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Examining the Effectiveness of Using Bankruptcy as an Ultimum Remedy in Resolving Debt and Receivable Disputes: Case Analysis of PT Jawa Barat Indah

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Abstract: Bankruptcy is a condition that causes a person or legal entity to become incompetent in carrying out legal actions. The Bankruptcy Law was originally created to protect creditors by providing a clear and definite mechanism for resolving unpaid debts. Debtors who have difficulty paying their maturing debts and believe that they are unable to continue payments can submit a PKPU to the Commercial Court. In bankruptcy, there are several important principles, one of which is the existence of debt. Debt is the main requirement for filing for bankruptcy, because without debt a bankruptcy case cannot be filed. Bankruptcy should belast resort, namely as the last solution or the last solution of the last in solving the problem. But in reality in the bankruptcy case of PT Jawa Barat Indah, Bankruptcy was just like premium remedy or the first resort. The author will provide a review and portrait of three important things. First, regulation of debt principles in the Bankruptcy Law; Second, bankruptcy principle as last resort; and Third, analysis of the effectiveness of the use of bankruptcy in cases of disputes over debts against the case of PT Jawa Barat Indah. The method in this article is normative juridical, Law No. 37 of 2004 became the primary legal material, library research is the technique of collecting legal materials in this article. Secondary legal material uses theory last resort as a benchmark and tertiary legal material as an elaboration of certain terms. Research results: 1) The principle of debt in UUK-PKPU has two equally strong opinions, namely the narrow angle (principal debt and interest) and the broad angle (performance obligation in civil law). 2) Bankruptcy as the last action after reorganization efforts, to prevent gaps, while filing for bankruptcy requires prior understanding regarding the implementation of agreements and the involvement of Debtors and Creditors.

Keyword: Bankruptcy, PKPU, Debt, Last Resort, Dispute.

INTRODUCTION

Bankruptcy is a process where a person who experiences financial difficulties in paying his debts is declared bankrupt by a court, especially a commercial court, because he is unable

to fulfill his debt obligations (Mantili & Trisna Dewi, 2021). Bankruptcy is a process that generally benefits creditors, based on several important principles such as the Principle of Equality of Creditors (Parity Creditorium), the Principle of Equal Distribution (Pari Passu Prorata Parte), the Principle of Structured Creditors, all of which are packaged in the Debt Collection Principle (Debt Collection) (Batam, 2020). Meanwhile, according to the author, bankruptcy is a situation that causes a person or legal entity to become incapable of carrying out legal actions (Anisah & Suarti, 2022). The debtor's assets can then be distributed to creditors in accordance with applicable government regulations. Historically, bankruptcy law was initially created to protect creditors by providing a clear and definite mechanism for resolving non-dischargeable debts.

The history of Bankruptcy Law in Indonesia began almost 100 years ago, namely since 1906, namely "*Verordening op het Faillissment en Surceance van Betaling voor de Europe in Indonesia*" based on Staatblads 1905 No. 217 jo. Staatblads 1906 No. 348 Fallissement verordening (Mantili & Trisna Dewi, 2021). In the 1960s and 1970s there were still many bankruptcy cases brought to District Courts throughout Indonesia, but since the 1980s there have been almost no more bankruptcy cases brought to District Courts. In 1997, Indonesia experienced a monetary crisis which resulted in many debts that could not be repaid even though they had been collected. This gives rise to the need to improve laws and regulations in the field of bankruptcy and postpone debt payment obligations, which are often referred to as PKPU. Currently, the legal basis for PKPU bankruptcy in Indonesia is contained in Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (UUK-PKPU).

