Bankruptcy as An Effort to Ultimum Remedium Debt Settlement

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Abstract. Creditors who are informed about the Debtor no longer able to pay their debts will try to be the forefront of getting payment of their receivables. Usually the trick is to force the Debtor to hand over his assets. This makes the other parties a loss. One solution to such a problem is to use an insolvency institution. The problems in this study include: (1) Is bankruptcy an effort by ultimum remedium in order to resolve debts of debts? (2) What are the obstacles faced by the Debtor for debt settlement. This type of research is library research. This study used secondary data as the main data. The source of the data can be obtained using document searches in the form of literature studies. Furthermore, this research is Normative Law Research. Namely conducting an assessment of the positive law aka written law. The results of this study show that in reality the applicable Law cannot explain in detail the concept of debt in insolvency, due collectible, Creditor and Debtor insolvent. The problem has the effect of understanding the meaning of simple proof, so that the application for a declaration of bankruptcy is used as a means of collecting debts rather than as an ultimatum premium. The above Electoral Act also does not touch the stakeholders of the parties, does not anticipate the domino effect and does not hold an insolvency test in insolvency matters.

Keywords: Bankruptcy, Ultimum, Remidium, Settlement, Debt, Debtor

1. Introduction

Progress in the economic sector, especially in Indonesia, cannot be separated from the development of growth of economic actors who carry out all activities in the economic world. The progress of economic actors can be carried out due to a number of factors that support this, as well as a conducive atmosphere of trying to be conducive which is a prominent factor. However, there is a reason that is relatively crucial and mandatory. The reason is the availability of funds and sources of funding. This is because funds or financing are the main drivers for activities in the business world in general.

In each economic institution, whether in any form or having any proportion, it definitely requires sufficient financing so that the course of its activities and development can be realized in accordance with what has been planned by the people in the institution. Financing needs, can be met from within or independently according to existing abilities, but not always it can be done. Therefore, external assistance or outside the institution is needed who are willing and able to help provide funds according to what is needed. The method used is to borrow, or arguably through the procedure of carrying out debts. Regarding debt, it is a very common thing used by business actors. Whether it's an individual or a company. In practice, business activities do not always run smoothly. One of the obstacles that often occurs is the financial condition of business actors which for some reason becomes not good. This can trigger a situation that makes payments bad, namely a condition where business actors are no longer able to clean up their debts, even though they have fallen in time.

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Creditors who are informed about the Debtor no longer able to pay their debts will try to be the forefront of getting payment of their receivables. Usually the trick is to force the Debtor to hand over his assets. In addition, the Debtor can also carry out actions that only provide benefits to one party or several. Of course, this makes the other parties a loss. The actions of the Creditor and the behavior of the Debtor like this will inevitably cause uncertainty for other Creditors who have good faith and do not participate in taking over the Debtor's assets for repayment of their receivables. The result is that the receivables of the good faith Creditor cannot be guaranteed repayment. The act was clearly an unfair attitude by the Debtor to his Creditors. One solution to such a problem is to use an insolvency institution [1].

From what has been described, there is a conclusion from Sri Redjeki Hartono that the insolvency institution will provide a way out to the parties involved if the debtor is in a condition of stopping paying or unable to pay. Unfair actions and can make losses of all parties can be avoided with insolvency institutions The two things are: avoiding the punishment / mass execution of the Debtor or Creditor and anticipating the occurrence of fraudulent acts committed by the Debtor himself.[2]

The provisions of Article 226 of Law Number 37 of 2004 concerning insolvency and postponement of debt payment obligations, it is said that the management must immediately make announcements about decisions and announcements about temporary delays in debt management obligations in at least 2 (two) daily newspapers ordered by the State Gazette of the Republic of Indonesia and the Supervisory Judge must also contain an invitation meeting. A meeting of the judges which includes the date and time of the hearing, the name of the supervisory judge, and the name and address of the board of directors.

