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The Principle of Good Faith In The Filing of A Bankruptcy Application by A Separated Creditor Against A Debtor (Case Study of Supreme Court Decision Number 1434 K/Pdt.Sus-Pailit/2020)

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Abstract: This study aims to analyze the application of the principle of good faith in the submission of bankruptcy petitions by secured creditors against debtors, as set forth in Supreme Court Decision Number 1434 K/Pdt.Sus-Pailit/2020 and assess the judge's considerations in distinguishing the use of legitimate rights from abuse of authority by comparing it with Supreme Court Decisions Number 704 K/Pdt.Sus-Pailit/2018 and Number 1230 K/Pdt.Sus-Pailit/2019. This study employs a juridical normative method under case and statutory approaches. The legal materials consist of primary, secondary, and tertiary legal materials, which are analyzed qualitatively through the interpretation of legal principles, doctrines, and the ratio decidendi of the decision. The results indicate that the Supreme Court considers the bankruptcy petition by secured creditors in Decision Number 1434 K/Pdt.Sus-Pailit/2020 does not violate the principle of good faith because it is submitted to protect the legal interests of collateral whose economic value is threatened. Conversely, in Decisions No. 704 K/Pdt.Sus-Pailit/2018 and No. 1230 K/Pdt.Sus-Pailit/2019, the bankruptcy petition was rejected because it was deemed disproportionate and potentially pressured the debtor. The study formulates an ideal model for a bankruptcy petition by secured creditors that emphasizes collateral protection, does not involve abuse of rights, and is preceded by alternative resolution efforts. This model reflects the principles of balance, appropriateness, and the objective of bankruptcy law to protect the interests of both creditors and debtors fairly and proportionally in the current bankruptcy court practice in Indonesia, and contributes to development.

Keyword: Good Faith, Secured Creditors, Bankruptcy, Proportionality, Abuse of Rights.

INTRODUCTION

Bankruptcy law is an significant part of the modern civil law system, serving as an instrument for collective debt settlement between creditors and debtors. In Indonesia, bankruptcy law is governed by Law No. 37 of 2004 on Bankruptcy and the Suspension of Debt Payment Obligations (the Bankruptcy and PKPU Law), which normatively defines bankruptcy as a legal process to fairly distribute a debtor's assets among its creditors when the debtor is unable to fulfill its debt obligations.

In the civil law system, the principle of freedom of contract, as contained in Article 1338 paragraph (1) of the Civil Code (KUHPerdata), grants parties the freedom to enter into agreements with anyone, on any matter, and in any form. However, this freedom is not absolute. Article 1338 paragraph (3) of the KUHPerdata emphasizes that agreements must be executed in good faith. This principle serves as a benchmark of legal morality that governs the exercise of rights and the performance of obligations by the parties to ensure they are in accordance with a sense of justice and propriety.

In practice, the principle of good faith applies not only to the execution of agreements but also to the exercise of legal rights arising from obligatory relationships, including the creditor's right to file for bankruptcy against the debtor. Problems arise when secured creditors, namely those holding collateral rights such as mortgages, fiduciary rights, or mortgages, file for bankruptcy against a debtor who still owns assets or is able to repay their obligations.

Normatively, secured creditors have a special position, as stipulated in Article 55 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, namely the right to execute collateral as if bankruptcy had not occurred. This means that secured creditors do not require bankruptcy proceedings to settle their receivables because the law grants them priority rights. However, in a number of cases, secured creditors resort to bankruptcy rather than collateral enforcement. This situation raises legal questions about whether such actions reflect good faith or constitute an abuse of rights.

One case illustrating this problem is Supreme Court Decision Number 1434 K/Pdt.Sus-Pailit/2020. In this case, the Supreme Court upheld the commercial court's decision, granting the bankruptcy petition filed by secured creditors, on the grounds that the elements of Article 2 paragraph (1) of Law Number 37 of 2004 had been met, namely the presence of two creditors and one debt that was due and collectible. This ruling reflects a formalistic approach, as the judge merely assessed whether the statutory requirements were met without examining the creditor's motivation or good faith in filing the bankruptcy petition.

Conversely, in several other decisions, the Supreme Court has adopted a different approach. Decision Number 10 K/Pdt.Sus-Pailit/2016 rejected the bankruptcy petition due to indications of abuse of rights. Decision Number 317 K/Pdt.Sus-Pailit/2017 rejected the petition due to the lack of sufficient evidence and the parties' unequal interests. Meanwhile, Decision Number 831 K/Pdt.Sus-Pailit/2020 deemed the bankruptcy proceedings disproportionate because other legal remedies were available.

