THE URGENCY OF LEGAL PROTECTION FOR SOLVENT COMPANIES WITH GOOD INTENTIONS IN BANKRUPTCY LAW IN INDONESIA

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Abstract

Bankruptcy is a situation when the debtors are unable to fulfill their obligations to pay debts to creditors. The requirement for a bankruptcy decision is based on Article 2 paragraph (1), namely that the debtors have two or more creditors and have not paid in full at least one debt that has matured and can be collected. This causes no legal protection for debtor companies that are still solvent and have good intentions from creditors who have bad intentions in abusing bankruptcy law. The debtors with good intentions will certainly find it difficult to face a bankruptcy application if the conditions are only 2+1. Debtor companies that do not pay off their debts do not always have bad intentions but face the threat of bankruptcy which should not be aimed at them. The study aims to understand how Indonesian bankruptcy law can better protect financially stable companies with good intentions from being unfairly declared bankrupt. This research used normative legal research using primary and tertiary legal materials collected from literature and document studies and analyzed qualitatively. The results of this research showed that legal protection and justice can be given to solvent debtors who have good intentions if bankruptcy law in Indonesia provides regulations regarding insolvency tests as an instrument to prove factually whether the debtor's financial condition is still healthy (solvent) or unhealthy (insolvent) so that it is appropriate to sentenced to bankruptcy.

Keywords: *Bankruptcy, Corporation, Insolvency, Good Intentions, Legal Protection*

1. INTRODUCTION

Bankruptcy is a situation when debtors are unable to fulfill their obligations to pay debts to creditors (Helena & Kartika, 2024). Legally, bankruptcy is defined in Article 1 paragraph (1) of Law Number 37 of 2004 which states: "Bankruptcy is a general confiscation of all assets of the bankrupt Debtor whose control and settlement is carried out by a curator under the supervision of the Supervisory Judge as regulated in Law". The Commercial Judge uses simple evidentiary principles to examine the bankruptcy application. This principle is found in Article 8 paragraph (4) which states: "The Application of bankruptcy declaration must be granted if there are facts or circumstances that are simply proven that the requirements for being declared bankrupt as intended in Article 2 paragraph (1) have been fulfilled." This Article means that a debtor can be bankrupted only requires the fulfillment of the bankruptcy requirements in Article 2 paragraph (1) which states: "The debtors who have two or more creditors and do not pay in full at least one debt that is due and collectible, is declared bankrupt by Court decision, either at their own application or at the application of one or more of creditors."

The provisions regarding the bankruptcy requirements which must be and are only based on Article 2 paragraph (1) states that debtors who have two or more creditors and do not pay in full at least one debt which has matured and can be collected (also known as the 2+1 requirement) causes no legal protection for debtor companies that are still solvent and have good intentions from creditors who have bad intentions to abuse

bankruptcy law (R. P. Putri & Prasetyawati, 2023). The debtors with good intentions will certainly find it difficult to face a bankruptcy application against them if the conditions are only 2+1. Debtor companies that do not pay off their debts do not always have bad intentions but face the threat of bankruptcy which should not be aimed at them. Regarding the bankruptcy requirements in Article 2 paragraph (1), the Constitutional Court in its Decision on Case Number: 071/PUU-II/2004 and Case Number: 001-002/PUU-III/2005 states that the very lax requirements for bankruptcy applications are a form of negligence legislators in the formulation of the article. In this decision, the Constitutional Court states that the makers of the Bankruptcy Law and PKPU or Postponement of Debt Payment Obligations are negligent because they removed the requirement of "unable to pay" so that creditors could easily apply for a bankruptcy declaration. This negligence by the legislators gives creditors freedom and has the potential to be exploited by creditors who have bad intentions to put pressure on debtor companies. The Court states that this would be a problem if the debtor was a solvent company but went bankrupt. Ideally, a bankruptcy law which focus on the principle called commercial exit from financial distress, namely that bankruptcy is a solution to the debt problem of debtors who are experiencing bankruptcy and not as an instrument to bankrupt a business (Mait et al., 2023).

The result of a bankruptcy decision for a debtor in the form of a company by the Commercial Court is the liquidation or confiscation of all assets belonging to the debtor to be managed and the bankruptcy assets being settled by the curator, resulting in the termination of the debtor company's operations and could result in bankruptcy (A. M. Putri & Marwanto, 2023). The liquidation of assets specified in Article 1 paragraph (1) coupled with the bankruptcy requirements in Article 2 paragraph (1) of the Bankruptcy Law and PKPU provides room for unfair business competition because financial insolvency is not a consideration in the law so that if it has been proven. So, debtors can easily be declared bankrupt by the Commercial Court.

