

APPLICATION OF BUSINESS CONTINUITY PROVISIONS IN BANKRUPTCY TO INCREASE THE VALUE OF BANKRUPTCY ASSETS

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Abstract

Application Of Business Continuity Provisions (Going Concern) In Bankruptcy To Increase The Value Of Bankruptcy Assets (Decision No. 54/Pdt.Sus-PKPU/2020/PN Niaga Sby), the aim of this research is to determine the duties and authority of the curator in the management and/or or settlement of bankruptcy assets and to find out the application of the going concern provisions in the bankruptcy of PT. Banjar Intan Mandiri based on Decision No. 54/Pdt.Sus-PKPU/2020/PN Niaga Sby. The research method used in this study is a normative juridical research method with Law no. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations. The results of this research are that the Curator has the authority to carry out the task of managing and/or settling all of the debtor's assets which become bankruptcy assets. This is because by law the Debtor loses his right to control and manage his assets which are included in the bankruptcy assets from the date the bankruptcy decision is declared. In carrying out its duties, the Curator is not required to obtain approval from or provide prior notification to the Debtor or any of the Debtor's organs, although in circumstances other than bankruptcy such approval or notification is required. The curator is obliged to take actions that can increase the value of the bankrupt assets. The application of business continuity provisions in bankruptcy cases is within the framework of legal protection for debtors and has a positive impact on increasing the company's economic value which in turn is used to pay debts to its creditors.

Keywords: Business Continuity, Bankruptcy Assets, Bankruptcy

INTRODUCTION

In carrying out the management and settlement duties, the Curator is obliged to secure the bankrupt's assets and make efforts to increase the value of the bankrupt's assets. The curator is responsible for any errors or negligence in carrying out management and/or disposal duties which cause losses to the bankrupt's assets (UU, 2004).

One of the efforts of the Curator in order to increase the value of the bankrupt assets is to continue the business of the bankrupt debtor (going concern). Continuing the business of the bankrupt debtor is one of the principles stipulated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, namely the principle of business continuity (going concern). One way for the Curator to increase the value of the bankrupt assets is that the Curator can continue the business of the debtor/company declared bankrupt that still has prospects to continue its business.

The concept of Going Concern is usually used in accounting, which according to the Public Accountant Professional Standards, going concern is a condition in which a company will continue to operate in the future, this condition is influenced by the company's financial and non-financial conditions. The definition of the concept of going concern according to Elyta Ras Ginting is a term commonly used in accounting related to the financial statements of a company (entity) made by a public accountant professionally, in terms of business practices going concern is used as a parameter in estimating the ability of an entity to maintain its business activities in a certain period of time (Ginting, 2018).

Based on Article 104 of the Bankruptcy Law, with the approval of the creditor committee (if any) or with the permission of the supervising judge, the Curator may continue the business of the Debtor who has been declared bankrupt even though a cassation or judicial review has been filed against the bankruptcy declaration decision. Thus, the Bankruptcy Law gives the curator the authority to continue the business of the bankrupt debtor (going concern). The aim is to maintain the continuity of the debtor's business so that it remains productive if peace is achieved in bankruptcy and if the bankruptcy decision is canceled by the Supreme Court.

In addition, the curator can continue the debtor's business (going concern) with the aim of increasing the value of the bankrupt estate during the period of settlement of the bankrupt estate if the debtor is declared insolvent in accordance with the provisions of Article 179 and Article 181 of the Bankruptcy and PKPU Law. Continuing the debtor's business (going concern) must be done, because one of the duties of the curator is to increase the value of the bankrupt estate.

Going concern or the principle of business continuity is the principle of the survival of an entity (business entity). Going concern indicates that an entity (business entity) is considered to be able to maintain its business activities in the long term, and will not be liquidated in the short term. Evidence of the potential and ability to survive a business entity or company included in the category, is proven in the form of an auditor's report as a party that has the competence to assess whether a company can properly carry out its business or is eligible for bankruptcy (Simalango, n.d.).

Judges need to consider the condition of the Debtor in deciding on a bankruptcy case, when the Debtor in question still has hope of rising again, is able to pay his debts to Creditors, if there is sufficient time and a large number of workers whose fate depends on the company in question.