If the debtor experiences difficulty in paying his debts which are due and he feels that he will not be able to continue paying them, he can submit a request for a postponement of debt payment obligations (PKPU) to the Commercial Court. This application is usually filed in response to a bankruptcy petition filed by its creditors. Through his attorney, the debtor applies for a suspension of debt payment obligations to the Commercial Court, with the hope of drawing up a resolution plan involving the payment of part or all of his debt to creditors. The main goal is to prevent bankruptcy. Considering that preventing bankruptcy benefits various parties, such as employees, shareholders and creditors who will receive debt payments, postponing debt payment obligations takes priority in a court decision if several cases are combined. In other words, the court is obliged to grant a "temporary" suspension of debt payment obligations (Mantili & Trisna Dewi, 2021). In UUK-PKPU Article 222 paragraph (2) it is stated that:

"Debtors who cannot or do not expect to be able to continue paying their debts which are due and payable, can request a postponement of debt payment obligations with the intention of submitting a peace plan which includes an offer to pay part or all of the debt to creditors." (Undang-Undang Republik Indonesia Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang, 2004)

Even though it is not clearly regulated in law, Postponement of Debt Payment Obligations (PKPU) can be understood as an effort to reach an agreement between debtors and creditors regarding debt settlement. Along the way, in 1934, bankruptcy only applied to traders. However, along with developments over time and the economy, bankruptcy does not only happen to traders, but also to companies that have debts and experience bankruptcy. Bankruptcy acts as a mechanism for creditors to collect debts from debtors. This is usually done when the debtor is in bankruptcy, where the debtor is no longer able to pay his debts to his creditors. The main aim of bankruptcy is to share the debtor's assets with creditors through receivership.

In bankruptcy there are several important principles, one of which is the existence of debt. Debt is a basic requirement for filing a bankruptcy petition because without debt a bankruptcy case cannot be filed. In addition, debts must be due and payable. Bankruptcy

applications are usually based on the existence of a debt and receivable agreement between the debtor and creditor. Based on this agreement, the creditor submitted a bankruptcy petition to the court (Anisah & Suarti, 2022).

One of the core contents of the changes to the UUK-PKPU is related to the definition of debt as regulated in Article 1 paragraph (6) of the UUK and PKPU as well as regarding the requirements and procedures for submitting bankruptcy applications and requests for postponement of debt payment obligations. This includes setting a clear time for making decisions regarding bankruptcy and/or postponing debt payment obligations.

The broad definition of debt has implications for the dimensions of the Bankruptcy Law in general, this is as regulated in the provisions of Article 1 paragraph (6) UUK and PKPU which defines debt as follows: "*Obligations that are stated or can be stated in an amount of money both in Indonesian currency and foreign currency, either directly or that will arise later or contingently, that arise due to agreements or laws and that must be fulfilled by the Debtor and if not fulfilled gives the right to the Creditor to get its fulfillment from the Debtor's property*." (Undang-Undang Republik Indonesia Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang, 2004)

The purpose of confirming in Bankruptcy regarding unpaid debts is to ensure that even though the debt has been partially paid off but there are still obligations that have not been fulfilled, this debt can be the basis for filing for bankruptcy. In the Bankruptcy Law, the expansion of the definition of debt is not accompanied by a limitation on the value of the debt, as a condition for filing a bankruptcy petition, so that every claim arising from a receivables-receipts relationship, or other relationship that results in an obligation to pay debts, can be submitted for bankruptcy to the Commercial Court. The Commercial Court judge will grant the bankruptcy petition if the elements regulated in Article 2 paragraph (1) of the UUK-PKPU have been fulfilled, which reads as follows:

"*A debtor who has two or more creditors and does not pay in full at least one debt that is due and collectible is declared bankrupt by a court decision, either at his own request or at the request of one or more of his creditors*."

There are no provisions in Article 2 paragraph (1) UUK and PKPU that require insolvent debtors to be declared bankrupt. This is actually contrary to the universal principle of the Bankruptcy Law which aims to provide solutions for debtors and creditors when debtors are unable to pay their debts. The legal term "*ultimum remedium*" is used to refer to the application of criminal sanctions, as the final action in law enforcement. According to Sudikno Mertokusumo in his book entitled "*Law Discovery An Introduction*". Ultimum remedium is defined as the last option that can be used (M. Yasir Said, 2019).