Bankruptcy should not need to be terminated if the value of the debtor's assets is more than the debt or is called a solvent debtor, so the debtor should receive legal protection and legal certainty from the threat of creditors who have bad intentions by abusing bankruptcy law. One of the bad intentions of creditors in question is filing a bankruptcy application against a debtor who is still solvent. Bankruptcy law should provide an opportunity for companies that do not pay debts but still have business prospects and have good intentions to pay off their debts first, carry out restructuring and so on to make their companies healthy again and bankruptcy should be the last resort (Gaol et al., 2021)

Legal protection, justice and legal certainty should be given to solvent debtors who have good intentions if bankruptcy law in Indonesia provides regulations regarding insolvency tests as an instrument of factual proof of whether the debtor's financial condition is still healthy (solvent) or unhealthy (insolvent) so that it is appropriate to be sentenced bankruptcy decision.

This study aims to understand how Indonesian bankruptcy law can better protect financially stable companies with good intentions from being unfairly declared bankrupt. Ultimately, the research aims to provide insights into how Indonesian bankruptcy law can be improved to better support solvent companies in financial distress.

2. LITERATURE REVIEW

2.1. Theory of Legal Certainty

Certainty is an inseparable characteristic of law, especially written legal norms. Laws without the value of certainty will lose meaning because they can no longer be used as guidelines for behavior for everyone. Certainty can be stated as one of the law goals. Gustav Radbruch (Radbruch, 1932) states that 4 (four) basic things related to the meaning of legal certainty, namely: First, that law is positive, meaning that positive law is legislation. Second, that law is based on facts, meaning it is based on reality. Third, that facts must be formulated in a clear way so as to avoid errors in meaning, as well as being easy to implement. Fourth, positive law must not be easily changed (Neltje & Panjiyoga, 2023). This theory is used in this research because through simple evidentiary arrangements in bankruptcy law in Indonesia, it will guarantee legal certainty for the parties involved in a bankruptcy application.

2.2. Theory of Legal Protection

Based on Fitzgerald (Fitzgerald, 1962), theory of legal protection has two main dimensions. First, the substantial dimension, which emphasizes the protection of individual rights recognized by law and public policy. Second, the procedural dimension, which emphasizes protection through a fair and independent legal process, which involves the right to a fair trial, the right to an open hearing and the right to the submission of adequate evidence (Hapsari & Nada, 2021). This theory is used in this research because through simple evidentiary arrangements in bankruptcy law in Indonesia, it will provide legal protection for debtors who have good intentions and whose financial condition is still solvent.

2.3. Previous Research

Previous research related to this study includes works by Purwanto (2022), who examined corporate law in bankruptcy applications in Indonesia, and by Laksmi & Astariyani (2019), who explored debtor strategies to evade bankruptcy. The distinction between these studies and the present research lies in their respective focuses: the former centered on applying bankruptcy terms to financially insolvent companies unable to meet their debt obligations, while the latter concentrated on creditor actions to prevent bankruptcy, such as debt repayment or filing for PKPU (Postponement of Debt Payment Obligations). These prior studies differ from the current research, which centers on the critical need for legal protection for solvent companies with genuine intentions within Indonesian bankruptcy law.

3. RESEARCH METHODS

The research methodology employed in this study comprised several key components. Firstly, the research design adopted was normative juridical legal research, relying on written legal norms expressed in regulations or other literary forms. Secondly, the research sample encompassed two sources of legal materials: primary legal materials, specifically Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, and secondary legal materials, including books, doctrines, and research findings related to evidence in bankruptcy proceedings. Thirdly, data collection techniques primarily involved a literature study, wherein books

and journals relevant to the research problem were reviewed, supplemented by document study to understand official institutional documents such as decisions. Finally, data analysis was qualitative in nature, focusing on legal material analysis through an analytical descriptive approach. This method entailed analyzing specific legal issues and linking them to existing literature, legal expert opinions, or relevant laws and regulations.