In certain cases, the opportunity to continue trying needs to be given to honest Debtors and with this decision, the interests of Creditors and the needs of society can be protected. PT. Banjar Intan Mandiri was declared bankrupt by the Commercial Court at the Surabaya District Court on December 17, 2020 based on Decision No. 54/Pdt.Sus-PKPU/2020/PN Niaga Sby. The Curator Team of PT. Banjar Intan Mandiri requested permission from the Supervisory

Judge so that the Debtor's business of PT. Banjar Intan Mandiri can continue to run even though it is bankrupt. This is because PT. Banjar Intan Mandiri still has work contracts with several of its creditors based on a cooperation agreement.

In his considerations, the Supervisory Judge explained that the Curator Team's task was to manage the bankrupt's assets. The purpose and objective of granting a going concern permit is to increase the bankrupt assets. If the business activities of PT. Banjar Intan Mandiri are not continued, it is suspected that the bankrupt assets will not be sufficient to pay off all its debts to its creditors, so that the Supervisory Judge granted the Curator Team's request for permission to continue the business of PT. Banjar Intan Mandiri, because by continuing to operate, it is likely to increase and improve the value of the bankrupt assets and benefit its creditors.

The granting of this permit is stated in Decree No. 54/Pdt.Sus-PKPU/2020/PN Niaga Sby dated January 11, 2021. Based on this decree, the Curator is the only party authorized to carry out the duties of managing and/or settling bankrupt assets as regulated in Article 16 paragraph (1) in conjunction with Article 69 paragraph (1) of the Bankruptcy Law, so the Bankrupt Debtor is obliged to submit to and obey the curator in terms of continuing the continuity of the bankrupt debtor's business.

Along the way, after the curator continued the debtor's business for 1 (one) year, and it turned out that the debtor's business was developing and improving, the Mining Business License (IUP) of the bankrupt debtor was revoked on January 10, 2022. Therefore, in order to maximize and increase the value of the bankrupt assets, the Curator Team took legal action by filing Other Claims at the Surabaya Commercial Court against the Ministry of Energy and Mineral Resources which revoked the business license of PT. Banjar Intan Mandiri. The lawsuit was granted by the panel of judges at the Surabaya Commercial Court and stated that the revocation of PT Banjar Intan Mandiri's business license was invalid. In the decision, the panel of judges also stated that the Curator can continue the bankrupt debtor's business.

Based on the description of the background of the problem above, the scientific work of the thesis entitled Application Of Business Continuity Provisions (Going Concern) In Bankruptcy To Increase The Value Of Bankruptcy Assets (Study of Decision No. 54/Pdt.Sus-PKPU/2020/PN Niaga Sby) is very important to study.

Based on the background explanation above, the following formulation of the problem can be drawn: What are the duties and authorities of the curator in managing and/or settling bankrupt assets? And How is the application of the provisions of business continuity (going concern) in the bankruptcy of PT. Banjar Intan Mandiri based on Decision No. 54/Pdt.Sus-PKPU/2020/PN Niaga Sby?

RESEARCH METHODS

The research used by the Author is normative legal research. Normative legal research is legal research conducted by collecting library materials that are studied by conducting literature (Kadir, 2004). Normative legal research uses deductive thinking (inference thinking). Conclusions can be drawn from generally accepted and correct data. Conclusions are based on the object of analysis in a qualitative way, namely referring to legal norms and regulations.

RESULT AND DISCUSSION

Duties and Authorities of the Curator in the Management and/or Settlement of Bankrupt Estates

Regarding the duties of the curator, the Bankruptcy Law does not clearly regulate the limitations of its duties and authorities. The Bankruptcy Law in Article 69 number 1 of the Bankruptcy Law and PKPU regulates that the Curator's duties are to manage and/or settle bankrupt assets. The regulation does not provide further explanation regarding what is meant

by "management of bankrupt assets" or "settlement of bankrupt assets", stated in the explanation of the Article with "quite clearly".

The Curator's duties are to manage and/or settle the bankrupt estate (UU, 2004). In carrying out his duties, the Curator: is not required to obtain approval from or provide prior notification to the Debtor or one of the Debtor's organs, although in circumstances outside of bankruptcy such approval or notification is required. After a bankruptcy decision is issued by the Commercial Court, the Curator will carry out his duties to manage and settle the bankrupt estate (Nainggolan, 2015).

