditor.

After all debtors are paid, the Commercial Court will decide to close the bankruptcy. This judgment is imposed if any of the following occurs the debtor's assets have been sold out and all debts of the debtor have been repaid, the debtor has been dissolved, the debtor has been converted into a limited liability company, and the debtor has qualified to apply for rehabilitation. This verdict must be pronounced in a hearing open to the public. After the bankruptcy closing judgment is pronounced, the bankruptcy process is declared over. The bankruptcy closing decision has permanent legal force or what in Dutch is called kracht vangewijsde (Savitri & Santoso, 2021).

The decision to close bankruptcy has several legal consequences, including the debtor is declared no longer bankrupt, which means that this decision restores the debtor's legal status to what it was before it was declared bankrupt. The debtor again has the authority to manage and control his property, and perform legal actions, then all the rights and obligations of the debtor that have been transferred to the receiver, such as the right to receive payments from creditors back to the debtor. Curator, after the bankruptcy closing judgment, the receiver's duties have been completed, and he is dismissed from his position. So that the bankruptcy process is important to protect the interests of all parties concerned, namely debtors, creditors, and the public.

CONCLUSION

A company's business life does not always run smoothly; at one time, there is an increase, and at another time, there is a decrease. Bankruptcy is a situation that can be experienced by all who run their business; bankruptcy is a debtor who is in an unfavourable state because all his assets are not enough to meet his needs to pay all his debts. Because the condition of this bankrupt company raises a series of legal problems, a law is needed that regulates company bankruptcy. Bankruptcy law has an important role in a country's economy, in addition to regulating how to solve the problem of debt receivables that cannot be resolved voluntarily. Bankruptcy law aims to protect the rights of creditors and debtors and increase public trust in the business world. In Indonesia, bankruptcy law is regulated in Law 37 of 2004 concerning bankruptcy and suspension of debt payment obligations.

The bankruptcy settlement process can be carried out through two stages: the PKPU stage or the postponement of debt payment obligations. If most creditors do not approve the PKPU proposal, then the PKPU process will end with the dissolution of the PKPU. In this case, the debtor will be declared bankrupt, and the second stage of the process of managing and settling the bankrupt assets will begin. The bankruptcy settlement process consists of several stages, namely the first bankruptcy application, the examination of the bankruptcy application, the bankruptcy statement decision, the appointment of a receiver, the distribution of the debtor's assets, and then the last stage of the bankruptcy closing decision.

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