

IMPLEMENTATION OF GENERAL BANKRUPTCY CONFISCATION AND POSTPONEMENT OF DEBT PAYMENT OBLIGATIONS (PKPU)

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ABSTRACT

This general confiscation is very interesting to discuss because the Bankruptcy Law makes it the starting point for bankruptcy as regulated in Article 1 point 1 of Law no. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations. In a bankruptcy decision, the curator acts as the person responsible for settling the bankruptcy assets. Article 16 of the Bankruptcy Law states that the Curator has the authority to carry out the duties of managing and/or settling bankruptcy assets from the date the bankruptcy decision is pronounced even if the decision is submitted for cassation or judicial review. The Court Registrar is obliged to maintain a general register to record each bankruptcy case separately. Bankruptcy confiscation is the confiscation of all of the debtor's assets, to be settled by the Curator for the benefit of the creditors. General confiscated objects in bankruptcy are under the authority of the Curator for settlement, which is different from criminal cases where confiscated objects are under the power of the state. By declaring bankruptcy, by law the debtor loses his right to control and manage his assets which are included in the bankruptcy court.

Keywords: General Confiscation, Bankruptcy, PKPU.

INTRODUCTION

Civil procedural law regulates four types of confiscation: First, collateral confiscation (*conservatoir beslag*) which is a confiscation of the property in dispute or the defendant's assets, both movable and immovable, related to a lawsuit for compensation or debts. Second, confiscation of property rights (*revindicatoir beslag*) which relates to the confiscation of movable property based on the reason that the plaintiff's property rights are currently in the hands of the defendant. Third, confiscation of joint assets (*marital beslag*) which is the confiscation of joint assets of husband and wife both in the hands of husband and wife in the event of a divorce dispute. Lastly, confiscation of execution (*executoir beslag*) is the confiscation of goods listed in the decision which has permanent legal force. Specifically in bankruptcy cases, there is a type of confiscation, namely general confiscation. A general confiscation is a confiscation carried out on all of the debtor's assets, both current and future, with the aim of ensuring that the proceeds from the sale of the confiscated assets can be distributed fairly and proportionally among creditors according to the size of their

respective receivables. unless creditors have reasons to take precedence (Isfardiyana, 2016). The basic principles of bankruptcy law are actually based on the provisions of Article 1131 of the Civil Code. This article states that all goods, both movable and immovable, belong to the debtor, whether they already exist or will exist in the future, become collateral for the debtor's individual engagement. The debtor's responsibility based on the provisions of Article 1131 of the Civil Code is what ultimately leads to at the bankruptcy institution. Because, the bankruptcy institution actually regulates what happens if a debtor cannot pay his debts, as well as what the debtor's responsibilities are, within his authority, with the assets he still has or will own. Apart from that, the purpose of bankruptcy is basically to divide the proceeds from the sale of all the debtor's assets equally among all creditors, so a bankruptcy institution only exists if the debtor has more than one creditor. The existence of more than one creditor is known as the principle of *concursum creditorum*. So according to this ratio, of course a debtor can only be declared bankrupt if he has more than one creditor. From these legal principles, it is hoped that in the Bankruptcy Law there will be a clear legal mechanism that can guarantee the legal interests of creditors, especially regarding the procedures and rights of creditors to recover payment of their receivables from a debtor who is declared bankrupt. Law, in accordance with the aim must be to try to provide balance and justice.

This general confiscation is very interesting to discuss because the Bankruptcy Law makes it the starting point for bankruptcy as regulated in Article 1 point 1 of Law no. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (Bankruptcy Law), bankruptcy is a general confiscation of all assets of a bankrupt debtor whose management and settlement are carried out by a curator under the supervision of a supervisory judge. The definition of bankruptcy shows that bankruptcy is everything related to general confiscation, although in reality the scope of bankruptcy in the Bankruptcy Law is not only related to general confiscation but also covers several other rules outside of general confiscation such as rehabilitation and the legal condition of the debtor after the end of the settlement. To provide legal protection for creditors, bankruptcy law is regulated in Article 10 of Law no. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as Law No. 37/2004) which basically contains the permissibility of submitting applications for confiscation of collateral by creditors or appointing a temporary curator to manage some or all of the debtor's assets, as a preventive security measure. and temporary, namely to prevent the possibility of debtors taking action against their assets so as to harm the interests of creditors in repayment of their debts. Furthermore, in the provisions of Article 10 paragraph (3) of Law no. 37/2004 also stipulates that if the request for confiscation of collateral is granted, the Commercial Court can require that creditors provide collateral in a reasonable amount to maintain a balance between the interests of debtors and creditors.

