

THE ROLE OF LEGAL AUDIT IN MITIGATION OF THE RISK OF BANKRUPTCY OR PKPU APPLICATIONS TOWARDS THE COMPANY

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Abstract

Several well-known companies have recently been the subject of discussion due to their bankruptcy filings. One of the most frequently filed disputes is a request for a suspension of debt payment obligations (PKPU) and bankruptcy. At least several companies have disputes being processed at the Commercial Court at the Central Jakarta District Court (PN). One such case occurred with the Meikarta developer, PT Mahkota Sentosa Utama (MSU), which was sued by PT Graha Megah Tritunggal for a suspension of debt payment obligations (PKPU) or bankruptcy on October 6, 2020, under case number 328/Pdt.Sus-PKPU/2020/PNNiagaJkt.Pst. Based on the cases above, bankruptcy can occur due to a bankruptcy lawsuit. This condition reflects a high level of financial distress for the company. This can occur due to the inability of company management to carry out its management functions, thus threatening business continuity. In other words, corporate governance is not running as it should. The type of research used in this paper is normative legal research. An important step in legal risk management, legal audits have a strategic role in mitigating potential bankruptcy applications or PKPU against companies by helping to detect the risk of corporate bankruptcy early. Legal audit results are often considered an important tool to support a company's defense in legal proceedings, including in bankruptcy applications or PKPU. Investigative legal audit results can be used as evidence of expert testimony in criminal trials. The Board of Commissioners and the Audit Committee as internal monitoring mechanisms have a role to detect potential bankruptcy early. Therefore, an external monitoring role is needed, carried out by an independent auditor, in this case a public accounting firm (KAP). Because auditing can provide value and benefits to a company's decision makers regarding the quality of the company's financial report information, the role of audits can detect the possibility of a company's bankruptcy.

Keywords : Bankruptcy, Legal Audit, Company

INTRODUCTION

In the business world, legal risk management is a crucial element that every company must consider. One common legal risk is the potential for bankruptcy or a suspension of debt payment (PKPU), which not only impacts the company's continuity but can also implicate the company's management as the primary defendant. When management is named the primary defendant, as in the case of Saiful Bahri and Kusni Yuli, who ran a housing development business in Palembang, the management's personal assets are also included in the bankruptcy estate.

The presence of bankruptcy in a company reflects a high level of financial distress, which can threaten the company's management function. Therefore, the Board of Commissioners and the Audit Committee, as internal monitoring mechanisms, must play a role in detecting potential bankruptcy. This also requires external monitoring by independent auditors, namely Public Accounting Firms (KAP), so that auditors can provide benefits to a company's decision-makers regarding the quality of the company's financial reporting information. Thus, the auditor's role can prevent bankruptcy in companies.

Legal audits play a crucial role in providing a comprehensive overview of a company's legal standing. Through legal audits, potential legal violations or weaknesses in company documents can be identified early, allowing effective mitigation measures. However, while legal audits can be a preventative measure and a defense tool in the face of bankruptcy or suspension of business orders (PKPU), their effectiveness is often debated (Fauzi, 2023).

Suspension of Debt Payment Obligations (PKPU) is a mechanism that can be used by Debtors to negotiate to pay and/or settle their debts that have matured by temporarily suspending debt payments with the approval of the Creditors and the Court, while Bankruptcy based on Article 1 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and PKPU (Bankruptcy and PKPU Law), namely "general confiscation of all assets of the Bankrupt Debtor whose management and settlement is carried out by the Curator under the supervision of the Supervisory Judge as regulated in this Law".

The purpose of filing a PKPU (Debt Settlement Order) according to the Bankruptcy Law and the PKPU is to propose a reconciliation plan that includes an offer to pay some or all of the debt, including restructuring. Therefore, the purpose of the PKPU itself is to enable a debtor to continue their business despite payment difficulties, thus avoiding bankruptcy. In this case, the PKPU is an important tool in preventing corporate bankruptcy due to debts. In addition, the PKPU also provides an opportunity for companies to revitalize their businesses, protect creditors, and preserve jobs (Subhan, 2015). The main requirement for filing a PKPU application is that it must be submitted before the company is declared bankrupt by a court decision. Therefore, the auditor's role is crucial in preparing a comprehensive legal audit report regarding the company's debts and receivables and mitigating risks for both debtors and creditors.