Bankruptcy should be the ultimum remedium, namely as the final solution or in the author's language it is the final and final solution in solving problems (Damanik, 2010). The Bankruptcy Law should not only aim to declare bankruptcy for debtors who fail to pay their debts, but more than that, provide solutions or alternatives for how a debtor company that has good business potential and the good faith of its management can pay off its debts, carry out restructuring. debt, and restore the company's financial condition. However, in reality, in the bankruptcy case of PT Jawa Barat Indah, bankruptcy is actually a premium remedium or first resort or the opposite of ultimum remedium which means the most important, initial, first choice, first weapon of all settlements, both civil and administrative. or criminal in imposing sanctions or punishment (M. Yasir Said, 2019). It should be noted that the principles of ultimum remedium and premium remedium were first recognized in the field of criminal law, not from bankruptcy law itself. And even the principle of premium remedium is a theory that emerged during the development of criminal law (M. Yasir Said, 2019).

Therefore, based on the description above, the author will provide an analysis and portrait of three important things. ***First***, the regulation of debt principles in the Bankruptcy Law; ***Second***, the principle of bankruptcy as the ultimum remedium; and ***Third***, analysis of

the effectiveness of the use of bankruptcy in debt and receivable dispute cases regarding the PT Jawa Barat Indah case. Before providing an analysis of the two points of discussion above, the author will explain comprehensively the nature of the ultimum remedium principle and the legal consequences of postponing debt payment obligations. The aim of this research is nothing less and nothing more than to provide understanding and reading for academics and practitioners. And no less important, this research is also directed at answering the problems contained in the problem formulation above.

METHOD

The term "method" comes from Greek, namely from the word "methods" which means a way or manner of conducting research aimed at understanding the object that is the focus of the field of science concerned (Koentjoroningrat, 1977). In this context, Soejono Soekanto explains that a method is a way of working or a procedure used to understand the object that is the focus of the science in question. Meanwhile, research is a scientific activity that aims to uncover the truth systematically and consistently through appropriate methodology (Sukanto, 1990). In Legal Science, research is a scientific activity that is based on certain methods, systematics and thinking. With the aim of studying a legal phenomenon or certain legal phenomena through careful analysis (Waluyo, 1996). Therefore, research methods are scientific efforts to understand or solve a problem based on certain methods.

The research in this writing uses normative juridical methods carried out through literature study and analysis of secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. The primary legal materials used include statutory regulations, in the form of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations. The method for collecting legal materials used in this research is library research or searching for sources such as statutory regulations, books, scientific journals and information in print media related to the legislative process (Marzuki, 2017). Primary legal materials are legal sources that have authority and are used as a legal basis, while secondary legal materials provide explanations of primary legal materials and are used to find a theoretical basis by comparing various theoretical approaches. Tertiary legal materials are used to search for certain definitions or terms. Data analysis in this research was carried out qualitatively. The legal materials collected have been classified according to the problems to be identified. Only then is a comparison carried out from various existing references.

RESULTS AND DISCUSSION

The Principle Of Ultimum Remedium And Debt Principles In The Bankruptcy Context.

Basic Properties of Ultimum Remedium

Before entering into the main discussion of the sub-chapter, the author needs to briefly discuss what the ultimum remedium principle is. Even though it has been explained above briefly, there are several points that could add insight and knowledge. For the first time, the principle of ultimum remedium was applied by the Dutch Minister of Justice named Mr. Modderman spoke before the Dutch Parliament, responding to a statement by a member of parliament named Mr. Mackay. Mr Mackay stated that: "*That he has failed to find a legal basis regarding the need for punishment for someone who has committed a violation*." (Bahari, 2019)

Minister Modderman said that (Lamintang, 1997): "*Ik geloof dat dit beginsel niet alleen voortdurend tussen de regels door wordt gelezen, maar ook herhaaldelijk wordt vermeld, misschien in verschillende vormen. Het principe is dit: alleen dat wat bijzonder onrechtvaardig is, mag worden gestraft. Dit is een conditio sine qua non. Ten tweede is er de vereiste dat het een onrecht is, waarvan de ervaring heeft geleerd dat het op geen enkele andere manier goed kan worden bestreden.* ***Straf moet een ultimum remedium blijven.***

Vanwege de aard van de zaak waren er bezwaren tegen eventuele dreigingen met straf. Intellectuelen kunnen dit ook zonder uitleg begrijpen. Dit betekent niet dat criminalisering moet worden afgeschaft, maar men moet altijd de voor- en nadelen van elkaar criminaliseren afwegen en ervoor zorgen dat straf geen slechter medicijn is dan kwallen."