The requirement that the Debtor can be declared bankrupt is if the Debtor has 2 (two) or more Creditors and does not make payments until at least one debt that has fallen over time and can be collected (Article 2 paragraph (1) of the Insolvency Law No. 37 of 2004). Meanwhile, the verdict of the bankruptcy statment application was filed for the Commercial Law Tribunal. The legal tribunal, which is defined as the one in charge of the territory where the legal role of the Debtor is suitable, is regulated in the Insolvency Act.

Therefore, the insolvency regulations and the postponement of debt repayment obligations are crucial. The regulation is a legal product for the sake of ensuring protection, certainty, enforcement, and order of the law that contains justice and truth needed now to support the economic development of the country.[3]

In fact, doing business in today's global era cannot be separated from problems. A business that gets a bankruptcy declaration will have a detrimental impact and have an impact not only on the business world but also on a global scale. From there, insolvency is a core need in business activities. With insolvency, business actors withdrew from the market. If entrepreneurs can no longer afford to play in the market, they may be forced to leave the market. Therefore, bankruptcy organizations have several roles to play.[4] In accordance with the above elaboration, the author concludes the formulation of the problem as follows : Is bankruptcy an attempt at ultimum remedium in order to settle the Debtor's debt? And What are the obstacles faced by the Debtor for debt settlement?

2. Method

The type of research used is *library research* [5]. This study used secondary data as the main data. The source of the data can be obtained using document searches in the form of literature studies. Furthermore, this research is *Normative Law Research*. [6] Explanation of

normative legal research that conducts an assessment of positive law aka written law. The method used for this research is a qualitative analysis technique that has inductive properties, or in other words an analysis rooted in the data obtained, then a certain relationship pattern is developed. Furthermore, anything that must be passed in data analysis includes data reduction, data display, and conclusion drawing or verification.[7] Trianggulation techniques are used to see and compare data and explore the truth of the data obtained [8].

3. Discussion

In accordance with Article 2 paragraph (1) of Law Number 37 of 2004, which regulates the requirements for debtors to be declared bankrupt, they must be met in the decisions of the bankruptcy statement. That is, if these requirements are met, the judge must declare bankruptcy, and not be able to declare bankruptcy with careful consideration. Therefore, in this case, judges are not given the freedom to give a broad assessment of their case. This is reinforced in the provisions of Article 8 paragraph (4), which explains that an application for a declaration of bankruptcy must be granted whenever there are facts or circumstances that can be related to the simple legal relationship of the parties. So that there are no problems in the simpleness of the relationship such as breaking promises or other complicated legal issues. From the conditions that have been explained, it turns out that none of the conditions for the unhealthy financial situation of the Debtor will be complicated. must pass a series of tests from the expert. It can be concluded that this is one of the weaknesses that exist in bankruptcy law in Indonesia.

The Insolvency Law in Indonesia must provide benefits and not cause harm to Creditors, Debtors and stakeholders. in particular also the rules on which the insolvency or application for a declaration of insolvency is based. The purpose of the existence of law among others is to maintain peace and order in society. The enforcement of stakeholder interests in addition to the interests of Creditors and Debtors, seems to have not been touched by Law Number 4 of 1998 and Law Number 37 of 2004.

Simple proof only includes the condition that there are two or more creditors and at least one debt that is due and collectable, that is, if those conditions are proven, then the judge is required to issue an application for bankruptcy without taking into account the financial condition of the debtor. As a result, debtors can easily be declared bankrupt, although the explanation of Law No. 37 of 2004 regulates the principle of business continuity. For this reason, it is necessary to influence the role of this principle in the decisions of commercial court judges.