These differing jurisprudential directions indicate that the enforcement of the principle of good faith in bankruptcy petitions by secured creditors lacks a clear standard. On the one hand, creditors have the right to file a bankruptcy petition as a form of legal protection for their rights. However, such actions can result in significant losses for the debtor if taken without due regard for reasonableness and proportionality.

In the context of modern economic law, the disproportionate exercise of legal rights may distort justice, particularly when a petition for bankruptcy is filed with the aim of pressuring the debtor to comply with specific demands. A bankruptcy petition should be the ultimum remedium, a last resort after all other debt resolution mechanisms have been exhausted. Therefore, the principle of proportionality should be applied to assess the extent to which a bankruptcy petition by secured creditors aligns with the objectives of bankruptcy law, namely, creating balance and justice for all parties. In this regard, the proportionality theory developed by Robert Alexy can be used to measure the balance between the interests of creditors and debtors to prevent misuse of bankruptcy legal instruments.

Furthermore, in the practice of Suspension of Debt Payment Obligations (PKPU), the status of secured creditors also presents its own challenges. Based on several Supreme Court decisions, secured creditors are not involved in the decision-making process or have voting rights during the homologation stage because they are considered to have material collateral and a different legal standing than concurrent creditors. Consequently, there is a potential imbalance in legal protection, as secured creditors remain bound by the homologation results even though they did not vote in the process.

This situation emphasizes that the issue of good faith and proportionality of secured creditors' actions is becoming increasingly complex, not only in the context of bankruptcy filings but also in debt restructuring mechanisms. Therefore, a study is needed to determine whether the principle of good faith is mandatory in bankruptcy petitions filed by secured creditors, how the criteria for good faith and proportionality are determined, and how a balance of legal protection for creditors and debtors can be achieved.

This research is based on the fact that there is no consistent jurisprudential standard for applying the principle of good faith to secured creditors filing bankruptcy petitions. On the one hand, there are decisions that affirm the principle of legal certainty through the fulfillment of formal requirements as stipulated in Article 2 paragraph (1) of Law Number 37 of 2004, while on the other hand, there are decisions that emphasize the importance of substantive justice, propriety, and legal morality. Therefore, this research aims to analyze the judges' considerations in Supreme Court Decision Number 1434 K/Pdt.Sus-Pailit/2020 and examine the application of the principle of good faith as a parameter for realizing a balance of legal protection between creditors and debtors in bankruptcy petitions filed by secured creditors.

Based on this background, the research questions are formulated as follows: 1) What are the legal considerations of the Supreme Court in Decision Number 1434 K/Pdt.Sus-Pailit/2020 regarding bankruptcy petitions filed by secured creditors against debtors? 2) How can the application of the principle of good faith in bankruptcy petitions by secured creditors achieve a balance of legal protection between creditors and debtors?

The objectives are: 1) To analyze the legal considerations of the Supreme Court in Decision Number 1434 K/Pdt.Sus-Pailit/2020 regarding bankruptcy petitions filed by secured creditors. 2) To formulate a concept for the proportional application of the principle of good faith in bankruptcy petitions by secured creditors so as not to create an imbalance in the rights and obligations between creditors and debtors.

LITERATURE REVIEW

The Principle of Good Faith in Civil Law

The principle of good faith (the principle of good faith) is a fundamental principle that underpins the entire Indonesian civil law system. This principle is explicitly stipulated in Article 1338 paragraph (3) of the Civil Code (KUHPerdata), which states that "Agreements must be executed in good faith" (KUHPerdata, Article 1338 paragraph (3)). This provision emphasizes that the exercise of rights and obligations in legal relationships may not be carried out arbitrarily or contrary to the values of justice and propriety.

Historically, the concept of good faith stems from ancient Roman law (bona fide), which emphasized the moral obligation to act honestly and not deceive others. In the modern context, good faith is understood as both a moral norm and a legal norm that limits freedom of contract (Hartkamp, 2018).

According to Mariam Darus Badrulzaman, the principle of good faith serves as the "spirit" of every legal contract. Without it, legal implementation becomes devoid of moral values (Badrulzaman, 2019).

Legal experts distinguish two dimensions of this principle: 1) Subjective good faith, namely the honesty of the parties' consciences in carrying out their legal obligations. 2) Objective good faith, namely propriety and fairness as measured by societal standards (Budiono, 2015).

In the context of contract law and bankruptcy, the principle of good faith serves as a moral check on the exercise of legal rights. Creditors who have the legal right to collect, execute, or file for bankruptcy are still limited by the value of propriety. This principle aligns with modern legal doctrine that law must go hand in hand with morality and justice (Rahardjo, 2020).

The Principle of Good Faith in Bankruptcy Law

Bankruptcy law in Indonesia is governed by Law No. 37 of 2004 on Bankruptcy and the Suspension of Debt Payment Obligations (hereinafter referred to as the Bankruptcy and PKPU Law). Its primary objective is to establish a mechanism for the collective and fair settlement of debts. However, its implementation is often marked by differing interpretations, particularly regarding the good faith of creditors and debtors (Law No. 37 of 2004).