4. RESULTS AND DISCUSSION

4.1. Research Results

4.1.1. The Consequences of No Legal Protection for Solvent Companies with Good Intentions in Bankruptcy Law in Indonesia

Bankruptcy decisions for debtors are only guided by Article 2 paragraph (1) of Law Number 37 of 2004, namely debtors who have two or more creditors and have not paid in full at least one debt that has matured and can be collected (also known as condition 2+ 1) as a simple evidentiary principle, it shows that there is no legal protection and legal certainty for debtors who are still solvent and have good intentions from creditors who have bad intentions in abusing bankruptcy law. No legal protection can make emergence of bankruptcy decisions against companies (debtors) that are still solvent, which can be an international issue is the bankruptcy decision of the Central Jakarta Commercial Court against PT Prudential Life Assurance (Decision Number 13/ Pailit /2004/ PN. Niaga. Jkt. Pst) because the 2+1 bankruptcy requirements are met even though the company's financial condition at that time was very solvent because the level of risk based capital of 225% far exceeded the Government's provisions of 100% and also revenue grew 114% compared to 2002, namely more than IDR 1 trillion (Budhisatrio et al., 2021).

Apart from that, this was also experienced by PT. Telkomsel was declared bankrupt by the central jakarta commercial court (Decision Number 48/ Pailit/ 2012/ PN. Niaga. Jkt. Pst) even though at that time the amount of debt was only 0,4% of the company's net profit in 2011, namely more than IDR 12 trillion (Pratama, 2021). Even though in the end both bankruptcy decisions were annulled by the Supreme Court at the cassation level, of course the bankruptcy of these two large companies had a negative impact on society and the condition of the business and economic environment in Indonesia.

A bankruptcy decision has serious consequences for the debtor company because when it has been declared bankrupt by the Commercial Court, from then on all of the PT's assets will be in general confiscation, resulting in the legal status of all assets being transferred to bankruptcy assets which has the effect of freezing the assets or what is called stay for a certain period of time and are supervised and managed by the curator. Macroeconomic bankruptcy of a company can affects the pulse of the regional and national economy because it is affected by the rate of production and distribution of goods and services, tax revenues for the state, as well as the potential for increased unemployment rates amidst difficulties in employment which will ultimately affect consumers at the lowest level, thereby affecting real sector activities.

Other consequences that can occur due to the regulation of bankruptcy requirements in Article 2 paragraph (1) and the principle of simple proof in Law Number 37 of 2004, which can lead to the bankruptcy of companies that are still solvent, include the potential for investment to be hampered in Indonesia due to the lack of legal certainty as one of the three conditions for attracting investors in addition to stable business and political

opportunities, which poses a risk to the stability of national economic growth. In fact, Indonesia's economic growth is very dependent on Gross Domestic Product and the growth of the young generation population who need employment opportunities. Apart from that, this shows the unequal protection between debtors, creditors and stakeholders in this law.

4.1.2. Insolvency Test as Legal Protection for Solvent Companies with Good Intentions in Bankruptcy Law in Indonesia

The simple evidence adopted by Law Number 37 of 2004 makes it easy for a company to be declared bankrupt without considering its financial condition, whether it is solvent or insolvent, even though ideally the debtor who can be bankrupted is an insolvent debtor. There is an inability to pay off financial obligations when they are due and the obligations are over greater than its assets at a certain time so that the company is declared financially incapable. The debtor's financial health is still solvent or insolvent based on the method which is to use an insolvency test or the financial solvency test applied in the bankruptcy laws of various countries such as the Netherlands, the United States, and Japan. The insolvency test can be carried out in three ways, namely :

a) Balance sheet insolvency test, namely whether the Debtors are unable to pay their obligations because the total value of their liabilities is greater than the total value of their assets;
b) Cash flow insolvency test, namely whether the Debtors are unable to pay their obligations due to a temporary situation in their finances, because they cannot pay them after the due, or at that time they do not have sufficient liquidity to pay their obligations due to a cash flow deficit (larger cash outflow from cash inflows).
c) Capital adequacy solvency test, namely whether the company still has adequate capital.

Therefore, the companies that can be bankrupted should be those that have experienced balance sheet insolvency.

The insolvency test before or during the bankruptcy application process is a form of good legal protection for debtors who are still solvent and have good faith before or during the bankruptcy application (Shubhan, 2020).This is supported by Sutan Remy Sjahdeini states that if the debtor's financial condition is still solvent, bankruptcy law should not provide a way for the debtor to be filed for bankruptcy at the Commercial Court but instead an ordinary civil lawsuit should be filed at the District Court (Asra, 2015).

If the value of the debtor company's assets is greater than its debts, then Article 1131 *Burgerlijk Wetboek*, Article 1132 *Burgerlijk Wetboek*, Article 1133 *Burgerlijk Wetboek*, and so on still guarantee the fulfillment of its obligations without the need to use bankruptcy law, namely in the following two ways: 1. The debtors voluntarily pay their debts with their possessions; and 2. The creditors sue the debtor to the District Court with a claim for default in order to fulfill their obligation to pay off their debts so that there is no need to file a Bankruptcy lawsuit at the Commercial Court.