Translation:

"*I believe that this principle is not only continually read between the lines, but also stated repeatedly, perhaps in different forms. The principle is this: only the extremely unfair should be punished. This is a sine qua non condition. Second, there is the requirement that it be an injustice, which experience shows cannot be successfully countered by any other means.* ***Punishment must remain the ultimum remedium****. Due to the nature of the case, there was objection to the threat of punishment. Intellectuals can also understand this without explanation.* ***This does not mean that criminalization should be abolished, but it should always weigh the pros and cons of criminalization against each other and ensure that punishment is not a medicine worse than jellyfish***."

Andi Zainal Abidin explained that ultimum remedium is the final action taken to improve human behavior, especially those who commit crimes, and provides a psychological effect so that other people do not commit crimes. Criminal law must be the last step or ultimum remedium. Because the Criminal Procedure Code gives enormous authority to the Police, Public Prosecutors and Judges (Abidin, 1987).

Van Bemmelen states that ultimum remedium has a unique position among other laws, and must be understood as a step (effort). Not as a tool to correct inequality or reverse losses but as an effort to restore unstable conditions in society. If action is not taken to combat such injustice, it can result in self-righteous actions by individuals (Lamintang, 1997).

According to the article entitled "Ultimum remedium in Senencing" from LBH Parahyangan University, it is explained that ultimum remedium is one of the principles of Indonesian criminal law. The principle of ultimum remedium states that criminal law must be the final step in law enforcement. This means that a problem can be resolved through other channels such as kinship, deliberation, mediation, civil or administrative law. So that route must be prioritized before using criminal law (M. Yasir Said, 2019).

Prof. Dr. Wirjono Prodjodikoro, S.H. in his book entitled "Principles of Criminal Law in Indonesia", also explains the meaning of ultimum remedium. According to him, norms or rules in constitutional law and state administrative law must be responded to first with administrative sanctions, as well as norms in civil law must be responded to with civil sanctions. However, if these administrative and civil sanctions are not sufficient to achieve the goal of improving social balance, then criminal sanctions will be imposed as a last resort or ultimum remedium (Prodjodikoro, 2014). When compared to civil or administrative sanctions, criminal sanctions have the nature of being a last resort or ultimum remedium. This characteristic encourages the use of criminal sanctions sparingly. Thus, it can be understood that ultimum remedium is a term that describes the nature of criminal sanctions as a last resort (Prodjodikoro, 2014).

From a number of understandings regarding the principle of ultimum remedium which have been reviewed above, the author provides opinions and conclusions related to bankruptcy practice or Bankruptcy Law. In short, the principle of ultimum remedium, from the explanation of several definitions above, this principle has historically been included in the category of criminal law, more precisely in the criminal justice system, in this case criminal law enforcement. However, the principle of ultimum remedium has been used over time not only in criminal law institutions, but in all fields, including civil law, state administrative law and administrative law. So the author concludes that the principle of ultimum remedium must also be applied in bankruptcy practice or bankruptcy law. Considering that this principle basically places criminal sanctions, in this case bankruptcy, must be applied or used last when other legal institutions are ineffective. The principle of

ultimum remedium is applied in Bankruptcy considering that before using the bankruptcy route according to the paradigm of this principle, before entering Bankruptcy there must be a mechanism for mediation, negotiation and other alternative dispute resolution.