Normatively, Article 2(1) of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations provides that a debtor may be declared bankrupt if: The debtor has two or more creditors; and has failed to pay at least one debt that is past due and enforceable (Law No. 37 of 2004, Article 2(1)).

These provisions are summary (simple) in nature, so commercial judges are not required to further assess whether the debtor is still solvent or not. However, this approach raises issues of morality and substantive justice. Creditors can only use these summary provisions to pressure debtors, even though other legal alternatives exist, such as the enforcement of collateral or debt restructuring (Fuady, 2013).

According to Sutan Remy Sjahdeini, a petition for bankruptcy that is not based on an intention to settle debts, but solely to pressure or shut down the debtor's business, constitutes an abuse of rights. Therefore, judges must have the courage to assess the creditor's motives in filing for bankruptcy (Sjahdeini, 2016).

Secured Creditors in the Bankruptcy System

A secured creditor is a creditor who holds a security interest in the debtor's assets, such as a mortgage as regulated in Law No. 4 of 1996 on Mortgages, fiduciary security as regulated in Law No. 42 of 1999 on Fiduciary Security, or a mortgage as regulated in the Civil Code. Under the law, they have special rights known as droit de preference (right of priority) and droit de suite (right to follow the property) (Bahsan, 2013).

Article 55 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations states that creditors holding collateral rights can exercise their rights as if bankruptcy had not occurred (Law No. 37 of 2004, Article 55 paragraph (1)). This provision provides a special position for secured creditors, but also creates a legal dilemma when such creditors choose to file for bankruptcy rather than enforce their collateral.

Theoretically, secured creditors should not need to file for bankruptcy because they have their own enforcement mechanism through collateral auctions (Lubis, 2019). However, in practice, some creditors utilize the bankruptcy process to expedite the process or to obtain formal recognition of the debtor's inability to pay (Andika, 2019).

Problems arise when bankruptcy petitions are filed solely to pressure the debtor or strengthen their bargaining position in negotiations. In such a situation, the creditor is considered to have abused his legal rights, and the judge should assess whether the action was in good faith or not (Sjahdeini, 2016; Fuady, 2013).

The Theory of Proportionality in Law

The concept of proportionality originates from the philosophy of law and developed within the German legal system through the work of Robert Alexy. This principle underscores a balance between the objectives of the law and its resulting effects (Alexy, 2018).

In the context of civil and bankruptcy law, the principle of proportionality is used to assess the reasonableness of the exercise of legal rights, including the rights of separate creditors (Alexy, 2018).

Proportionality consists of three stages of scrutiny, namely:

1. Suitability: whether the legal action is suitable for achieving a legitimate objective.
2. Necessity: whether there is no less burdensome alternative to achieve that objective.
3. Balancing: whether the benefits of the action outweigh its harms (Alexy, 2018).

By applying this principle, a judge can assess whether a separate creditor’s filing for bankruptcy is truly necessary or, conversely, excessive. For example, if the creditor can still enforce its security interest, then the bankruptcy proceeding does not satisfy the element of necessity. Therefore, the principle of proportionality can be used as a tool to assess the reasonableness of a creditor’s exercise of its right to file for bankruptcy (Alexy, 2018).

Theory of Abuse of Rights

The theory of abuse of rights asserts that every legal right has moral limits. According to Subekti, a person must not exercise their rights in a manner contrary to the purpose of the law and principles of propriety (Subekti, 2005).

The concept of abuse of rights is recognized in various legal systems, including Dutch law (misbruik van recht) and French law (abus de droit) (Hartkamp, 2013). This theory essentially emphasizes that the exercise of a right must align with the underlying legal purpose and must not be used to harm another party.

In the context of bankruptcy, this theory is used to limit the actions of creditors who exploit bankruptcy proceedings not for the settlement of debts, but to exert business pressure. A judge may declare a bankruptcy petition legally unfounded if it is proven that the creditor acted in bad faith (Sjahdeini, 2016).

Thus, the theory of abuse of rights serves as the basis for assessing whether a separate creditor’s exercise of rights in filing a bankruptcy petition remains within the bounds of reasonableness or has deviated from the very legal purpose of bankruptcy itself (Haryono, 2021).

Substantive Justice Theory

Substantive justice emphasizes that the goal of law is not merely formal certainty, but also moral justice. According to John Rawls, justice must be understood as fairness, namely the balance between legal certainty and social morality (Rawls, 2012).

In the context of bankruptcy, substantive justice requires judges not only to adhere to the formal requirements stipulated in statutory regulations but also to consider the impact of the decision on the parties. Therefore, judges need to assess whether the creditor's actions reflect propriety, reasonableness, and balance in the exercise of their rights (Rawls, 2012).