In everyday life we often hear various terms or mentions related to principles or some call them principles. Basically, principles with principles are the same. Principles and principles are the source of a norm. Furthermore, we also often hear the terms of legal principles, divine principles, judicial principles, economic principles, business principles, educational principles, nationality principles and so on.[9]

Sutan Remy Sjahdeini, said that insolvency arrangements in the law should contain various principles as below:[10]

1. The Insolvency Law should be a driver of increasing foreign investment enthusiasm, become a driver of the capital market while making Indonesian companies get credit from foreign parties more easily;
2. The Insolvency Act shall provide balanced protection for both Creditors and Debtors;
3. The agreement of the majority Creditor should be the basis of the judgment of the bankruptcy declaration;

4. An application for a declaration of bankruptcy should only be filed with an insolvent Debtor, i.e. one who is unable to pay his debts to the majority Debtor.
5. From the commencement of filing an application for a declaration of bankruptcy, a state of silence (standsill or stay) should be enforced).
6. The Insolvency Act should recognize the separatist rights of the Creditors holding the right of guarantee.
7. The application for a declaration of bankruptcy should have been decided in a short time or not to drag on.
8. Insolvency proceedings must be open to the public.
9. The management of a company whose fault results in the company being declared bankrupt must be personally responsible.
10. The Insolvency Act should have allowed the Debtor's debt to be restructured first, before the filing of the application for declaration of bankruptcy.
11. The Insolvency Act should criminalize fraudulent acts relating to the insolvency of the Debtor.

In addition to this, related to the elements that should be regulated in the Insolvency Law, Sutan Remy also explained several kinds of insolvency principles globally that must be understood by creditors and debtors in insolvency, namely; the principle of encouraging investment and business, the principle of balance of interests, protection of creditors and debtors, the principle of bankruptcy decisions is not applied to repaid debtors, the principle of approval of the award of the bankruptcy award must obtain the approval of the regulatory body [11]. the majority of creditors, the principle of silence (stand still or stay), the principle of recognition of the right of separation of creditors of the holder of guarantees, the principle of procedures for declaring bankruptcy without dragging on, the procedural principle of decision-making to declare bankruptcy in public, the principle of managing the debtor's company with the personal responsibility of the bankrupt company, the principle of providing the possibility of debt restructuring before making a decision to ask for a statement bankruptcy for the debtor [12]. there are still activities in the future, and taking action against the property of the bankrupt person is an offense that can be sued. With insolvency, the first thing that creditors and debtors do is to restructure or file for bankruptcy. insolvency in the form of the remaining ultimatum.

3.1. Bankruptcy as an Effort to Ultimum Remedium

Good insolvency provisions are indispensable to give a chance to a reputable debtor who finds it difficult to pay his debts, even though he wants to continue running his business. In accordance with the philosophy of insolvency, it is crucial for judges to be careful in making judgments about an insolvency case. The judge must also pay attention to the continuation of the activities of a business entity. To evaluate the potential activities of an enterprise, among other things, activities can consider from the point of view, the number of assets owned by the debtor, the number of potential assets that can be maximized by the debtor, future diversification and cooperation between the debtor and other parties.

The author argues that, the assessment of the future performance of a company or individual can be the basis for examining insolvency or checking the ability to repay debts, thus becoming a reference to whether the debtor is able to pay, whether the debtor can pay. has a problem with his obligations. For future insolvency laws, in addition to being a reference for judges in deciding bankruptcy applications, it should be understood as an ultimatum. Insolvency law in the future must be able to benefit debtors, creditors, and stakeholders. If the insolvency law can

set terms in favor of debtors, creditors, and stakeholders, it does not necessarily create a civil matter that is a potential waste of time.

Delaying the payment of solvent debts until they are able to pay is a possible solution, law number 37 of 2004 actually proposes an alternative payment of deferred debt payment obligations (PKPU). In context, the above paragraph also offers a choice, whether it is necessary to reschedule or restructure the joint debt repayment between the debtor and the creditor. The author argues, if indeed the individual Debtor is unable to pay his debts after passing the inability to pay debts test or insolvency test because meeting his basic needs alone is unable and the debt is greater than his assets, then the Creditor can carry out the release of all debts.

Proof is simply defined in Law Number 37 of 2004. This type of proof is proof of the creditor's right to collect his rights simply, or in other words, there should be no complexity in its implementation. The bankruptcy applicant is required to prove the valid agreement of both parties bound by rights and also obligations. Then, there is no problem with the third party related to the agreement of both parties, If the obligation has not been paid and it must be proved simply.