A bit of company data from bankrupt and disbanded BUMNs in 2022: First, PT Merpati Nusantara Airlines (Persero), was officially declared bankrupt by the panel of judges at the Surabaya District Court, in a judge's decision on June 2, 2022. Merpati Airlines has not operated since 2014 and recorded a liability of Rp. 10.9 trillion with negative equity of IDR 1.9 trillion per the 2020 audit report. Second, PT Istaka Karya, since the decision to file for bankruptcy and cancel the peace agreement (homologation) on July 12, 2022, Istaka Karya has not shown any improvement in its work. In 2021, it has total liabilities of IDR 1.08 trillion with company equity recorded at minus IDR 570 billion. Third, PT Kertas Kraft Aceh went bankrupt because production was stopped because there were no raw materials and gas. However, in general PT KAA's problems originate from two aspects, namely operational aspects, and financial aspects. Fourth, PT Industri Sandang Nusantara, is a state-owned company operating in the textile sector. The company was disbanded due to continuous losses, where the company's revenue for 2022 was IDR 52 billion and a net loss of IDR 86.2 billion (Yuliastuti, 2022).

According to the author, the principle of ultimum remedium has begun to be used as a benchmark in enforcing bankruptcy law by bankruptcy administrators. This can be seen from the decrease in the number of criminal sanctions from year to year and the increase in bankruptcy administration sanctions. The success of implementing the ultimum remedium principle can be measured from the positive impact caused by the sanctions imposed by the bankruptcy administrator on the welfare of the Indonesian people, especially state-owned companies themselves which are free from the smell of growing and increasing losses. Law enforcement must be based on the aim of creating fair legal certainty and prosperity, so that it can create an environment that is safe, fair, and beneficial for the community, defendants and convicts.

Regulation of Debt Principles in the Bankruptcy Law

Before a creditor files a bankruptcy petition against a debtor, there are requirements that must be met. First, the debtor must have a debt that is due and unpaid that can be collected. Second, the debtor must have at least two creditors, this is clearly regulated in Article 2 paragraph (1) of the Bankruptcy Law which states that, if the debtor has two or more creditors and does not pay at least one amount that is due and collectible , the debtor can be declared bankrupt through a court decision either at his own request or at the request of one or more of his creditors (Undang-Undang Republik Indonesia Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang, 2004).

If we look at the conditions required to file a bankruptcy case, it is actually very simple. First, there must be an overdue debt that has not been paid in full and can be collected. Apart from that, the debtor must also have at least two creditors. Evidence of debt can be obtained from the creditor which shows that the debtor has debts that have not been repaid according to their due date or based on an agreement that allows collection of these debts (Shubhan, 2008). In the juridical context, the issue of the type of debt that meets the criteria as regulated in Article 2 Paragraph (1) of the UUK is something that needs to be considered in the evidentiary process in bankruptcy cases.

In Article 1 Number 6 of the UUK, it is explained that debt in the context of bankruptcy law is an obligation that can be expressed in the form of a sum of money in either Indonesian or foreign currency (Undang-Undang Republik Indonesia Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang, 2004). These obligations may arise immediately or in the future, and may be contingent. This debt arises because of an

agreement or law, and the debtor has an obligation to fulfill it. If these obligations are not fulfilled, the creditor has the right to obtain fulfillment of the debt from the debtor's assets.

The explanation regarding the definition of debt in the 2004 Bankruptcy Law has increased quite significantly compared to the previous Bankruptcy Law. In the previous Bankruptcy Law, namely Law Number 4 of 1998 in conjunction with the Bankruptcy Regulations, there were no clear boundaries regarding the definition of debt. Therefore, when the 1998 Bankruptcy Law was revised, two interpretations emerged from both academics and practitioners (Shubhan, 2008). Some argue that debt in this context is debt that arises because of a debt agreement in the form of money. This group limits the definition of debt narrowly so that it does not include achievements arising from agreements other than trade debts. In bankruptcy court practice, some judges also adopt this narrow interpretation. For example, in the case of PT Jawa Barat Indah, against Sumeni Omar Sandjaya and Widyastuti, the Supreme Court in its judicial review decision number 05 PK/N/1999 was of the opinion that based on Article 1 of the UUK, the debt referred to is principal and interest. So, the meaning of debt in this context is related to the legal relationship of borrowing and borrowing money, or the obligation to pay a certain amount of money, as a special form of various types of agreements in general.