The duties and authorities of the curator in carrying out the management and settlement of bankrupt assets are as follows:

1. The curator may also take out loans from third parties, only in order to increase the value of the bankrupt's assets. If in taking out loans from third parties the curator needs to burden the bankrupt's assets with a pledge, fiduciary guarantee, security right, mortgage, or other collateral rights or property, then the loan must first obtain the approval of the Supervisory Judge. The burdening of the bankrupt's assets with a pledge, fiduciary guarantee, security right, mortgage, or other collateral rights on property as referred to in paragraph (3) may only be done against the portion of the bankrupt's assets that has not been used as collateral for debt (UU, 2004).
2. To appear before the Court, the Curator must first obtain permission from the Supervising Judge, except in cases concerning disputes regarding the verification of receivables or in cases where there is a reciprocal agreement between the Bankrupt Debtor that has not been or is still partially fulfilled, a lease agreement between the Debtor and creditors, and issues regarding termination of employment.
3. Since his/her appointment, the Curator must make every effort to secure the bankrupt's assets and keep all letters, documents, money, jewelry, securities and other valuables by providing a receipt (UU, 2004).
4. The curator must make a record of the bankrupt's assets no later than 2 (two) days after receiving the decision letter appointing him as curator (UU, 2004).
5. The curator must immediately announce the bankruptcy declaration decision within a maximum of 5 (five) days since the bankruptcy declaration decision was pronounced in the State Gazette of the Republic of Indonesia and 2 (two) daily newspapers. The purpose of this announcement is so that all known creditors and unknown creditors can know the bankruptcy situation. This bankruptcy announcement is very important because one of the important objectives of the UUK is to create legal certainty for the interests of the business world in settling debts fairly, quickly, openly and effectively (Nainggolan, 2015).
6. No later than 14 (fourteen) days after the bankruptcy declaration decision is pronounced, the supervisory judge is required to determine the final deadline for submitting bills and the final deadline for tax verification to determine the amount of tax obligations in accordance with laws and regulations in the field of taxation and the day, date, time and place of the Creditor meeting to conduct a verification of receivables (UU, 2004).
7. The curator is obliged to hold creditor meetings, namely with the following agenda:

- a. First Creditors Meeting

The first creditor meeting is the first meeting held which is attended by the supervisory judge as the meeting leader, the curator, the debtor and known creditors. In the first creditor meeting, the debtor is given the opportunity to provide an explanation regarding the condition of his company to all his creditors and to ensure whether the debtor will submit a peace plan or not.

- b. Debt Verification Meeting

Debt verification meeting is a meeting held to match debts between debtors and creditors accompanied by evidence. The results of this debt verification meeting will

be recorded by the Curator in the permanent debt list which becomes the basis for calculating voting rights for creditors.

c. Peace Proposal Voting Meeting

In this voting meeting, the peace plan offered by the debtor will first be discussed. In the discussion of this peace plan, creditors and the Curator can provide input on the peace plan and the debtor can improve or maintain the peace plan offered. After the discussion is complete, a vote will be held to determine whether the peace plan is accepted or rejected by the creditors. The peace plan is accepted if it is approved in the Creditor meeting by more than 1/2 (one half) of the number of concurrent creditors present at the meeting and whose rights are recognized or temporarily recognized, representing at least 2/3 (two thirds) of the total number of concurrent receivables recognized or temporarily recognized from concurrent creditors or their proxies present at the meeting (UU,2004).

d. Debtor Business Continuity Meeting

The business continuity meeting is held to determine whether the Curator can continue the bankrupt debtor's business or not. Article 104 of the Bankruptcy and PKPU Law, the Curator can continue the debtor's business if it receives approval from the temporary creditor committee. If there is no temporary creditor committee, the Curator can continue the debtor's business with the permission of the supervising judge.

In contrast to Article 178 and Article 181 of the Bankruptcy and PKPU Law, the Curator may carry out business continuity based on the approval of creditors. A proposal to continue the company as referred to in Article 179 paragraph (1) must be accepted if the proposal is approved by Creditors representing more than 1/2 (one half) of all receivables acknowledged and temporarily accepted, which are not secured by lien rights, fiduciary guarantees, security rights, mortgages, or collateral rights on other objects (UU, 2004).

e. Other Creditors Meetings.