The existence of an insolvency test will provide legal protection and justice for solvent debtors who have good intentions from the threat of creditors with bad intentions who use bankruptcy law solely as a debt collection regime and an instrument to bankrupt debtors for various motives such as business competition or others. The bankruptcy law

in Indonesia has implemented the principle of commercial exit from financial distress as a general principle in bankruptcy law in the world and positioned bankruptcy law as the last resort for parties in dispute.

4.2. Discussion

The principle of simple proof is a principle that applies in Bankruptcy law in Indonesia currently contained in Article 8 paragraph (4) of Law Number 37 of 2004 which states: "The application for a bankruptcy declaration must be granted if there are facts or circumstances that are simply proven that the requirements to be declared bankrupt as intended in Article 2 paragraph (1) has been fulfilled." The existence of this Article means that debtors can be bankrupted only requires the fulfillment of the bankruptcy requirements in Article 2 paragraph (1) which states: "The debtors who have two or more creditors and do not pay in full at least one debt that is due and collectible, is declared bankrupt by Court decision, either at their own request or at the request of one or more of their creditors." This provision means there is no legal protection and legal certainty for debtor companies that are still solvent and have good intentions from creditors who have bad intentions in abusing bankruptcy law. The debtors with good intentions will certainly find it difficult to face a bankruptcy application against them if the conditions are only 2+1. Debtor companies that do not pay off their debts do not always have bad intentions but face the threat of bankruptcy which should not be aimed at them.

In fact, a bankruptcy decision has implications that are like a death sentence for debtors, namely general confiscation (liquidation) of all debtor assets in accordance with Article 1 Paragraph (1) which can result in the cessation of company operations and even bankruptcy. This is contrary to the principle of corporate rescue from financial distress which is generally known in bankruptcy law in the world which provides legal protection and legal certainty for solvent companies that have good intentions. Bankruptcy law in Indonesia should include requirements for factual proof in the form of financial insolvency as a condition for bankruptcy, which is obtained by carrying out an insolvency test which will show whether the debtor's financial health is still solvent or insolvent. According to Sutan Remy Sjahdeini, only insolvent debtors should be able to go bankrupt, while those who are still solvent should have an ordinary civil lawsuit filed in the District Court. The financial insolvency requirements can make legal protection is created for solvent debtors who have good intentions to escape the trap of bankruptcy and confirms legal certainty that only debtors who are declared financially insolvent can be declared bankrupt. This research is still limited to explaining the consequences of no legal protection for solvent companies with good intentions and providing an insolvency test as the solution. Future research can further explain insolvency tests and how to carry them out by taking examples of insolvency tests regulated in bankruptcy law in various countries such as Netherlands, United States, and Japan as a reference for academics, legal practitioners, legislators and the Indonesian government to formulate further bankruptcy regulations which provides legal protection and legal certainty for solvent debtors who have good intentions.

5. CONCLUSION

Legal protection for solvent debtors who have good intentions needs to be provided by bankruptcy law, which has implications for creating a sense of security and comfort as well as legal certainty for entrepreneurs and investors in Indonesia. This is not only beneficial for company stakeholders, but is also beneficial both directly and indirectly. The directly to the social economy of the wider community because various companies operating in this country are at the forefront of driving Gross Domestic Product through their roles as producers, consumers and absorbers of labor. Various bankruptcy decisions against solvent companies such as PT. Prudential, PT. Telkomsel, and others have provided concrete evidence of the implications of the absence of legal protection for solvent companies with good intentions for the company, its investors, its workforce, its suppliers, the wider community, as well as the business climate in Indonesia, especially for the companies exemplified. This research is a large national company so it has a broad impact on society and the government.

The insolvency test is actually something that is commonly applied in bankruptcy law in the world and is an implementation of the principle of corporate rescue from financial distress. The application of the insolvency test to look for factual evidence of the company's financial condition has implications for the realization of legal protection for solvent debtors who have good intentions because the insolvency test will show that the company is still solvent and not worthy of being declared bankrupt so that the solvent company is safe from the threat of general confiscation (liquidation) which is like a death sentence for them. This also has implications for legal certainty that only insolvent companies can be bankrupted, if the solvent company's dispute is through an ordinary civil lawsuit in the District Court.

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