Explanation of Law Number 37 of 2004, regarding the principle of business continuity, in this case the law provides that the Creditor is not allowed to bankrupt the Debtor, if there is a provision that gives the possibility that the prospective debtor's company or business can still continue to carry out its business, it clearly indicates that the application for bankruptcy statement becomes ultimum remidium because it prioritizes the reorganization and restructuring of the Debtor's business. In Indonesia, there is no known solvency test before filing for bankruptcy. The law on insolvency should contain provisions regarding the financial state of the debtor as a condition for being declared bankrupt, but the insolvency law does not regulate the financial condition of the debtor at all as a condition [13]. The insolvency test, in addition to fulfilling the principle of business continuity, to maintain the value of fairness (also included in the principle of insolvency), to avoid opportunistic factors in the downturn, which means that the solvent debtor is not the main target for creditors who want to assert their interests, the solvency test is also to explain that if it is true that the debtor is mathematically bankrupt, he is worthy of bankruptcy.

3.2. Obstacles Faced by Debtors for Debt Settlement.

The purpose of enactment of the bankruptcy law is to achieve fast, fair, general and efficient settlement of debts and obligations. The Bankruptcy Law has explained the steps for managing bills. Unfortunately, in practice there are still many obstacles. Several obstacles to the settlement of debtors' debts to creditors through bankruptcy include:

a) In the management and settlement of bankrupt assets, there is no financing.

The costs required for the management and settlement of bankrupt assets can reach tens of millions of rupiah. Meanwhile, the budget for the heritage hall sometimes cannot be used for this purpose in advance because it is not what it was intended for. Sometimes, for household expenses, this hall is quite minimal. To resolve a bankruptcy case requires quite a lot of money. At the time of the decision to declare bankruptcy is obtained by the curator. In a short period of time there should be provision of funds from the curator to carry out the announcement of the bankruptcy statement, then the last deadline for submitting creditors' claims as well as the deadline for submitting creditors' claims/organizing a credit matching meeting. Announcements in accordance with Article 15 paragraph (4) and Article 114 are provided with financing

exceeding Rp. 10,000,000 (ten million rupiah). Unfortunately for that sometimes there is no allocation in the routine budget of the state heritage hall.

Actually, the UUK has prevented the possibility of obstacles from appearing for the Curator regarding this financing issue for the smooth management and settlement of bankrupt assets. The guarantee is stated in Article 107 paragraph (1). Unfortunately, in reality, the sale of bankruptcy estate takes time. This is due to demands regarding the release at the maximum price. In fact, this is done so that there is no loss to the bankruptcy estate. Not only that, the permission of the Supervisory Judge is also required. This means that obtaining the permit also takes time, even though the funds must be fulfilled immediately.

As for the method of the treasurer's office as the bankruptcy administrator, to cover the lack of capital to finance the management and settlement of the bankruptcy estate, it is for the debtor's family, creditors, and others. This method is a method that can be explained. Article 69 paragraph (2) b explains that when carrying out his work, the Curator may lend funds to third parties in order to increase the value of the bankruptcy estate. The Curator has the task of managing and/or liquidating the bankruptcy estate for the benefit of the Debtor and Creditor. Therefore, if the Curator experiences financial difficulties and then takes steps to borrow from the family of the Debtor or the Creditor is used to manage the interests of the Debtor/Credit, of course, this approach can be done fairly. The manager's loan will of course be repaid after the bankrupt property is sold.

b) Bankrupt debtors who do not want to cooperate

Types of uncooperative debtors include: difficulty asking for ownership data, not attending credit reconciliation meetings scheduled on a date and time, debtors running away and others. The Curator needs data on the Debtor's assets. This is necessary in order to make a record of bankruptcy assets as regulated in Article 100 paragraph (1) of the UUK, namely the curator must make it a maximum of 2 (two) days after receiving a decision on his appointment as Curator.