Other Creditor Meetings in this case are meetings other than the first creditor meeting, debt verification meeting, voting meeting and business continuity meeting. Other creditor meetings can be called incidental meetings. The urgency of holding an incidental creditor meeting is usually done for (Ginting, 2018):

- a. Bankruptcy revocation meeting;
- b. Curator replacement meeting;
- c. Meeting to replace the composition of the creditor committee.

8. The curator is also authorized to perform *actio pauliana* for the benefit of the bankrupt estate in accordance with Article 41 of the Bankruptcy Law and PKPU (UU, 2004). *Actio pauliana* is the Curator's action to cancel all legal acts of the Debtor who has been declared bankrupt that are detrimental to the interests of the Creditor, which were carried out before the bankruptcy declaration decision. The cancellation is requested to the competent Court according to the Debtor's legal domicile. The cancellation of the Debtor's actions can be carried out if it can be proven that at the time the legal act was carried out, the Debtor and the party with whom the legal act was carried out knew or should have known that the legal act would result in losses for the Creditor, except for the Debtor's legal acts that are required to be carried out based on an agreement and/or because of the law.
9. The curator must submit a report to the Supervisory Judge regarding the condition of the bankrupt estate and the implementation of his duties every 3 (three) months. The report is open to the public and can be viewed by everyone free of charge. Given the importance of implementing this principle of openness, the explanation of the UUK in the general section

mentions the fact that bankruptcy regulations are needed, among others to avoid fraud committed by one of the creditors or the debtor himself (Nainggolan, 2019).

10. The Curator is appointed by the Court with the main vision of maximizing the value or quality of the bankrupt estate. If the value or quality of the bankrupt estate increases, it means it is beneficial for its creditors (Nainggolan, 2014). In carrying out its duties and authorities, one of the legal obligations of the Curator is referred to as fiduciary duties or fiduciary obligation, namely the Curator has a fiduciary relationship with:
 - a. Court; which in the Indonesian UUK is represented by a Supervisory Judge;
 - b. Debtor;
 - c. Creditors
 - d. Shareholders (Nainggolan, 2014).

The definition of a curator has a fiduciary relationship above, the curator bears the trust of the court, debtors, creditors and shareholders to carry out his duties as well as possible for the benefit of these parties (Nainggolan, 2015). In other words, the curator is responsible to the court, debtors, creditors and shareholders.

11. Based on Article 104 of the Bankruptcy and PKPU Law, the Curator is authorized to continue the business of the debtor who is declared bankrupt (with the approval of the supervisory judge or creditor committee) even though the bankruptcy declaration decision is filed for cassation or judicial review. This aims to maintain the productivity of the bankrupt Debtor's company so that it remains productive if at any time a peace settlement is achieved in the bankruptcy.
12. Based on Article 107 of the Bankruptcy and PKPU Law, with the approval of the Supervisory Judge, the Curator may transfer the bankrupt's assets to the extent necessary to cover bankruptcy costs or if its detention will result in losses to the bankrupt's assets, even though a cassation or judicial review is filed against the bankruptcy decision (UU, 2004).
13. The curator, after seeking advice from the temporary creditors' committee, if any, and with the permission of the Supervising Judge, has the authority to make a peace settlement to end an ongoing case or prevent a case from arising (UU, 2004).
14. Based on Article 116 of the Bankruptcy and PKPU Law, the Curator is obliged to:
 - a. match the calculation of receivables submitted by the Creditor with the notes previously made and the Bankrupt Debtor's statement; or
 - b. negotiate with Creditors if there are objections to the collection received.The curator has the right to ask the creditor to submit letters that have not been submitted, including showing original records and proof of documents.
15. Based on Article 117 of the Bankruptcy and PKPU Law, the Curator is obliged to include receivables that he has approved in a list of receivables that are temporarily recognized, while receivables that are disputed, including the reasons therefor, are included in a separate list.
16. The curator is required to provide a copy of each temporary list of receivables at the Court Clerk's Office for 7 (seven) days before the day of the receivables verification, and everyone can see it free of charge. The curator is required to notify known Creditors by letter of its existence, accompanied by a summons to attend a receivables verification meeting stating the peace plan if it has been submitted by the Bankrupt Debtor (UU, 2004).
17. Based on Article 146 of the Bankruptcy and PKPU Law, the Curator and temporary creditor committee are each required to provide a written opinion on the peace plan.
18. Based on Article 178 of the Bankruptcy and PKPU Law, the Curator or Creditor present at the meeting may propose that the Bankrupt Debtor's company be continued if the peace plan is rejected or not submitted in bankruptcy, in other words after the bankrupt debtor is declared insolvent. The purpose of continuing the debtor's business in an insolvent state is to increase the value of the bankrupt's assets before the sale or transfer to another party.

