



THE APPLICATION OF THE CONCEPT OF MANAGING AND SETTLING THE BANKRUPT DEBTOR'S ASSETS PROCESS PERFORMED BY THE CURATOR

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Abstract:

The purpose of this research is to find out the form of the application model and concept of the management and the settlement process of bankrupt assets of debtor carried out by the curator. The main result of this research is the curator's main duties and authorities in carrying out the tasks of management and bankruptcy of assets from the date the bankruptcy decision is pronounced. However, these duties and authorities are detailed by law to avoid differences in interpretation from many parties involved. This proposition is quite appropriate given the vulnerability of the curator's duty to the lawsuit from third parties, debtors, and even the creditors themselves. The conclusion of this study is that the curator must cooperate with various parties, namely bankrupt debtors, creditors, supervisory judges. This is useful for the smooth process of management and settlement of the bankrupt debtors' assets in paying their debts to creditors. The curator has several ways of managing and clearing up the bankrupt debtor's assets but the most important is cooperation or good relations with the parties involved, thus, no party feels disadvantaged by the curator.

Keywords: assets, bankrupt debtor, curator

1. Introduction

The progress and sophistication of technology and information sources increasingly support the development of business, facilitate the entry and exit of goods and services from domestic to abroad and vice versa, but in addition to providing a positive impact on the development of business and also to business actors. This also demands domestic entrepreneurs to able to compete and maintain the viability of their business. Some of the effects of technological developments in the field of economy or business or industry, including:

- a) higher economic growth;

- b) the occurrence of industrialization;
- c) increasing productivity;
- d) business competition from both domestic and international;
- e) investments and reinvestments that take place on a large scale which can increase economic productivity;
- f) competition in the world of employment which requires workers to enhance their skills and knowledge;

The many demands in the fields of business, commerce and industry that occur along with the development of technology and information require the fulfillment of the needs of industry, commerce, companies to meet their production costs so that they can survive the competition. It is unavoidable that most entrepreneurs need additional funds as capital to support their business. The growth and development of the national economic sector cannot be separated from the growth and development of economic actors who carry out economic activities today. The growth and development of economic actors can occur because of the availability of several relatively very important factors. That is the source of funds, because funds are very important as a driving force in the operational activities of the business world. At present days, many companies are experiencing difficulties in terms of funding. One of the causes is the high dollar exchange rate, which has resulted in many companies experiencing a lack of capital or funds to meet the company's operational needs.

In running its business, a company definitely wants to get maximum results. Companies that have reached the target certainly want to expand their business in order to reach the next larger target. This resulted in many companies applying for loan funds to several banking companies or financial service providers. One of the main motives of a company that has a legal body to make a loan or use capital from a third party is the desire to increase profits that can be achieved. Additional new capital can be used to facilitate the company's cash flow or commonly used as a business development company. For entrepreneurs, banks are very much needed because banks are one of the facilitators of funding providers in the form of credit loans for entrepreneurs who need additional funds for the continuity of their business. Imaniyati and Putra (2016) stated;

“Bank, as one of the financial institutions, is an institution formed as an effort to support the economic activities of the community. Banks as institutions that work based on public trust have a strategic role and position in national development. As a financial intermediary, banks become media brokers for parties that have surplus of funds with those who lack funds”.

Whereas on the other hand, one of the main motives of banks / creditors or lenders willing to lend is the desire to receive remuneration by providing these loans (e.g. interest). This lending and borrowing activity is commonplace in the business world. However, in the world of business, this cannot be separated from the risk of

losses, even the magnitude of the risk of loss can be a major consideration in determining the amount of remuneration for a loan. If there is a failure in business, the debtor and creditor will suffer losses. This is because the debtor cannot pay his debts to the creditor. Likewise, the creditors cannot benefit from the expected loan interest. The failure of a company can be said to be bankrupt or insolvent. A company is said to be bankrupt or the popular term is bankruptcy, when the company (or private person) is unable to pay its debts.

2. Research Methods

The research method used in this research is the juridical normative and juridical empirical method. Normative Jurisdiction is research carried out by focusing on studying the application of positive legal norms or norms related to legal regulations (Marzuki, 2015). While the Juridical Empirical method is to analyze bankruptcy case decisions in the Commercial Court. Both of these approaches will be combined together, resulting in more accurate legal material. In this study the method of data collection is done by; library research and field research. In this study the method of data collection is done through library research, which includes the results of scientific writing by legal circles and economic circles, both in the form of books, paper articles, as well as research reports, seminars and workshop reports as well as scientific journals relating to bankruptcy law and civil law.

