

APPLICATION OF THE PRINCIPLES OF JUSTICE TO PKPU APPLICATIONS BY DEBTORS AND BANKRUPTCY APPLICATIONS BY CREDITORS

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Abstract

Bankruptcy law is seen as a solution to the problem of debts and receivables that burden debtors who no longer have the ability to pay their debts to their creditors. PKPU is a period provided by law through a commercial judge's decision, during which the parties, namely creditors and debtors, are given the opportunity to discuss and agree on how to make debt payments by providing a payment plan for all or part of the debt. Request for Postponement of Debt Payment Obligations (PKPU) is a mechanism in bankruptcy law that provides an opportunity for debtors who are experiencing debt payment difficulties to carry out debt restructuring. Based on Law Number 37 of 2004 concerning Bankruptcy and PKPU, both debtors and creditors can apply for PKPU. The type of research used in this research is normative juridical. The application of the provisions regarding PKPU has given rise to various debates related to the principle of justice, namely that the application of the concept of justice in resolving bankruptcy cases can be interpreted as a situation where the debtor stops paying his debts which are due in social life in society. The principle of justice in resolving bankruptcy cases is defined as a commercial solution to get out of debt and receivable problems that are pressing on a debtor, so that the bankruptcy institution functions as an alternative institution for resolving debtor obligations towards creditors more effectively and efficiently.

Keywords: PKPU, Bankruptcy, Principles of Justice, Debtors, Creditors

INTRODUCTION

The business world has developed rapidly, and companies are one of the driving forces in the business world and are a means in a country's economic system. To operate their businesses, companies require a significant amount of capital, therefore, companies need capital injections from various financial institutions or other corporate bodies to support the continuity of their businesses. However, in the world of commerce, success is not always guaranteed. Many problems arise in the midst of business continuity, such as the company may not have good financial management calculations, resulting in various debt problems (Naihasy, 2005). This will certainly become a source of problems for the continuity of the business, so that the company will experience a financial crisis. If a company has a lot of debt while the company's income is less than its debt, then the company cannot pay its debts, and from this arises the term bankruptcy (Hartono, 2009).

The bankruptcy institution has the main function, as the realization of two important articles in the Civil Code, namely Article 1131 and Article 1132 concerning the debtor's responsibility for his debts. There are 3 exceptions to the principles contained in these two articles, namely:

1. The exception to Article 1131 of the Civil Code is that while goods, even though they are owned by the debtor, cannot be used to fulfill creditor claims, such as goods that cannot be confiscated, goods which are included in the details of Article 22 of the Bankruptcy Law;
2. On the other hand, there are goods that are not owned by the debtor, but can be the object of execution for creditors and the proceeds from their sale can be used to settle creditor bills, namely goods belonging to third parties that are used as collateral for the repayment of the debtor's money.

Certain creditors' rights to priority are stipulated in Article 1132 of the Civil Code (Hartono, 2009). This article provides a guarantee of certainty to creditors that the debtor's obligations will be fulfilled or paid in full, secured by the debtor's assets, both existing and future. The debtor is compelled to fulfill their obligations to the creditor. If the debtor defaults, meaning they have breached the contract, then all of the debtor's bankrupt assets will serve as collateral for all their debts (Hartono, 2009). This is reinforced by Pradjoto's opinion that the provisions of Articles 1131 and 1132 of the Civil Code indicate that the law intends to protect creditors and compel debtors to fulfill their obligations (Hartono, 2009). The proceeds from the sale of the debtor's assets will be distributed proportionally to the creditors based on the principle of proportionality of the type and amount of each creditor's claim. The relationship between these two articles shows that the debtor's assets (Article 1131 of the Civil Code) serve as a joint guarantee for all creditors, except for creditors with preferential rights (Hartono, 2009). The formulation of Article 1131 of the Civil Code shows that every action taken by a legal subject in the field of civil law, especially in the field of property law, will always have consequences for their assets, both in terms of increasing the amount of assets and decreasing the amount of assets in the future. Thus, the assets owned by a legal subject will always be in a dynamic state and constantly changing over time (Subhan, 2009). However, if it turns out that in a property relationship, a legal subject has more than one obligation to be fulfilled to more than one legal subject entitled to the fulfillment of that obligation, then the provisions of Article 1132 of the Civil Code will apply (Subhan, 2009).

By adhering to the provisions of Articles 1131 and 1132 of the Civil Code, it shows that there is an obligation for a bankrupt debtor to pay off their debts to all creditors, especially creditors who are given priority in payment due to the nature of their claims, namely separate creditors. If a debtor feels that they cannot pay all of their debts, they can request the Commercial Court to file for a suspension of debt payments so that they can be given sufficient time to pay their debts to their creditors. By filing this request, it is hoped that the debtor can

pay off all debts to their creditors (Sunarmi, 2010). Based on the explanation of Article 222 paragraph 2 of Law Number 37 of 2004, a creditor is defined as any creditor, whether a concurrent creditor or a preferred creditor.