19. Based on Article 181 of the Bankruptcy and PKPU Law, the Curator or Creditor submits a proposal to the Supervisory Judge to continue the Bankrupt Debtor's company, if within a period of 8 (eight) days after the decision to reject the ratification of the peace settlement has permanent legal force.
20. All items must be sold in public in accordance with the procedures specified in statutory regulations (UU, 2004).
21. The curator is required to sell the bankrupt's assets in public (through an auction house). If the sale is not successful in public, then a private sale can be carried out with the permission of the Supervisory Judge. (All objects that cannot be immediately or at all settled, then the Curator decides what action must be taken against the object with the permission of the Supervisory Judge.
22. The curator is obliged to pay the receivables of creditors who have the right to retain an object, so that the object is returned and benefits the bankrupt estate.
23. Based on Article 186 of the Bankruptcy and PKPU Law, for the purposes of settling bankrupt assets, the Curator may use the services of a Bankrupt Debtor with the provision of remuneration determined by the Supervising Judge (UU, 2004).
24. If the Supervisory Judge is of the opinion that there is sufficient cash, the Curator is ordered to make a distribution to the Creditors whose receivables have been verified.
25. The curator is obliged to prepare a distribution list for approval by the Supervising Judge.
26. After the expiration of the time limit for viewing the distribution list as referred to in Article 192, or in the event that an objection has been filed after the decision on the objection case has been pronounced, the Curator is obliged to immediately pay the distribution that has been determined.
27. Based on Article 202 of the Bankruptcy and PKPU Law, as soon as the Creditors who have been verified are paid the full amount of their receivables, or as soon as the closing distribution list becomes binding, the bankruptcy ends. The Curator makes an announcement regarding the end of the bankruptcy in the State Gazette of the Republic of Indonesia and 2 (two) newspapers (UU, 2004).
28. The curator is obliged to provide accountability regarding the management and settlement that he has carried out to the Supervisory Judge no later than 30 (thirty) days after the bankruptcy ends.
29. The Curator returns to the Debtor all books and documents regarding the bankrupt assets held by the Curator with a valid receipt.

The Curator must uphold the principle of transparency in the management of the bankrupt estate. If the Curator acts excessively, deviates and is proven to be detrimental to the interests of creditors and bankrupt debtors, the Curator can be held personally accountable (Nainggolan, 2015).

Implementation of Business Continuity Provisions (Going Concern) in the Bankruptcy of PT. Banjar Intan Mandiri Based on Decision No. 54/Pdt.Sus-PKPU/2020/PN Niaga Sby

The principle of business continuity is a principle or legal principle that is formulated broadly and becomes the basis of bankruptcy legal norms and suspension of debt payment obligations. The application of the principle of business continuity is not limited to the normative text, but has a broad meaning that also includes the entire process of issuing bankruptcy decisions and suspension of debt payment obligations. The application of the principle of business continuity in bankruptcy cases is in the context of legal protection for debtors and has a positive impact on increasing the economic value of the company which in turn is used to pay debts to its creditors.

The application of the principle of business continuity is not only in the process of settling bankrupt assets as regulated in Article 178 paragraph (2), Article 179 paragraph (1) and Article

184 paragraph (2) of the Bankruptcy and PKPU Law, but also in the process of managing bankrupt assets in accordance with Article 104 paragraph (1) and (2) of the Bankruptcy and PKPU Law. This is important to avoid large companies that support the economy, both as foreign exchange earners and as a place to absorb workers who still have business prospects to become liquid. Thus, the principle of business continuity is very important to be considered by judges before issuing a bankruptcy decision by expanding the meaning of the "principle of business continuity" as stated in the General Explanation of the Bankruptcy and PKPU Law.