Debtors who are reluctant to provide data regarding their assets will make it difficult for the Curator to carry out the recording of bankruptcy assets. In addition, debtors who do not attend the matching meeting whose implementation has been determined can cause the meeting to be postponed. In accordance with Article 121 paragraph (1), the presence of the bankrupt Debtor is absolute. Therefore, if the Bankrupt Debtor does not attend the meeting, the meeting cannot be continued and the Supervisory Judge is forced to postpone it. Of course this makes bankruptcy resolution more time consuming/

The way to deal with Bankrupt Debtors who are uncooperative and do not want to be asked for information on the condition of their assets by the Curator, as described above, is another way of systematizing forward or crossing certificates using a bank before the information on the condition of the debtor's equipment appears in a bank. The bank usually complains about adding information on the condition of the customer's equipment calculation using the letter of the bank key. Before taking the bank key, the curator must give up the main point of practice that is strongly suspected, namely the explanation of Article 105 of the UUK which essentially says that according to article 34 and 69, starting with the bankruptcy decision, all authority is reported. belonging to the debtor related to the control and management of bankruptcy assets which also includes obtaining an explanation of the books, records, accounts from the bank, as well as debtor deposits provided by the bank that is related to the debtor will be transferred to the curator. Since the uncooperative Bankrupt Debtor is preventing the bankruptcy settlement, the Curator is allowed to take firm action. The legal basis is Article 93 paragraph (1). The curator can ask the Commercial Court to order the arrest of the debtor.

c) Prior to the declaration of bankruptcy, the debtor hides or transfers his assets.

The curator has one of the tasks of carrying out the management and/or administration of the bankruptcy estate. The point is that if the assets of the bankrupt debtor are transferred or sold before the bankruptcy occurs, the Curator must take care of when the sale is made, as well as to whom the assets will be sold. The activity of tracing where assets have been transferred or hidden, along with the cancellation process can take a long time. The cost is also not small. Of course, this is again an obstacle in the settlement of debtors' debts to creditors through the bankruptcy process.

Steps to overcome obstacles that prevent bankrupt debtors from transferring or hiding their assets before being declared bankrupt is to take legal action. This is of course for the sake of canceling the sale/transfer. Then, the hidden assets will be reported to the authorities in this case the police. The legal case of a bankrupt debtor who sells his assets 1 (one) year before being declared bankrupt can be postponed in accordance with UKK Article 41 paragraph (1). What the Balai Harta Peninggalan does to overcome the obstacles to the actions of a bankrupt debtor selling his property by filing a lawsuit is a professional act, as a trustee must try his best to return the assets that have been sold to the bankrupt while the buyer will generally maintain that what he has purchased has not been released. Debtor assets/assets that were hidden before bankruptcy were declared bankrupt.

Bankruptcy debtors who conceal and have not declared bankruptcy can be said to have embezzled bankruptcy assets. However, there are other methods that can be done before reporting explicitly to the police. The debtor can make peace with the inheritance hall as long as the goods are returned so that the process can proceed quickly. This is a very wise act and can provide a win-win solution for both parties involved. If the debtor is reported, he will automatically undergo a criminal process which of course hinders the ongoing bankruptcy process. This of course makes everything unproductive and contrary to simple principles and low costs.

4. Conclusion

In the bankruptcy law there is a very important principle. The principle is business continuity. If the debtor's business has signs it will continue to be prospective to continue. The going concern principle is at the root of the nation's bankruptcy laws. If you adhere to this principle, the bankruptcy application should be the ultimum remedium option. However, in reality Law Number 4 of 1998 as well as Law Number 37 of 2004 cannot explain in detail the concept of debt in bankruptcy, collectible maturity, creditors and debtors in bankruptcy. These problems have an impact on the complexity of understanding the meaning of simple evidence, so that the application for a declaration of bankruptcy is used as a means of collecting debts, not as an ultimum remidium. The Bankruptcy Law above also does not touch stakeholders from the parties, does not anticipate a domino effect and does not hold insolvency tests in bankruptcy issues.

In addition, the prevailing bankruptcy regulations should provide a sense of justice for the parties involved in it. With the enforcement of justice, it will anticipate the arbitrariness of the collectors in demanding settlement of debts to debtors by ignoring other creditors.

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