PKPU is a period granted by law through a commercial court decision during which the parties, namely creditors and debtors, are given the opportunity to consult and agree on how to pay debts by providing a repayment plan for all or part of their debts (Wantu, 2007). PKPU can be filed by either the debtor or the creditor experiencing debt-related problems. The provision allowing creditors to file for PKPU is a new provision in the PKPU Law (Hartono, 1999). The motives for debtors to file for PKPU are: (1) Debtor's application because the debtor wants to restructure the debt; (2) Debtor's opposition to a bankruptcy petition from the creditor; (3) Creditor's application for the debtor's debt to be restructured; and (4) Creditor's opposition to a bankruptcy petition by the debtor (Fuady, 2010).

In practice, creditors may benefit from PKPU, but they cannot be completely at ease. There are concerns about fraudulent acts committed by debtors during the PKPU process, which is a problem that creditors must face and anticipate. Examples of fraudulent acts committed by debtors include debtors absconding, transferring their assets to third parties, or prioritizing payments to certain creditors, due to the lack of adequate supervision by the PKPU committee. This contradicts the tradition of creditors desiring broad flexibility in choosing the right time to exercise their rights in accordance with market conditions. This is considered a violation of creditors' rights because the concept of balanced interest protection is in line with the principles of the Indonesian state, Pancasila. Pancasila not only recognizes individual interests but also the interests of the many or society. Pancasila must not only consider human rights but also the fundamental duties of individuals. Based on the principle of "Just and Civilized Humanity," an attitude of not being arbitrary towards others should be developed.

RESEARCH METHODS

The type of research used in this study is normative legal research. This normative juridical method is used to systematically explain a regulation and analyze its relationship with relevant laws and regulations aimed at analyzing in depth the implementation of bankruptcy law in Indonesia, especially regarding the rights of creditors and debtors in filing for PKPU, and the application of the principle of justice (Diantha, 2016). This normative legal research can also be called doctrinal legal research, which focuses on the analysis of written law in legislation (Qamar & Rezah, 2020).

RESULT AND DISCUSSION

Application of the Principles of Justice in PKPU Applications by Debtors and Bankruptcy Applications by Creditors

PKPU is a right granted by the Commercial Court to a debtor to continue their business activities, so that they can pay off all their creditors' debts. This is because bankruptcy causes the debtor to lose all civil rights to control and manage the assets that have been included in the bankrupt estate (Saija & Sudirawan, 2021). Furthermore, lawsuits filed with the aim of obtaining a lien on the bankrupt estate, while in bankruptcy, which are directly filed against the bankrupt debtor, can only be filed in the form of a reconciliation report (Widjaja, 2004). Unlike bankruptcy, in a suspension of debt payments, the company's organs (including the board of directors) still have the authority to carry out their duties. However, in carrying out these duties, they must be authorized/assisted/approved by what is called a "trustee". In this case, the "trustee" is similar to a "curator". During the suspension of debt payments period, in order to carry out management actions or transfer rights to their assets, a debtor must be authorized by

the trustee, as explained in the provisions of Article 240 paragraph 1 of Law Number 37 of 2004 (Fuady, 2010).

With the existence of PKPU, the following things will happen (Budiyono, 2021):

- a. The creditors' debts can be paid in full by the debtor;
- b. The payment of creditors' debts is settled partially through a step-by-step settlement;
- c. An out-of-court settlement;
- d. The homologation of a settlement if there is a judicial settlement or forced settlement;
- e. A declaration of bankruptcy if the objectives to be achieved through the postponement of payments are not met (Asikin, 2001).

The essence and purpose of granting PKPU by the Commercial Court to bankrupt debtors, it can be understood that the benefits that can be obtained from granting a postponement of debt payment obligations are (Andani & Pratiwi, 2021):

1. Benefits for the debtor

With PKPU, the debtor is given sufficient time to restructure its debt and even possibly reorganize its company, so there is a greater possibility that the debtor can resume its business and pay off all its debts.

2. Benefits for creditors

Because the debtor is given the opportunity to improve its performance or overcome its financial difficulties, there is a high possibility that creditors will receive full payment of their claims, thus not harming the creditors (Yahanan, 2007).

The application of bankruptcy law in Indonesia has undergone significant changes since the enactment of Law Number 37 of 2004 concerning Bankruptcy and PKPU. One of the prominent aspects of this law is the granting of the right to creditors to file a PKPU petition against debtors. Although this right aims to protect creditors who are unable to collect debts, questions arise as to whether this right should remain given the potential for abuse and the injustice that may arise for debtors. Conversely, debtors also have the right to file for PKPU as an effort to restructure their debts, especially in situations where creditors file for bankruptcy. The application of the principle of justice in this case is crucial, as the purpose of bankruptcy law and PKPU is to create a balance between the rights of debtors and creditors.