The substantive justice approach requires judges not only to read the text of the law but also to consider the parties' motives, the economic and social impacts of bankruptcy, and the proportionality between the value of the debt and the resulting legal impact (Rahardjo, 2020).

Thus, the application of the principle of good faith becomes a moral instrument for upholding substantive justice. Through this approach, bankruptcy law is not only oriented towards formal legal certainty, but also towards creating a balance of legal protection between creditors and debtors (Rawls, 2012; Rahardjo, 2020).

The Concept of Ultimum Remedium in Bankruptcy Petitions

The principle of ultimum remedium means that bankruptcy law should be used as a last resort after all other alternatives for resolution have failed. According to Munir Fuady (2013), bankruptcy should be used only if restructuring, negotiation, and the enforcement of collateral have not yielded results.

The application of this principle is particularly relevant for secured creditors who have the legal authority to enforce collateral without needing to file for the debtor's bankruptcy. If a creditor immediately files for bankruptcy without first taking these steps, their action may be deemed disproportionate and in bad faith. However, issues arise when a creditor files for bankruptcy first, even though enforcement of the collateral has not yet been pursued.

METHOD

This research is normative legal research, examining law as a system of norms applicable in legislation, court decisions, and the doctrines of legal experts (Soekanto, 2015). The focus of this research is the application of the principle of good faith in bankruptcy petitions by secured creditors, specifically in Supreme Court Decision Number 1434 K/Pdt.Sus-Pailit/2020.

The procedures used include the statute, conceptual, and case approaches (Marzuki, 2021). The legal approach is conducted by examining the Civil Code, specifically Article 1338 paragraph (3), Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, and regulations relating to material collateral, such as Law Number 4 of 1996 concerning Mortgage Rights and Law Number 42 of 1999 concerning Fiduciary Guarantees.

A conceptual approach is employed to examine the concept of the principle of good faith proposed by Mariam Darus Badrulzaman (2019), the proportionality theory developed by Robert Alexy (2018), and the theory of substantive justice proposed by John Rawls (2012). Meanwhile, a case-based approach is conducted through an analysis of Supreme Court Decision Number 1434 K/Pdt.Sus-Pailit/2020 and several other comparative decisions to assess the consistency of the application of the principle of good faith in bankruptcy petitions by secured creditors.

The legal materials used consist of primary, secondary, and tertiary legal materials. Primary legal materials include laws and court decisions. Secondary legal materials consist of books, scientific journals, theses, and dissertations related to bankruptcy law and the principle of good faith. Tertiary legal materials include legal dictionaries, legal encyclopedias, and directories of Supreme Court decisions.

Legal materials were collected through literature and document studies. Legal material analysis was conducted qualitatively using deductive and inductive methods. Deductive analysis is used to examine the application of general legal principles to specific cases, while inductive analysis is used to draw conclusions from the judges' reasoning patterns in the decisions studied (Marzuki, 2021). The analysis focuses on the judges' ratio decidendi, the consistency of the application of the principle of good faith, and its implications for legal protection for creditors and debtors.

RESULTS AND DISCUSSION

Overview of Bankruptcy Applications by Secured Creditors in the Indonesian Bankruptcy Law System

Bankruptcy law in Indonesia essentially aims to create a collective debt resolution mechanism that is fair to all parties involved. When a debtor is unable to meet their debt repayment obligations, the law provides a bankruptcy mechanism as a means to regulate the proportional distribution of the debtor's assets to their creditors. This system is regulated by Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Law No. 37 of 2004).

In practice, bankruptcy law assigns different positions to each type of creditor. Generally, creditors can be divided into three groups: secured creditors, preferred creditors, and concurrent creditors. Secured creditors are creditors who hold security rights over the debtor's assets, such as mortgages, fiduciary rights, or other security interests. Secured creditors' position in the bankruptcy legal system is special because they have the right to directly execute the collateral (Bahsan, 2013).

Article 55 paragraph (1) of the Bankruptcy Law states that creditors holding collateral rights may exercise their rights as if bankruptcy had not occurred (Law No. 37 of 2004, Article 55 paragraph (1)). This provision provides substantial legal power to secured creditors, as they do not have to rely on bankruptcy proceedings to obtain repayment of their debts.

Theoretically, the existence of this right indicates that secured creditors actually have adequate legal instruments to obtain repayment of their debts without having to file a bankruptcy petition against the debtor. It presents an important legal question: why, in practice, do some secured creditors still choose to file a bankruptcy petition against the debtor?