METHOD

Research is a process, namely a series of steps carried out in a planned and systematic manner to obtain solutions to problems or answers to certain questions (Simatupang et al., 2022). This type of research is normative research. In normative legal research, law is often conceptualized as something written in statutory regulations (law in books) or law is conceptualized as rules which are benchmarks for human behavior that are considered

appropriate or appropriate. (Amiruddin & Asikin, 2004). This research is descriptive analysis, namely: "research that describes an object, explains and explains an event with the aim of knowing the condition of the object being studied. Descriptive research is intended to provide as precise data as possible about people, conditions or other symptoms" (Soekanto, 2014).

DISCUSSION

Legal Arrangements Related to Bankruptcy in Indonesia

Bankruptcy law has a very important role in the traffic of business activities. Just as law functions to provide guarantees of protection for every aspect of life and every legal relationship, bankruptcy law plays a role in providing guarantees of certainty in resolving debt and receivable disputes between business actors by regulating the protection of the interests of each party. (Sidabutar, 2019). Bankruptcy is a solution for debtors to be able to get out of the debt and receivable problem that is pressing on them, because the debtor no longer has the ability to pay debts to its creditors. (Hartono, 2016). The debtor's inability to pay debts due to creditors, the appropriate step to resolve this is through bankruptcy law instruments. Therefore, bankruptcy law is one of the debt dispute resolution mechanisms that can be chosen by the parties in a short, cheap and transparent manner. (Nola, 2017). In principle, bankruptcy law is a general confiscation of all assets of a bankrupt debtor, both existing and those that will exist in the future, with the main aim being to use the proceeds from the sale of these assets to pay all debts of the bankrupt debtor proportionally (prorate parte) and in accordance with the creditor structure. . Through the Bankruptcy Law, it is hoped that there will be a fair and proportional distribution of the debtor's assets to each creditor, except if among the creditors there are those who, according to law, must have priority in receiving payment of their bills, so that security is guaranteed and the interests of the parties concerned are also guaranteed. The implementation of general confiscation must avoid confiscation and execution by individual creditors. Creditors must act together (concursum creditorium) in accordance with the principles as stipulated in the provisions of Article 1132 Burgerlijk Wetboek (Civil Code).

Bankruptcy law arrangements in Indonesia have undergone several changes since the implementation of the Faillissements Verordening Stb. 1905 No. 217 jo Stb. 1906 No. 348 until the latest amendment through Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (Bankruptcy Law and PKPU). There are several factors that encourage the need for revision of bankruptcy regulations, namely: First, to avoid seizure of debtor assets if at the same time there are several creditors who collect their receivables from the debtor. Second, to avoid creditors holding material security rights claiming their rights by selling the debtor's goods without considering the interests of the debtor or other creditors. Third, to avoid fraud committed by one of the creditors or debtors themselves (Irianto, 2015). The object of the bankruptcy law dispute, referring to the definition and objectives above, is "debt" and "more than one creditor". This is expressly stated in the provisions of Article 2 paragraph (1) of Law of the Republic of Indonesia Number 37 of 2004. The object of "debt" and the number of creditors which must be more than one, is a fundamental requirement in submitting a bankruptcy

petition against a debtor to be examined and decided. by the Panel of Judges at the Commercial Court.

Implementation of General Confiscation in Bankruptcy Cases

General confiscation in bankruptcy is contained in the definition of bankruptcy based on Article 1 point 1 of Law Number 37 of 2004 concerning Bankruptcy and PKPU, where general confiscation covers all assets of the bankruptcy debtor when the bankruptcy decision is pronounced. Based on article 31 paragraph (1) and paragraph (2) of the Bankruptcy Law, it is stipulated that all confiscations that have been determined on the debtor's assets become null and void from the moment the bankruptcy decision is pronounced and since then the only thing that applies is general confiscation. Article 31 paragraph (1) and paragraph (2) of the Bankruptcy Law emphasizes that the position of general confiscations is higher than other confiscations because with the existence of general confiscations all confiscations are invalidated, even if forced, the supervising judge can write off confiscations outside of general confiscations. Based on Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, hereinafter referred to as (Bankruptcy Law), precisely in Article 1 number 1, it explains that bankruptcy is a general confiscation of all assets of the Bankrupt Debtor, the management and settlement of which is carried out by the Curator under the supervision of the Supervisory Judge. as regulated in this Law.