The application of the principle of business continuity in adjudicating bankruptcy cases can provide encouragement to judges to first look at the company's financial condition using the insolvency test method even though the Bankruptcy Law and PKPU themselves do not regulate this (Nugroho, 2013). This action will reflect a cautious attitude for bankruptcy judges before actually placing a company in a state of bankruptcy.

The Bankruptcy Law does not specifically regulate provisions regarding the financial condition of the debtor as a requirement to be declared bankrupt through an insolvency test. This situation is in contrast to the existence of the principle of business continuity in the Bankruptcy Law and PKPU, which stipulates that debtors who still have the potential are allowed to continue their business without having to go bankrupt. One reference to this potential can be seen through the state of their financial assets and liabilities. A Going Concern Audit by an Auditor is a method that can be used to determine the financial condition of a business entity or company, this activity is very necessary in relation to the Insolvency Test mechanism. Going concern or the principle of business continuity is the principle of the survival of an entity (business entity). Going concern shows that an entity (business entity) is considered to be able to maintain its business activities in the long term, and will not be liquidated in the short term. Evidence of the potential and ability to survive a business entity or company that is included in the category, is proven in the form of an auditor's report as a party who has the competence to assess whether a company can properly continue its business or is eligible for bankruptcy (Simalango, n.d.).

Judges need to consider the condition of the debtor when deciding on a bankruptcy case, when the debtor in question still has hope of getting back on his feet, being able to pay his debts to creditors, if there is sufficient time and the large number of workers whose fate depends on the company in question.

In certain cases, the opportunity to continue trying needs to be given to honest Debtors and with that decision, the interests of Creditors and the needs of the community can be protected. The principle of going concern is a characteristic of modern bankruptcy law that fills the gap in the provision of write-offs, debt (debt recharge) and providing a fresh start for debtors in the Bankruptcy Law and PKPU (Ginting, 2018).

Based on the principle of business continuity, bankruptcy as a general seizure of the debtor's assets does not immediately stop the operation of the debtor's business which still has going concern status. The principle of the debtor's business continuity can even be applied by the Curator immediately after the bankruptcy decision is pronounced, as contained in Article 104 of the Bankruptcy Law and PKPU. Starting from when the debtor is declared bankrupt, the Bankruptcy Law and PKPU give the curator the authority to continue the debtor's business to continue operating. The authority granted by Article 104 of the Bankruptcy Law and PKPU to the curator to continue the debtor's business must be aimed at increasing the value of the bankrupt's assets.

The principle of business continuity plays a very important role in saving bankrupt debtors and in increasing the value of bankrupt assets. The Bankruptcy Law has provided certainty for curators to be able to continue the business of debtors declared bankrupt. Curators are required to carry out their management and/or settlement duties optimally, including continuing the debtor's business to increase the value of bankrupt assets. PT. Banjar Intan

Mandiri is a regional-owned company of the Banjar Regency Government engaged in coal mining. PT. Banjar Intan Mandiri was declared bankrupt by the Commercial Court at the Surabaya District Court on December 17, 2020 based on Decision No. 54/Pdt.Sus-PKPU/2020/PN Niaga Sby.

In carrying out the task of managing and settling bankrupt assets, the Curator Team of PT. Banjar Intan Mandiri makes every effort to maximize the value of the bankrupt assets. One of the steps taken by the curator in the task of managing and settling bankrupt assets is to ask for permission from the Supervisory Judge so that the Debtor's business of PT. Banjar Intan Mandiri can continue to run even though it is bankrupt. This is because PT. Banjar Intan Mandiri still has work contracts with several of its creditors based on a cooperation agreement. This was also granted by the Supervisory Judge.

In its consideration, the Supervisory Judge explained that the Curator Team's task is to manage the bankrupt assets. The purpose and objective of granting a going concern permit is to increase the bankrupt assets. If the business activities of PT. Banjar Intan Mandiri are not continued, it is suspected that the bankrupt assets will not be sufficient to pay off all its debts to its creditors, so the Supervisory Judge granted the Curator Team's request for permission to continue the business of PT. Banjar Intan Mandiri, because by continuing to operate, it is likely to increase and improve the value of the bankrupt assets and benefit its creditors.