The factors underlying PKPU to prevent bankruptcy depend on the contents of the agreement between the parties which contain the debt repayment schedule, the terms of the agreement, the reduction or release of the amount of debt. Thus, according to the Bankruptcy and PKPU Law, there are specific regulations regarding the PKPU submission procedure which is regulated in Article 224 of the Bankruptcy and PKPU Law, namely as follows (Sutedi, 2009):

1. The PKPU application must be submitted to the Commercial Court and signed by the applicant and his/her lawyer;
2. If the applicant is a debtor, the application for postponement of debt payment

obligations must be accompanied by a list containing the nature, amount of receivables and debts of the debtor along with sufficient evidence;

3. If the applicant is a creditor, the Court is obliged to summon the debtor via a bailiff by registered express mail no later than 7 (seven) days before the hearing;
4. At the hearing, the debtor submits a list containing the nature, amount of the debtor's receivables and debts along with sufficient evidence and, if any, a peace plan;
5. A peace plan can be attached to the application letter.

A PKPU (Debt Suspension) is an important measure to prevent bankruptcy due to a company's financial situation. Furthermore, it can provide an opportunity for companies to revitalize their businesses, protect creditors' rights, and maintain the company. A PKPU provides debtors with the advantage of having a significant opportunity to repay their debts, thus preventing the company from being declared bankrupt (Rahmadiyahanti, 2015).

Postponement of debt payment obligations is an alternative debt settlement to avoid bankruptcy. According to Munir Fuady, this debt payment suspension (PKPU) is a certain period of time granted by law through a commercial court decision, during which time the Creditor and Debtor are given an agreement to discuss ways to pay their debts by providing a peace plan (composition plan) for all or part of their debt, including if necessary restructuring the debt. Thus, the postponement of debt payment obligations (PKPU) is a kind of moratorium in this case a legal moratorium.

During the PKPU period, the Debtor cannot take any administrative action or transfer rights to his assets without the approval of the appointed administrator. If the Debtor has taken legal action without obtaining authority from the administrator, then the administrator has the right to act to ensure that the Debtor's assets are not harmed by the Debtor's actions. Therefore, the PKPU has legal consequences for the Debtor's authority and obligations until the end of the term.

The actions of the PKPU administrator in bankruptcy law are a responsibility that must be carried out in good faith, honestly and openly. The qualification of good faith is emphasized in the substantive specificity standard of behavior (Khairandy, 2004), so that the granting of trust to carry out fiduciary duty is based on the fiduciary capacity of the trusted person (Fuady, 2002). Fiduciary capacity can be seen from the fact that the assets managed or the business transacted are not theirs, but a responsibility entrusted to them (Riana, 2008).

RESEARCH METHODS

The type of research used is normative or doctrinal legal research. It is a normative research type because it is conducted by analyzing legal norms (existing provisions) (Marzuki, 2010). Using Ronald Dworkin's term, this type of research is also called doctrinal research (Hanitijo, 1998), namely research that analyzes law, both written in books (law as it is written in the book) and law decided by judges through the judicial process (Nasution, 2003). In addition, this research is a study that discusses systematically, analyzes the relationship between provisions, and examines and predicts possible future developments. This research includes research on legal principles, legal history, and comparative law (Ibrahim, 2007). Therefore, this research focuses on library research, which means it will examine and review secondary data obtained from research.

RESULT AND DISCUSSION

A. The Role of Legal Audit in Mitigating the Risk of Bankruptcy Applications or PKPU for Companies

A legal audit is a comprehensive legal evaluation of various aspects of a company's operations, including legal documents, contracts, permits, regulatory compliance, and potential legal disputes. In the context of bankruptcy or suspension of business operations

(PKPU), a legal audit can play a crucial role as a preventative measure to mitigate potential lawsuits.