Article 2 of the Bankruptcy Law states that:

1. A debtor who has two or more creditors and has not paid in full at least one debt that is due and collectible is declared bankrupt by a court decision, either at his own request or at the request of one or more of his creditors;
2. The application as intended in paragraph (1) can also be submitted by the prosecutor's office for the public interest.
3. In the event that the Debtor is a bank, the application for bankruptcy can only be submitted by Bank Indonesia.
4. In the event that the Debtor is a Securities Company, Stock Exchange, Clearing and Guarantee Institution, Depository and Settlement Institution, the application for bankruptcy can only be submitted by the Capital Market Supervisory Agency.
5. In the event that the Debtor is an Insurance Company, Reinsurance Company, Pension Fund, or State-Owned Enterprise operating in the public interest sector, the application for a bankruptcy declaration can only be submitted by the Minister of Finance.

Decisions on applications for bankruptcy declaration and other matters related to and/or regulated in this Law, are decided by the Court whose jurisdiction includes the area where the Debtor's legal domicile is. The flow of applications for a bankruptcy declaration is regulated in Article 6 of the Bankruptcy Law as follows:

1. Application for bankruptcy declaration is submitted to the Chairman of the Court.
2. The Registrar registers the application for bankruptcy declaration on the date the application in question is submitted, and the applicant is given a written receipt signed by an authorized official with the same date as the registration date.
3. The Registrar is obliged to reject the registration of an application for a bankruptcy declaration for an institution as intended in Article 2 paragraph (3), paragraph (4),

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and paragraph (5) if it is carried out not in accordance with the provisions in these paragraphs.

4. The Registrar submits the application for bankruptcy declaration to the Chairman of the Court no later than 2 (two) days after the date the application is registered.
5. Within a period of no later than 3 (three) days after the date the application for bankruptcy is registered, the Court will study the application and set a hearing date.
6. The examination hearing on the application for bankruptcy declaration shall be held no later than 20 (twenty) days after the date the application is registered.
7. At the Debtor's request and based on sufficient reasons, the Court may postpone the holding of the hearing as intended in paragraph (5) until no later than 25 (twenty five) days after the date the application is registered.

The court plays a very important role in the bankruptcy application process, as stated in Article 8 of the Bankruptcy Law that:

1. Court:
 - a. Obligated to summon the Debtor, in the event that the application for bankruptcy is submitted by the Creditor, prosecutor, Bank Indonesia, Capital Market Supervisory Agency, or the Minister of Finance;
 - b. Can summon Creditors, in the event that an application for declaring bankruptcy is submitted by the Debtor and there is doubt that the requirements for being declared bankrupt as intended in Article 2 paragraph (1) have been fulfilled.
2. The summons as intended in paragraph (1) is made by the bailiff by registered express letter no later than 7 (seven) days before the first examination hearing is held.
3. The summons is valid and deemed to have been received by the Debtor, if it is carried out by the bailiff in accordance with the provisions as intended in paragraph (2).
4. The application for declaring bankruptcy must be granted if there are facts or circumstances that are simply proven that the requirements for declaring bankruptcy as intended in Article 2 paragraph (1) have been fulfilled.
5. The Court's decision on the application for bankruptcy declaration must be pronounced no later than 60 (sixty) days after the date the application for bankruptcy declaration is registered.
6. The Court Decision as intended in paragraph (5) must also contain:
 - a. Certain articles of the relevant laws and regulations and/or sources of unwritten law which are used as the basis for adjudicating; And
 - b. Legal considerations and opinions that differ from member judges or chairman of the panel.
7. The decision on the application for bankruptcy as intended in paragraph (6), which contains the complete legal considerations underlying the decision, must be pronounced in a hearing open to the public and can be implemented first, even if a legal remedy is proposed against the decision..

As long as the decision on the petition for bankruptcy has not been pronounced, any creditor, prosecutor, Bank Indonesia, Capital Market Supervisory Agency, or Minister of Finance can submit a request to the court to:

1. Place collateral confiscation over some or all of the Debtor's assets; or

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2. Appoint a temporary Curator to supervise:
 - a. Debtor business management; And
 - b. Payment to Creditors, transfer or collateralization of the Debtor's assets in bankruptcy is the authority of the Curator.