As for the field research, in order to get bankrupt decision proceedings, the study obtained courtesy from the Medan Commercial Court. In normative legal research, data processing is carried out qualitatively, because normative legal research starts from existing regulations as positive legal norms. As a tool to analyze this research, two approaches are used, namely the statute approach and comparative approach. The use of two approaches in this study is to complement one approach with another (Ediwarman, 2011). If all legal materials have been obtained and collected primary, secondary and tertiary legal materials then these were analyzed qualitatively by describing the legal symptoms studied. Subsequently, the materials are arranged systematically, so that it will produce a certain classification according to the formulation of the problems discussed in this study.

3. Finding and Discussion

Debt in Bankruptcy Law No.37 of 2004 Article 1 paragraph (6) is an obligation stated or can be stated in the amount of money both in Indonesian currency and foreign currency, either directly or which will appear in the future or contingent. This arises because of an agreement or law that must be fulfilled by the debtor (Novita & Husna, 2016). If it is not fulfilled, the member has the right to the creditor to obtain fulfillment from the debtor's assets. After the bankruptcy decision has been dropped, the debtor immediately loses the right to do the management and control of his assets. All assets

will be bankrupt. The curator stipulated in the bankruptcy decision immediately has the duty to administer and control the bankruptcy of the assets, under the supervision of the supervising judge, even though the decision is submitted to legal remedies in the form of cassation or a review. The stage of bankruptcy management is the period from the time the debtor is declared bankrupt by the panel of judges which results in bankruptcy and is appointed a curator who must take the following actions:

- 1) Registering, verify the obligations of bankrupt debtors. Especially regarding the verification of the liabilities of bankrupt debtors, it needs accuracy from the curator. Both the bankrupt debtor and the creditor must be heard to be able to determine the status, amount and validity of the debts between the bankrupt debtors and their creditors.
- 2) Registering, conduct research on assets from bankrupt debtors including bills owned by bankrupt debtors so that the steps taken by the curator can be determined to cash the bills in question.

Curators are individuals who are domiciled in Indonesia who have special expertise as needed to manage and settle bankruptcy assets and have been registered with the Department of Justice and Human Rights, as referred to in the Bankruptcy Act (Article 69 and Article 70) and implementing regulations. The essence of the curator's task in managing and clearing bankruptcy assets is to increase its value to give creditors a little satisfaction (Sinaga, 2012). Every curator has a job that can increase property value. This also means increasing satisfaction for creditors. If in carrying out its duties the curator harms bankrupt assets, the curator must be responsible both civil and criminal.

In this stage the curator must protect the existence of the bankrupt debtor's assets and try to maintain the value of the wealth. Every action carried out outside of his authority at this stage must obtain prior approval from the supervisory judge, such as carrying out the act of selling the assets of the bankrupt debtor or collateralizing the assets of the bankrupt debtor. The curator is an institution held by law to make bankruptcy securities, Volmar in Hadi Subhan's book (2008), states that "*De curator is belast aldus de wet, met het beheer en de vereffening van de failliete boedel*" (the curator is on duty which is according to laws in regards to managing and clearing bankruptcy assets). In each bankrupt decision by the court, there is the appointment of a designated curator to administer and transfer bankrupt assets under the supervision of a supervisory judge.

The principle of *paritas creditorium*, the *pari passu prorata parte* principle, and the principle of *structured prorata* are the main concepts in the process of management and the settlement of debt from bankrupt debtors to creditors carried out by the curator. The principle of *paritas creditorium* (equality of creditors' position) states that creditors have equal rights to all debtor property. If the debtor cannot pay the debt, the debtor's assets are targeted by creditors (Mahadi, 2003). The principle of the *paritas creditorium* implies that all debtor's assets, whether in the form of movable or immovable property or

property which the debtor currently holds and the goods in the future, will be owned by the debtor bound to the settlement of debtor's obligations (Muljadi, 2005).

In the event that a debtor has only one creditor and the debtor does not pay his debt voluntarily, then the creditor will sue the debtor civilly to the competent district court and all the debtor's assets become the source of the debt repayment to the creditor. If the debtor has a lot of creditors and the debtor's assets are not enough to pay off all creditors, then the creditors will compete in all ways, both *halal* (permissible or lawful in traditional Islamic law) or *non-halal* terms, to get the bill paid in full. For creditors who arrived later, they could no longer pay because the debtor's assets had run out. This is very unfair and detrimental. Based on these reasons, a bankruptcy institution arises which job is to regulate fair procedures regarding the payment of creditors' bills. Following are some procedures for paying bills to creditors, namely;