The granting of the permit is stated in the Decree No. 54/Pdt.Sus-PKPU/2020/PN Niaga Sby dated January 11, 2021 (PKPU, 2021). Based on the decree, the Curator is the only party authorized to carry out the task of managing and/or settling bankrupt assets as regulated in Article 16 paragraph (1) in conjunction with Article 69 paragraph (1) of the Bankruptcy Law, so the Bankrupt Debtor is obliged to submit to and obey the curator in terms of continuing the continuity of the bankrupt debtor's business. In its journey, after the curator continued the debtor's business for 1 (one) year, and it turned out that the debtor's business was growing and Decree No. 54/Pdt.Sus-PKPU/2020/PN Niaga Sby dated January 11, 2021, the condition of the company PT. Banjar Intan Mandiri is getting better. However, later, the Ministry of Energy and Mineral Resources (ESDM) as the party authorized to issue permits in the mining and mineral and coal business sector suddenly revoked the Mining Business Permit (IUP) of the bankrupt debtor on January 10, 2022 in the midst of the Curator Team continuing the business of the Bankrupt Debtor PT. Banjar Intan Mandiri. The Ministry of ESDM issued a letter of revocation of the PKP2B permit through Decree Number 20220110-01-62835 dated January 10, 2022 and letter No. T-837 RKAB/MB 05/DJB,8/2022 dated February 2, 2022 concerning Rejection of the 2022 PKP2B RKAB of PT Banjar Intan Mandiri.

The basis for revoking the IUP is based on Article 119 of Law No. 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, namely that the IUP or IUPK may be revoked by the Minister if:

- a. IUP or IUPK holders do not fulfill the obligations stipulated in the IUP or IUPK and the provisions of statutory regulations;
- b. the holder of an IUP or IUPK commits a criminal act as referred to in this Law; or
- c. IUP or IUPK holders are declared bankrupt (UU, 2020).

The revocation of the business license stops the curator's steps in increasing the value of the bankrupt's assets, so that the interests of his creditors are harmed. Whereas based on Article 104 of the Bankruptcy and PKPU Law, on 136 Article 119 of Law No. 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, the approval of the creditor committee (if any) or with the permission of the supervisory judge, the Curator can continue the business of the Debtor who has been declared bankrupt even though an appeal or judicial review has been filed against the bankruptcy declaration decision. Thus, the Bankruptcy Law gives the curator the authority to continue the business of the bankrupt debtor (going concern).

The goal is to maintain the continuity of the debtor's business so that it remains productive if peace is achieved in bankruptcy and if the bankruptcy decision is canceled by the Supreme Court. The curator's task in implementing the principle of going concern is hampered by the revocation of the debtor's business license. After the revocation of the license, the curator temporarily stopped the business activities of PT. Banjar Intan Mandiri. Due to the revocation of the license, the Curator took legal action, namely filing a lawsuit in the Surabaya Commercial Court against the Ministry of Energy and Mineral Resources which had revoked the business license of PT.

Banjar Intan Mandiri. The lawsuit was granted by the Surabaya Commercial Court in its decision read out on August 9, 2022, stating that the Revocation of the Permit was invalid and had no binding legal force because it was detrimental to the bankrupt company and stating that Stipulation No. 54/Pdt.Sus PKPU/2020/PN Niaga Sby dated January 11, 2021 concerning granting permission to the Curator Team of PT. Banjar Intan Mandiri (In Pallit) to continue the business and maintain the assets of the bankrupt debtor (Going Concern) was valid and had binding legal force.

In bankruptcy law in Indonesia, legal certainty is needed in order to provide justice for creditors and bankrupt debtors. The Bankruptcy Law and PKPU have strictly regulated the principle of business continuity in the event of bankruptcy of bankrupt debtors. The principle of business continuity aims to maintain and increase the productivity of debtor companies that still have future business prospects. However, in the case of the debtor being a company engaged in coal mining, a mining permit is required as regulated in Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining.

The existence of 2 (two) conflicting provisions, namely the provisions in Article 119 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining and Article 104 of Law Number 37 of 2004 concerning Bankruptcy and PKPU, creates legal uncertainty in carrying out going concern for bankrupt companies.