This issue is crucial because a bankruptcy petition has significant legal consequences for the debtor. When a debtor is declared bankrupt, all of their assets are under the control of a curator, and their business activities can be suspended. Therefore, the use of bankruptcy instruments must be carried out carefully and must not conflict with fundamental principles of civil law, particularly the principle of good faith (Badrulzaman, 2019).

In some cases, bankruptcy pleas by secured creditors have actually indicated that the bankruptcy mechanism is being used not as a means of debt settlement, but as a means of pressure on the debtor. It raises concerns that the bankruptcy mechanism could be abused by parties with greater economic power. Therefore, analyzing the application of the principle of good faith in bankruptcy petitions by secured creditors is crucial to ensure that bankruptcy law continues to function as an instrument of justice and not as a tool of economic oppression (Sjahdeini, 2016).

Legal Considerations of the Supreme Court in Decision Number 1434 K/Pdt.Sus-Pailit/2020

Supreme Court Decision No. 1434 K/Pdt.Sus-Pailit/2020 is one of the most significant decisions in the practice of bankruptcy law in Indonesia because it concerns a petition for bankruptcy filed by a separate creditor against a debtor. In this case, the Supreme Court upheld the commercial court’s decision declaring the debtor bankrupt.

The Supreme Court’s primary reasoning was based on the fulfillment of the elements of bankruptcy as stipulated in Article 2(1) of Law No. 37 of 2004 on Bankruptcy and the Suspension of Debt Payment Obligations. That provision states that a debtor may be declared bankrupt if it has two or more creditors and fails to pay at least one debt that is due and collectible (Law No. 37 of 2004, Article 2(1)).

The Supreme Court determined that these elements had been proven through the financing agreement documents and evidence of payment obligations that the debtor had failed to fulfill. Thus, from a legal standpoint, the requirements for declaring the debtor bankrupt had been met.

Furthermore, the Supreme Court emphasized that the standard of proof in bankruptcy cases is a simple one, as provided for in Article 8(4) of the Bankruptcy Law. As long as the existence of overdue debts can be proven through simple evidence, the petition for bankruptcy may be granted (Law No. 37 of 2004, Article 8(4)).

This approach indicates that the Supreme Court emphasizes the aspect of formal legal certainty. However, in several other decisions, the Supreme Court has adopted a more substantive approach by assessing the motives and proportionality of the creditor's actions. In Decision No. 10 K/Pdt.Sus-Pailit/2016, the Supreme Court denied a bankruptcy petition, finding indications of an abuse of rights. Similarly, in Decision No. 317 K/Pdt.Sus-Pailit/2017 and Decision No. 831 K/Pdt.Sus-Pailit/2020, the Supreme Court ruled that the bankruptcy petition was disproportionate because there were still other legal alternatives available to the creditor (Supreme Court Decision No. 10 K/Pdt.Sus-Pailit/2016; Supreme Court Decision No. 317 K/Pdt.Sus-Pailit/2017; Supreme Court Decision No. 831 K/Pdt.Sus-Pailit/2020).

In Decision No. 1434 K/Pdt.Sus-Pailit/2020, the Supreme Court found no evidence indicating that the separate creditor acted in bad faith. Therefore, the bankruptcy petition was granted because it was deemed to meet the statutory requirements set forth by law (Supreme Court Decision No. 1434 K/Pdt.Sus-Pailit/2020).

This enactment demonstrates that Indonesia's bankruptcy legal system still provides significant leeway for creditors to exercise their right to file for bankruptcy, provided that the formal requirements set forth by law have been met.

Critical Analysis of the Supreme Court's Legal Considerations in Decision Number 1434 K/Pdt.Sus-Pailit/2020

In Decision No. 1434 K/Pdt.Sus-Pailit/2020, the Supreme Court held that the bankruptcy petition could be granted because the elements of simple proof, as stipulated in Article 8(4) of Law No. 37 of 2004 on Bankruptcy and the Suspension of Debt Payment Obligations, had been met. The panel of judges determined that there were debts that had become due and collectible, as well as the existence of more than one creditor. This reasoning aligns with the normative framework of Indonesian bankruptcy law, which establishes the standard of simple proof as the basis for examining bankruptcy cases. However, this approach remains focused on the formal aspects of the existence of debt and has not yet fully addressed the substantive aspects regarding the purpose of the exercise of rights by secured creditors.

A secured creditor is a creditor who holds a security interest and is granted a preferential right to enforce the collateral, as provided for in Article 55 of Law No. 37 of 2004. Given this status, secured creditors essentially already possess adequate legal instruments to obtain repayment of their claims without always having to resort to bankruptcy proceedings. However, the Supreme Court has not yet provided sufficient reasoning as to why secured creditors still choose to file for bankruptcy rather than exercising their existing rights to enforce security interests.