Furthermore, Article 15 explains that:

1. In the decision to declare bankruptcy, a Curator and a Supervisory Judge must be appointed from among the Court judges.
2. In the event that the Debtor, Creditor, or authorized party submits a request for bankruptcy as intended in Article 2 paragraph (2), paragraph (3), paragraph (4), or paragraph (5) does not submit a proposal for the appointment of a Curator to the Court, then the Heritage was appointed as Curator.
3. The curator appointed as intended in paragraph (1) must be independent, have no conflict of interest with Debtors or Creditors, and not be handling bankruptcy cases and postponement of debt payment obligations for more than 3 (three) cases.
4. Within a period of no later than 5 (five) days after the date the bankruptcy declaration decision is received by the Curator and Supervisory Judge, the Curator shall announce in the State Gazette of the Republic of Indonesia and at least 2 (two) daily newspapers determined by the Supervisory Judge, regarding the summary of the decision bankruptcy statement containing the following matters:
 - a. Debtor's name, address and occupation;
 - b. Name of the Supervising Judge;
 - c. Name, address and occupation of the Curator;
 - d. Name, address and occupation of members of the temporary Creditor committee, if appointed; And
 - e. Place and time for holding the first meeting of Creditors

In a bankruptcy decision, the curator acts as the person responsible for settling the bankruptcy assets. Article 16 of the Bankruptcy Law states that the Curator has the authority to carry out the duties of managing and/or settling bankruptcy assets from the date the bankruptcy decision is pronounced even if the decision is submitted for cassation or judicial review. The Court Registrar is obliged to maintain a general register to record each bankruptcy case separately. The general list must load sequentially:

1. Summary of the bankruptcy decision or decision to cancel the bankruptcy declaration;
2. Brief content of the peace settlement and its ratification decision;
3. Cancellation of peace;
4. Amount of distribution in settlement;
5. Revocation of bankruptcy as intended in Article 18; And
6. Rehabilitation; by mentioning the respective dates.

Bankruptcy covers all of the Debtor's assets at the time the bankruptcy declaration decision was pronounced as well as everything obtained during the bankruptcy, but the Bankruptcy Law excludes several things related to the debtor's assets in bankruptcy in Article 22 of the Bankruptcy Law that:

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1. Objects, including animals that are really needed by the Debtor in connection with his work, equipment, medical equipment used for health, beds and equipment used by the Debtor and his family, and food for 30 (thirty) days for The debtor and his family, who are in that place;
2. Everything that the Debtor obtains from his own work as remuneration for a position or service, as wages, pensions, waiting money or allowances, to the extent determined by the Supervising Judge; or
3. Money given to the Debtor to fulfill an obligation to provide support according to law.

Bankruptcy confiscation is the confiscation of all of the debtor's assets, to be settled by the Curator for the benefit of the creditors. General confiscated objects in bankruptcy are under the authority of the Curator for settlement, which is different from criminal cases where confiscated objects are under the power of the state. By declaring bankruptcy, by law the debtor loses his right to control and manage his assets which are included in the bankruptcy court (Article 24 of the Bankruptcy Law). And the main function of the Bankruptcy Law is a legal means for settling debts and receivables, whether due to force or coercion. Then, Article 31 paragraph (2) of the Bankruptcy Law regulates that with the decision to declare bankruptcy, all encumbrances on the bankrupt's assets are forfeited, meaning that it becomes the authority of the Curator in the process of settling the bankrupt's boedel's assets.

CONCLUSION

In a bankruptcy decision, the curator acts as the person responsible for settling the bankruptcy assets. Article 16 of the Bankruptcy Law states that the Curator has the authority to carry out the duties of managing and/or settling bankruptcy assets from the date the bankruptcy decision is pronounced even if the decision is submitted for cassation or judicial review. The Court Registrar is obliged to maintain a general register to record each bankruptcy case separately. Bankruptcy confiscation is the confiscation of all of the debtor's assets, to be settled by the Curator for the benefit of the creditors. General confiscated objects in bankruptcy are under the authority of the Curator for settlement, which is different from criminal cases where confiscated objects are under the power of the state. By declaring bankruptcy, by law the debtor loses his right to control and manage his assets which are included in the bankruptcy court.

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