Legal certainty as one of the objectives of law can be said to be part of the effort to realize justice. The real form of legal certainty is the implementation or enforcement of the law against an action regardless of who does it. With legal certainty, everyone can estimate what will be experienced if they do a certain legal action. Certainty is needed to realize the principle of equality before the law without discrimination (MD, 2007).

Therefore, the author uses the theory of legal certainty as an analytical tool in this study. One of the important objectives of the UUK is to create legal certainty for the interests of the business world in resolving debts fairly, quickly, openly and effectively (Nainggolan, 2015).

CONCLUSIONS

The curator is authorized to carry out the task of managing and/or settling all of the debtor's assets that become bankrupt assets. This is because by law the Debtor loses his right to control and manage his assets that are included in the bankrupt assets since the date the bankruptcy decision was pronounced. In carrying out his duties, the Curator is not required to obtain approval from or provide prior notification to the Debtor or one of the Debtor's organs, although in circumstances outside of bankruptcy such approval or notification is required. The Curator is required to take actions that can increase the value of the bankrupt assets.

The application of business continuity provisions in bankruptcy cases is in the context of legal protection for debtors and has a positive impact on increasing the economic value of the company which in turn is used to pay debts to its creditors. The revocation of PT. Banjar Intan Mandiri's business license stops the curator's steps in increasing the value of the bankrupt estate, so that the interests of its creditors are harmed. Therefore, in order to maximize and increase the value of the bankrupt estate, the Curator Team took legal action by filing Other Claims at

the Surabaya Commercial Court against the Ministry of Energy and Mineral Resources which revoked PT. Banjar Intan Mandiri's business license. The lawsuit was granted by the panel of judges at the Surabaya Commercial Court and stated that the revocation of PT Banjar Intan Mandiri's business license was invalid. In the decision, the panel of judges also stated that the Curator could continue the bankrupt debtor's business.

REFERENCES

- Abdul Kadir. (2004). *Law and Legal Research*. Bandung: PT. Citra Aditya Bakti.
- Adi Nugroho. (2013). *Legal Analysis of Insolvency in Bankruptcy (Normative Study of Article 2 Paragraph (1) of Law No. 37 of 2004 Concerning Bankruptcy and Suspension of Debt Payment Obligations)*. Scientific Article, Ministry of National Education, Faculty of Law, Brawijaya University, Malang.
- Bernard Nainggolan. (2014). *The Role of Curators in the Settlement of Bankrupt Boedel*. Badung: PT. Alumni.
- Bernard Nainggolan. (2015). *Transparency in the Settlement of Bankrupt Boedel*. Bandung: PT. Alumni.
- Elyta Ras Ginting. (2018). *Bankruptcy Law: Creditors' Meetings*. Jakarta: Sinar Grafika.
- Kartini Muljadi. (2001). *Settlement of Debts Receivables Through Bankruptcy or Postponement of Debt Payment Obligations*. Bandung: PT. Alumni.
- Law No. 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining.
- Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.
- Mahfud MD. (2007). *Legal Certainty Clashes with Justice*. Bandung: Citra Aditya Bakti.
- Man. S. Sastrawidjaja. (2006). *Bankruptcy Law and Suspension of Debt Payment Obligations*, 1st Printing. Bandung: Alumnus.
- M. Hadi Subhan. (2008). *Bankruptcy Law: Principles, Norms, and Practices in the Courts*. Jakarta: Kencana.
- Maruli Simalango. *The Principle of Business Continuity (Going Concern) in Indonesian Bankruptcy Law*. Journal of Law.
- Susanti Adi Nugroho. (2020). *Bankruptcy Law in Indonesia in Theory and Practice and its Legal Application*. Jakarta: Prenadamedia Group.
- Sutan Remi Sjahdeini. (2018). *History, Principles, and Theory of Bankruptcy Law*. Jakarta: Prenadamedia Group.
- Syamsudin M. Sinaga. (2012). *Indonesian Bankruptcy Law*. Jakarta: PT Tatanusa.
- The Liang Gie. (2002). *Theories of Justice*. Yogyakarta: Sumber Sukses.
- WJS Poerwadarminta. (2006). *General Dictionary of the Indonesian Language*, Third Edition. Balai Pustaka.
- Yahya Harahap. (2017). *Civil Procedure Law*. Jakarta: Sinar Grafika.