Indonesian bankruptcy law, as stipulated in Law Number 37 of 2004, has granted both debtors and creditors the right to file for a Suspension of Debt Payment Obligation (PKPU). PKPU aims to provide an opportunity for financially distressed debtors to restructure their debts and avoid bankruptcy. This reflects the application of the principle of balance and justice in bankruptcy law, where the debtor's right to restructure debts is balanced with the creditor's right to demand payment. However, the exercise of creditors' rights to file for PKPU has raised debates regarding the principle of justice. In essence, creditors have the right to file for PKPU if the debtor is deemed unable to fulfill their obligations. However, there is a concern that this right may be abused by economically stronger creditors to pressure debtors and expedite debt settlement without considering the debtor's capacity to restructure their debt (Simaremare, 2023). Conversely, debtors facing bankruptcy petitions from creditors also have the right to file for PKPU as a step to maintain their business and settle their obligations in a more structured manner. However, the problem that arises is the inequality in access to legal remedies, especially when a PKPU filed by a creditor is considered unfair. The principle of justice in this case requires a balance between the rights of debtors and creditors. Creditors must have the right to file for PKPU, but this right needs to be limited to prevent abuse in efforts to pressure financially distressed debtors (Alexander & Parulian, 2022). On the other hand, debtors must also be given the right to defend themselves, including the right to appeal a PKPU decision filed by a creditor (Rosalind & Sari, 2022).

Regulation of the Concept of Justice According to Indonesian Bankruptcy Law in the Case of Application for Postponement of Debt Payment Obligations (PKPU)

The law that protects creditors from other creditors seeks to prevent one creditor from obtaining more than the others in the distribution of bankrupt assets. Meanwhile, protection from dishonest debtors is obtained by requiring debtors to fully disclose their financial condition to all creditors on a periodic basis (Rosalind & Sari, 2022). As is known, the main purpose of bankruptcy, according to Mosgan Situmorang, is to distribute the debtor's assets among the creditors through a curator. Bankruptcy is intended to avoid separate seizures or executions by creditors and replace it with a joint seizure so that the debtor's assets can be distributed to all creditors according to their respective rights, because bankruptcy exists to ensure that creditors obtain their rights to the assets of a bankrupt debtor. A debtor who owes money to several creditors and is known to have breached a contract will try various ways to get paid the most as quickly as possible, both legally and illegally. This is reinforced by Kartini Muljadi's opinion that the purpose of the Bankruptcy Law is to avoid situations that can harm creditors. Furthermore, from a historical legal perspective, the bankruptcy law aims to protect creditors by providing a clear and certain way to settle unpaid debts.

PKPU is an important mechanism in Indonesian bankruptcy law that allows companies or individuals facing financial difficulties to recover their financial condition and prevent bankruptcy through controlled and fair restructuring. The concept of justice has been widely discussed by experts because justice is something that is very close to the fulfillment of human rights and interests. In the concept of justice, there are various definitions of justice among experts, fair meaning putting everything in its proper proportion (Juni, 2012). The word fair or justice is a combination of moral and social values that are the embodiment of fairness, balance, temperance, and straightforwardness (Santoso, 2012).

In practice, it is not easy to formulate what the benchmark or parameter of justice is, because the nature of the issue of justice is that its implementation in practice is felt to be fair or unfair based on the assessment of each party. PKPU is an effort that can be made by a debtor who is facing financial difficulties to avoid bankruptcy by obtaining the agreement of most of its creditors to postpone the payment of its debts for a certain period. PKPU also aims to protect the rights of creditors in the PKPU process, the rights of creditors will be respected, and the postponement of payments will be based on a fair agreement between the parties involved. In relation to the enforcement of Indonesian Bankruptcy Law, the enforcement of just law is required. This is because the law is a means of realizing justice (Rahardjo, 2009). Legal products, both laws and court decisions, in their implementation, in addition to providing legal certainty and order, must also provide legal protection¹ for the parties involved, which is based on justice and truth. Bankruptcy law as a legal institution in resolving debtor debt problems has the meaning of a solution to resolving debtor debt, rather than being used to bankrupt a business. In principle, bankruptcy is a last resort to overcome a bankrupt business, so it can be said that bankruptcy is an exit from financial distress.

CONCLUSIONS

The principle of justice in bankruptcy law means that bankruptcy provisions should satisfy the sense of justice for all stakeholders, including creditors, debtors, and other interested parties. This principle of justice aims to prevent the arbitrary actions of creditors seeking payment of their respective claims against the debtor. The application of the principle of justice in Indonesian bankruptcy law, especially in the context of PKPU applications filed by both debtors and creditors, shows a significant challenge in creating a balance between the rights of debtors and creditors. Granting creditors the right to file for PKPU can indeed protect creditors' rights, but in practice, this often leads to injustice for debtors who are experiencing financial difficulties. Revisions to the Bankruptcy Law must be carefully carried out to ensure that the

rights of both creditors and debtors are fairly protected. The elimination of creditors' rights to file for PKPU must be balanced with granting debtors the right to appeal a PKPU filed by creditors. In this case, the principle of justice must be upheld by considering the balance of rights of both parties, so that the bankruptcy and PKPU legal processes can be carried out fairly and transparently. The Bankruptcy and PKPU Law is the starting point for the reform of bankruptcy law in Indonesia, which aims to protect both debtors and creditors.

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