In its decision considerations, the Supreme Court also did not elaborate on whether other alternative settlements were available to the parties. However, the existence of mortgages and fiduciary guarantees provides the possibility of settlement through the collateral enforcement mechanism. An analysis of alternative debt settlement options is crucial for determining whether a bankruptcy petition is truly necessary or whether other, more proportionate legal remedies are available that will not have a significant impact on the debtor.

From the perspective of the theory of good faith, Mariam Darus Badrulzaman (2019) explains that every legal entity must exercise its rights and obligations based on propriety, honesty, and fairness. If this theory is applied to Decision Number 1434 K/Pdt.Sus-Pailit/2020, the judge's review should not stop at fulfilling the formal requirements for bankruptcy, but also assess whether the exercise of the right to file a bankruptcy petition by the secured creditors was carried out appropriately and in accordance with the objectives of bankruptcy law. In this case, the Supreme Court placed more emphasis on the existence of debt that had matured and the existence of more than one creditor, but did not explicitly consider the aspects of propriety and the purpose of using these rights.

Furthermore, Robert Alexy's (2018) theory of proportionality asserts that a legal action must be evaluated based on the elements of suitability, necessity, and balancing. The Decision No. 1434 K/Pdt.Sus-Pailit/2020, the element of suitability was essentially met because bankruptcy is a recognized legal instrument for resolving a debtor's debts. However, the elements of necessity and balancing were not clearly evident in the judges' reasoning. The Supreme Court did not elaborate on whether other, less severe alternatives for resolution were still available, nor did it conduct an in-depth assessment of the balance between the benefits gained by the creditors and the impact borne by the debtor.

Based on this analysis, the author argues that the Supreme Court has correctly applied Article 2(1) of Law No. 37 of 2004 from the perspective of legal certainty. Nevertheless, the approach taken remains dominated by formalistic considerations and thus has not fully allowed for an assessment of the aspects of good faith and proportionality in the exercise of rights by separate creditors. Therefore, the application of the principles of good faith and proportionality must be incorporated into the legal considerations in every bankruptcy petition filed by a separate creditor so that the legal objectives of legal certainty, justice, and public benefit can be realized in a more balanced manner.

Analysis of the Principle of Good Faith in Bankruptcy Petitions Filed by Separate Creditors

The principle of good faith is a fundamental principle in Indonesian civil law, requiring all parties in a legal relationship to act honestly and fairly and without abusing their rights. This principle is stipulated in Article 1338 paragraph (3) of the Civil Code, which states that agreements must be executed in good faith (Civil Code, Article 1338 paragraph (3)).

In the bankruptcy law, the principle of good faith plays a crucial role because a bankruptcy petition can have a significant impact on a debtor's economic well-being. Therefore, exercising the right to file for bankruptcy must be proportionate and must not conflict with the principle of justice.

Secured creditors essentially have a strong position in the bankruptcy legal system because they have collateral rights over the debtor's assets. With this collateral, secured creditors have the right to execute the collateral to obtain repayment of their receivables (Law No. 37 of 2004, Article 55).

To assess whether a bankruptcy petition is filed in good faith, this study uses several indicators. The first indicator is the purpose of the bankruptcy petition. A bankruptcy petition filed to collectively settle debts can be considered a legitimate action. However, if it is filed to pressure debtors or obtain unfair profits, it can be categorized as acting in bad faith.

The second indicator is the steps taken by creditors before filing the bankruptcy petition. Creditors acting in good faith should first attempt to resolve debt issues through negotiation, restructuring, or collateral enforcement. The third indicator is the proportionality between the value of the debt and the impact of the bankruptcy. The fourth indicator is the availability of other legal alternatives to creditors. If creditors still have other, less stringent legal remedies, such as collateral enforcement, the bankruptcy petition may be deemed to fail to meet the principle of necessity in the theory of proportionality (Alexy, 2018).

Analysis of Separatist Creditors Who Do Not Act in Good Faith in Bankruptcy Applications

One of the main problems in bankruptcy law practice is the use of bankruptcy mechanisms as a means of economic pressure on debtors. In this context, secured creditors have a greater potential to take such action due to their strong legal standing.

Secured creditors can be deemed to be acting without good faith if they file a bankruptcy petition without a proportionate basis and without first exhausting other available legal means. For example, if a secured creditor holds material collateral sufficient to repay the debt but still files a bankruptcy petition against the debtor, this action could indicate an abuse of rights.

A bankruptcy petition filed in such a situation can result in significant losses for the debtor, especially if the debtor still has a viable business and can still restructure the debt. In such circumstances, the bankruptcy mechanism no longer functions as a fair means of debt resolution but instead becomes a tool to destroy the debtor's business.

In several Supreme Court decisions, bankruptcy petitions showing indications of abuse of rights have been rejected by the courts. It demonstrates that judges have the authority to assess whether a bankruptcy petition is filed in good faith or not (Supreme Court Decision No. 10 K/Pdt.Sus-Pailit/2016; Supreme Court Decision No. 317 K/Pdt.Sus-Pailit/2017).