One of the primary functions of a legal audit is to identify potential legal violations or loopholes that could be exploited by third parties to file for bankruptcy or a suspension of debt (PKPU). In the case of Saiful Bahri and Kusni Yuli, an evaluation of financial documents, business contracts, and asset ownership structures can help detect potential conflicts that could lead to legal action. By conducting a legal audit, companies can:

1. Ensuring that the ownership structure and responsibility for company assets are clear and do not give rise to legal interpretations that could potentially harm the management personally.
2. Identify contracts or agreements that can be the basis for a bankruptcy or PKPU application, so that corrective steps can be taken before a dispute occurs.
3. Ensuring compliance with applicable regulations, so that the company is not in a weak position when facing opposing parties.

A legal audit can provide strategic recommendations for rewriting business agreements or revising internal documents that could potentially pose legal risks. For example, clauses in debt agreements can be adjusted to avoid ambiguity that could be used as a basis for a bankruptcy petition (Putri, 2024).

B. Legal Ratio: The Results of Investigative Legal Audits Can Be Used as Expert Witness Testimony in Criminal Trials

Legal audit results are often considered an important tool to support a company's defense in legal proceedings, including in bankruptcy applications or PKPU (Mangesti, Suhartono & Asmara, 2021). Investigative legal audit results can be used as expert testimony evidence in criminal trials. Expert testimony is valid evidence in criminal trials, according to Article 184 paragraph (1) of the Criminal Procedure Code. Expert testimony is provided by people who have special expertise related to criminal cases. Expert testimony is based on education, training, certification, skills, or experience. Judges can consider expert opinions to help find the truth. Judges are not bound to follow expert testimony if it conflicts with their beliefs. Audit evidence can be developed into legal evidence, such as written evidence or instructions. Investigative auditor statements and Investigative Audit Reports can serve as expert testimony evidence. In proving criminal acts, relevant, competent, and valid audit evidence can be developed into legally valid evidence.

The effectiveness of legal audit results in this context depends on several factors, such as the substance of the audit, the expertise of the legal auditor, and the acceptance of the audit results by the court. As part of the defense, legal audit results can be used to:

1. Provide an in-depth legal analysis of the company's condition, including arguments supporting that the company does not meet the criteria for bankruptcy or PKPU in accordance with the Bankruptcy Law in Indonesia;
2. Present relevant data and facts to reject the applicant's claim, such as evidence that the company is still able to pay the debt or that the debt used as the basis for the application does not meet legal requirements;
3. Demonstrating that the company's operational implementation has met legal compliance standards, so that the applicant's argument can be refuted.

However, the main challenge in using legal audit results as expert witness testimony is that they are often considered legal opinions, not legal facts. Opponents can challenge legal audit results by using other expert witnesses or contradictory evidence. Therefore, to ensure that legal audit results have greater validity, several points must be considered:

1. Legal audits must be conducted by auditors who have high credibility and are recognized as experts in the field of corporate law.

2. Audit results must be presented objectively and supported by valid legal documents and relevant data.
3. The auditor who prepares the audit report can be asked to appear as an expert witness to provide direct explanations at the trial, so that the audit results have stronger weight as a defense tool (Rozali & Darliana, 2015).

CONCLUSIONS

A crucial step in legal risk management, legal audits play a strategic role in mitigating potential bankruptcy filings or suspension of business operations (PKPU) against a company by helping to detect the risk of bankruptcy early. Bankruptcy can occur due to various factors, such as poor financial management.

Legal audit results are often considered a crucial tool to support a company's defense in legal proceedings, including bankruptcy filings or suspension of business operations (PKPU). Investigative legal audit results can be used as expert evidence in criminal trials. Legal audits also contribute to the defense by providing legal analysis that can support companies in litigation. However, for legal audit results to be effective and reliable, a clear methodology, valid data, and credible auditors are required.

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