1) The principle of *pari passu pro rata parte* which means that the property is a joint guarantee for creditors and the proceeds must be distributed proportionally between the pre-creditors, except if there are those creditors who according to the law must take precedence in accepting payment of the bill. This principle emphasizes the distribution of debtor's assets to pay off debts of bankrupt debtors to creditors in a more equitable manner in accordance with their proportions (*pond-pond gewijs*) and not in the same way. The principle of *pari passu prorata parte* gives justice to creditors with the concept of proportional justice, in which creditors who have larger accounts will get a portion of their receivables from debtors greater than creditors who have receivables smaller than that. If the creditor is generalized without seeing the size of the receivables, it will cause an injustice of his own. Bankruptcy is a means of avoiding the seizure of debtor property after the debtor no longer has the ability to repay his debts. In addition, bankruptcy is also used to protect weak creditors against creditors who are strong in fighting for bankrupt debtors' assets. Therefore, in essence, the principle of *pari passu prorata parte* is inherent with the bankruptcy institution itself.

2) The principle of *paritas creditorium* which is equipped with the principle of *pari passu prorata parte* in the context of bankruptcy still has weaknesses, namely to creditors who hold material guarantees and / or creditors who have preference rights granted by law. Then the principle of structured creditors is needed (some also call this as *structured prorata*). The principle of structured creditors is the principle that classifies various types of debtors according to their respective classes. In the event of bankruptcy, creditors are classified into three types, namely:

- Separatist creditors;
- Preferred creditors;
- Concurrent creditors.

The existence of these three creditors is recognized. In the Dutch Bankruptcy Law, there is no doubt about the rights of separatist and preferential creditors to file bankruptcy.

Separatist creditors are creditors holding material rights, who can act alone. This group of creditors is not affected by the decision of the debtor's bankruptcy statement,

meaning that their execution rights can still be carried out like there is no bankruptcy of the debtor. This group of creditors can sell goods that are collateral, as if there is no bankruptcy (Hartanto, 2015). From the proceeds of the sale, they take as much as the receivables, while if there is the rest, they are deposited to the cash curator as bankrupt. Conversely, if the sales proceeds are insufficient, the creditor for unpaid bills can include the shortcomings as competing creditors (concurrent).

Whereas preferential creditors are creditors who, because of the nature of their receivables, have a privileged position and have the right to obtain advance repayments from the sale of bankrupt assets. Special creditors are under the holder of mortgage and mortgage rights. Article 1133 of the Civil Code says that the right to take precedence among people in debt is issued from privileges from pawns and mortgages. Article 1134 states that privilege is a right which is given by law to a person with a debt so that the level is higher than that of other debtors. This is solely based on the nature of his debt. Pawns and mortgages are higher than rent rights, except in cases where the law is determined otherwise.

Furthermore, concurrent / competing creditors have the same position and are entitled to obtain the proceeds from the sale of debtor's assets, both existing and in the future period after deducting the obligation to pay the credit to the creditors who is holding guarantee rights and creditors with special privileges proportionally to the ratio of the accounts of each of the concurrent creditors (sharing on the basis of *pari passu pro rata parte*).

3) The principle of debt is crucial, because without debt there is no possibility that bankruptcy cases will be examined. Without the debt, the essence of bankruptcy becomes non-existent because bankruptcy is a legal institution to liquidate debtors' assets to pay their debts to their creditors. Debt is the main basis for bankrupting legal subjects. In bankruptcy debt regulations is a form of obligation to fulfill performance in an engagement. Debt refers to obligations in civil law. Debt obligations can arise either from the agreement or from the law.

Curators in carrying out their duties must not have a conflict of interest in it. The curator must be independent and not have a conflict of interest and are not handling bankruptcy cases and delays in debt payment obligations of more than three cases. This is given the fact that curator has immense authority and duty to the assets of the bankrupt debtor. The curator must not take any side with anyone, either for bankrupt debtors or creditors. The curator must only abide to the applicable law. The curator must also be responsible for what he does when managing and clearing the bankrupt debtor's assets.

4. Conclusion

The curator is a *Balai Harta Peninggalan* (Property and Heritage Agency) or an individual appointed by the Court to administer and settle the bankrupt debtor's assets under the supervision of a supervisory judge in accordance with this law. If the curator

is a person, the curator must be domiciled in Indonesia with special expertise as needed to manage and settle bankruptcy assets and have been registered with the Department of Justice and Human Rights, as referred to in the Bankruptcy Act (Article 69 and Article 70) and implementing regulations. The curator must cooperate with various parties, namely bankrupt debtors, creditors and supervisory judges. This is useful for the smooth process of the management and the settlement of bankrupt debtors' assets in paying their debts to creditors. The curator has several ways to manage and settle bankrupt debtors' assets, but the most important thing is cooperation or good relations with the parties involved so that no party feels disadvantaged by the curator in carrying out his duties.

Acknowledgement

The authors would like to express sincere gratitude to Universitas Muslim Nusantara Al-Washliyah for the research support.

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