Assessing a creditor's good faith is crucial for maintaining a balance between the interests of creditors and the protection of debtors. Thus, the principle of good faith serves not only as a moral principle but also as a legal instrument to prevent the abuse of rights in bankruptcy proceedings (Badrulzaman, 2019).

Model for the Application of the Principle of Good Faith in Bankruptcy Applications by Separatist Creditors

Based on an analysis of legal theory and court decisions, this study formulates a model for applying the principle of good faith in bankruptcy petitions filed by separate creditors. This model emphasizes that bankruptcy petitions filed by separate creditors must comply with the principles of proportionality, ultimum remedium, and substantive justice.

The principle of proportionality requires that the exercise of legal rights be carried out in a balanced manner and not cause unreasonable harm to other parties. According to Robert Alexy (2018), the exercise of a right must satisfy the elements of suitability, necessity, and balancing.

The principle of ultimum remedium asserts that bankruptcy should be used as a last resort after all other alternative resolutions have been exhausted. Munir Fuady (2013) explains that bankruptcy proceedings should be used only when other resolution efforts no longer yield effective results.

The principle of substantive justice requires judges to assess not only the formal aspects of a bankruptcy petition but also the social and economic impacts of the decisions made. John Rawls (2012) emphasizes that justice must be achieved through a balance of the parties' interests.

By applying these principles, the bankruptcy mechanism can function more fairly and avoid becoming a means for the abuse of economic power.

Comparative Analysis of Supreme Court Decisions Regarding Bankruptcy Applications by Separatist Creditors

In Indonesian bankruptcy court practice, the Supreme Court has issued various decisions related to bankruptcy petitions filed by secured creditors. A comparison of Decisions No. 1434 K/Pdt.Sus-Pailit/2020, No. 10 K/Pdt.Sus-Pailit/2016, No. 317 K/Pdt.Sus-Pailit/2017, and No. 831 K/Pdt.Sus-Pailit/2020 demonstrates a difference in approach to assessing bankruptcy petitions.

In Decision No. 1434 K/Pdt.Sus-Pailit/2020, the Supreme Court placed greater emphasis on fulfilling the formal elements as stipulated in Article 2 paragraph (1) of Law No. 37 of 2004 (Supreme Court Decision No. 1434 K/Pdt.Sus-Pailit/2020).

In contrast to this ruling, the Supreme Court, in Decision No. 10 K/Pdt.Sus-Pailit/2016, deemed the bankruptcy petition not to reflect the debt settlement objective and therefore rejected the petition (Supreme Court Decision No. 10 K/Pdt.Sus-Pailit/2016).

In Decision No. 317 K/Pdt.Sus-Pailit/2017, the Supreme Court concluded that the evidentiary basis was no longer simple due to the complex dispute between the parties (Supreme Court Decision No. 317 K/Pdt.Sus-Pailit/2017).

Meanwhile, Decision No. 831 K/Pdt.Sus-Pailit/2020 indicates that the Supreme Court considers that there are still alternative debt settlement options available before resorting to bankruptcy procedures (Supreme Court Decision No. 831 K/Pdt.Sus-Pailit/2020).

According to the author, these differing considerations indicate that there is no truly consistent jurisprudential standard regarding the parameters of good faith in bankruptcy petitions filed by secured creditors. This situation has the potential to create legal uncertainty because cases with similar characteristics can result in different decisions.

Therefore, a good-faith testing model is needed that can serve as a guideline for judges when examining bankruptcy petitions filed by secured creditors. This model is expected to create a balance between legal certainty, justice, and legal expediency.

A Model for Testing Good Faith for Secured Creditors in Bankruptcy Petitions

Based on an analysis of legal theory and Supreme Court decisions, this study formulates a testing model that can be used to assess whether secured creditors acted in good faith in filing bankruptcy petitions.

This model is formulated by combining the principle of good faith, the theory of abuse of rights, the principle of proportionality, and the concept of ultimum remedium. The assessment is based on several indicators, namely the purpose of the bankruptcy petition, the steps taken prior to the bankruptcy filing, the proportionality between the debt value and the impact of bankruptcy, the availability of other legal alternatives, and the transparency of the parties' legal relationship.

Through these indicators, the judge can more objectively assess whether the bankruptcy petition is truly filed to resolve debt collectively or is instead used as a means of pressure on the debtor. Therefore, this model can serve as a guideline for applying the principle of good faith to bankruptcy petitions filed by secured creditors.

Analysis of the Decidendi Ratio of the Supreme Court's Decision in Bankruptcy Applications by Separatist Creditors

The ratio decidendi is the legal reasoning upon which a judge bases a ruling (Marzuki, 2021). In bankruptcy cases involving separate creditors, the Supreme Court has demonstrated two distinct approaches: the formalistic approach and the substantive approach.

In Decision No. 1434 K/Pdt.Sus-Pailit/2020, the Supreme Court emphasized the fulfillment of the requirements of Article 2(1) of Law No. 37 of 2004, thereby granting the petition for bankruptcy (Supreme Court Decision No. 1434 K/Pdt.Sus-Pailit/2020). Conversely, in Decision No. 10 K/Pdt.Sus-Pailit/2016, Decision No. 317 K/Pdt.Sus-Pailit/2017, and Decision No. 831 K/Pdt.Sus -Pailit/2020, the Supreme Court considered the purpose of the petition, proportionality, and the existence of alternative debt settlement options before granting the bankruptcy petition (Supreme Court Decision No. 10 K/Pdt.Sus-Pailit/2016).

The disparity in these rulings indicates that the application of the principle of good faith in bankruptcy petitions filed by separate creditors has not yet been subject to a fully consistent standard. Therefore, clearer assessment parameters are needed to strike a balance between legal certainty and substantive justice.

CONCLUSION

Based on the analysis of legal theory, laws and regulations, and relevant Supreme Court decisions, it can be concluded that:

1. The Supreme Court’s legal reasoning in Decision No. 1434 K/Pdt.Sus-Pailit/2020 affirms that a bankruptcy petition filed by a separate creditor may be granted, provided that the elements of simple proof are met, namely the existence of a debt that is due and collectible and the presence of more than one creditor. These considerations provide clarity regarding the scope of the “simple standard of proof” in bankruptcy cases and reinforce the authority of commercial court judges in evaluating bankruptcy petitions filed by separate creditors.
2. The application of the principle of good faith in bankruptcy petitions filed by separate creditors must be realized through the proportional exercise of rights and must not aim to abuse the bankruptcy mechanism as a means of pressuring the debtor. The principle of good faith must be understood as a legal parameter for assessing the purpose of exercising rights, the existence of alternative debt settlement options, the proportionality of actions, and their impact on the parties involved. Thus, the principle of good faith serves as a legal protection mechanism to create a balance of legal protection between creditors and debtors and to uphold the legal purpose of bankruptcy as a fair and collective debt settlement mechanism.

The Supreme Court is expected to establish consistency in the application of bankruptcy law, particularly in assessing simple evidence and the limits on the exercise of secured creditors' rights in bankruptcy petitions. Furthermore, improvements to Law Number 37 of 2004 are needed to provide clarity regarding the criteria for collectible debts, the claim verification mechanism, and the status of secured creditors. Furthermore, creditors and debtors need to prioritize the principle of good faith by prioritizing alternative resolution efforts, such as restructuring or negotiation, before resorting to bankruptcy mechanisms.

REFERENCES

Alexy, R. (2018). A Theory of Constitutional Rights. Oxford University Press.
Andika, R. (2019). Kreditor separatis dan eksekusi jaminan pada masa pailit. Mimbar Hukum, 31(2), 212–230.
Bahsan, M. (2013). Hukum Jaminan dan Kepailitan. RajaGrafindo Persada.
Badrulzaman, M. D. (2019). Kompilasi Hukum Perikatan. Alumni.
Budiono, H. (2015). Asas-Asas Hukum Perjanjian. Citra Aditya Bakti.
Fuady, M. (2013). Hukum Kepailitan Modern. Citra Aditya Bakti.
Hartkamp, A. S. (2013). Contract Law in the Netherlands. Kluwer Law International.
Hartkamp, A. (2018). Good Faith in Civil Law Systems. Brill.
Haryono, T. (2021). Asas itikad baik dan penyalahgunaan hak. RechtsVinding, 10(1), 87–105.
Lubis, S. (2019). Prinsip Eksekusi Hak Tanggungan. Pustaka Bangsa.
Marzuki, P. M. (2021). Teori dan Metode Hukum. Kencana.
Rawls, J. (2012). A Theory of Justice. Harvard University Press.
Rahardjo, S. (2020). Hukum Progresif. Kompas.
Republik Indonesia. (1847). Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek).

Republik Indonesia. (1996). Undang-Undang Nomor 4 Tahun 1996 tentang Hak Tanggungan atas Tanah Beserta Benda-Benda yang Berkaitan dengan Tanah.
Republik Indonesia. (1999). Undang-Undang Nomor 42 Tahun 1999 tentang Jaminan Fidusia.
Republik Indonesia. (2004). Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang.
Sjahdeini, S. R. (2016). Hukum Kepailitan Indonesia. Kencana.
Soekanto, S. (2015). Metode Penelitian Hukum Normatif. UI Press.