However, there are also other groups who argue that Article 1 of the UUK Debt refers to achievements that must be paid as a result of an agreement. The definition of debt in this case is broader. The term debt relates to obligations in civil law. Obligations or debts can arise either from contracts or law (as regulated in Article 1233 of the Civil Code) (Shubhan, 2008). This achievement can be in the form of giving something, doing something, or not doing something (Kitab Undang-Undang Hukum Perdata (*Burgerlijk Wetboek Voor Indonesie*), 1847).

Basically, in the Civil Code and in the civil law system there is no division of debt in the narrow or broad sense. Debt is debt, as regulated in Article 1233 of the Civil Code. However, in practice and expert discussions, there is debate about this terminology. Of the two opinions regarding debt, the correct opinion is the group that states that debt has a broader meaning. Considering that the Bankruptcy Law is a further development of the Civil Code, debt in the UUK has the same meaning as that regulated in the Civil Code. This is also related to the principle of debt pooling where bankruptcy is used to distribute assets to creditors. In this case, the creditor is not only related to the loan agreement but also in the context of the agreement in general. Debts related to engagements may arise as a result of agreements or laws. Debts in obligations that arise due to law can originate from the law itself or as a result of someone's actions. An obligation that arises because of a law as a result of someone's actions, can be an act that is in accordance with the law or violates the law (*onrechtmatige-daad*).

The Bankruptcy Law also applies the concept of debt in a broad sense. According to Siti Soemarti Hartono, in legal practice it has been proven that making a payment does not always mean giving a certain amount of money. For example, according to the Hoge Raad decision of 3 June 1921, making a payment means fulfilling an obligation, which could be the delivery of goods (Hartono, 1993). Apart from considering debt principles in a broad sense, there are several broad elements that must be met in order for debt to be the basis for filing for bankruptcy, including: 1) the debt has matured; 2) the debt is collectible; and 3) the debt is not paid in full.

A debt can be said to be due, when the agreed time has passed, or in some other cases, the debt can be collected, even though it has not yet reached its due date. To collect debts that are not yet due, acceleration clauses or provisions for acceleration of maturity and default clauses can be used. Debts that can be collected are debts that do not arise from natural obligations or obligations that cannot be disputed in court. Obligations that are usually referred to as natural obligations cannot be used as a reason for filing bankruptcy.

Meanwhile, it is important to emphasize that in bankruptcy, debts that are not repaid are intended so that if the debt has been partially repaid but there are still obligations that have not been fulfilled, then the debt can be used as a basis for filing for bankruptcy (Shubhan, 2008).

Bankruptcy Principles as Ultimum Remedium

Basically, bankruptcy is a process in which all assets belonging to a debtor who is declared bankrupt are confiscated to settle their debt obligations. This is directly related to the debtor's financial situation. Even though the bankruptcy requirements are relatively simple according to Law Number 37 of 2004, the court will not enforce bankruptcy if the debtor still has business potential in the future. This can be seen from the company's financial and managerial condition. Debtors who have good prospects need to be given the opportunity to continue operating and fulfill their financial obligations to creditors. If the court decides on bankruptcy, there is still the possibility of carrying out a rehabilitation process. Therefore, a bankruptcy decision is not the final action (*ultimum remedium*) (Tata Wijayanta, 2021). To ensure the settlement of debts that have the potential to cause debtor bankruptcy, it is important that bankruptcy is used as a final step in the legal system, as it is referred to as the "ultimate weapon" or ultimum remedium in criminal law. This aims to prevent gaps in implementation (RUSLI, 2016).

Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (UUK-PKPU), explains that if the debtor has two or more creditors and has passed the stipulated payment deadline and the debt can be collected, then the competent court can declare the debtor bankrupt. In this case, the requirements for filing a bankruptcy petition consist of (Sjahdeini, 2016): 1) The debtor against whom the petition is being submitted must have at least two creditors, or in other words, must have more than one creditor; 2) The debtor does not pay off at least one debt to one of his creditors; and 3) Unpaid debts must be due and payable. Ideally, bankruptcy should be used as a last resort in resolving debts between debtors and creditors. In other words, bankruptcy must be considered as the last action (ultimum remedium) taken, not as the first choice (premium remedium), to resolve the debt problem. The first step that must be taken is an effort to reorganize the debtor's debts, and bankruptcy is only taken as a last step if the reorganization effort is unsuccessful or stops midway (Hengky & Amboro, 2022).

As mentioned previously, bankruptcy should be considered a final step taken by the court. Before the court declares the debtor bankrupt, the debtor must be asked to make reorganization efforts (Nurwulan, 2017). What is meant by reorganization, in Investopedia reorganization is defined and explained as follows: "A process designed to revive financially troubled or bankrupt companies. Reorganization involves restating assets and liabilities, as well as entering into talks with creditors to make arrangements to retain payments. Reorganization is an attempt to extend the life of a company facing bankruptcy through special arrangements and restructuring to minimize the possibility of the past situation recurring." (Nurwulan, 2017)

Apart from fulfilling the requirements that the debtor is bankrupt, it is also important to pay attention to the principles of modern bankruptcy law which state that the court can only declare the debtor, whether individual or company, bankrupt after efforts to reconcile between the debtors have been made. and creditors have committed but failed to reach an agreement. This settlement includes debt reorganization and corporate restructuring of the Debtor (Nurwulan, 2017). An application for a bankruptcy declaration must be the final action (ultimum remedium) taken. In the Law on Bankruptcy and Suspension of Debt Payment Obligations (PKPU), bankruptcy is discussed neutrally in the context of debtors who can no longer make payments. The occurrence of a situation like this can result in a

reduction in the debtor's assets in bankruptcy, both factually and legally, which needs to be avoided.

Bankruptcy is the process of taking over the debtor's property by creditors for joint interests. In this case, all items executed, and the proceeds reduced, with bankruptcy costs will be distributed to creditors, taking into account the privileges recognized by law. The wealth referred to here includes all goods and rights that can be converted into cash. In addition, the consequence of a bankruptcy decision is that all legal claims relating to the rights and obligations of the bankruptcy debtor's assets must be filed by or against the curator. If a lawsuit is filed or it turns out to give rise to a crime against the bankruptcy debtor, then the crime does not apply to the property that is the object of the bankruptcy (Gultom, 2023).

Legal Consequences of Delaying Debt Payment Obligations and Analysis of The Effectiveness of Bankruptcy In Debt-Receivable Disputes: The Case of Pt Jawa Barat Indah

Legal Consequences of Delaying Debt Payment Obligations

Legal consequences are the consequences that arise as a result of an event, whether it is an act in accordance with the law or an act against the law committed by a legal subject (Juliantini et al., 2021). If the management gives approval, the debtor can make a loan to a third party, with the aim of increasing the value of the debtor's assets. However, if the loan requires collateral, the debtor can provide collateral for his property, such as a lien, fiduciary guarantee, mortgage or other mortgage rights, provided that approval has also been given by the Supervising Judge.

The implementation of PKPU will have a legal impact on all assets owned by the debtor. Therefore, the law differentiates between debtors who are married with a community of assets and those who are married without a community of assets. If the debtor marries into joint assets then all assets and liabilities in the joint assets become part of the debtor's assets (in accordance with Article 241 UUK-PKPU) (Husna, 2016). Postponement of debt payment obligations has a legal impact on the status of confiscation and implementation of collateral. In PKPU all execution actions have been initiated to obtain a suspension of debt payments (Article 242 paragraph (1) UUK-PKPU). As a result, debtors cannot be forced to pay their debts during the PKPU period because the Commercial Court gives debtors the opportunity to draw up a peace plan, which means that debt payment obligations are postponed. This provision applies during the temporary PKPU period and while the PKPU is in effect (Sjahdeini, 2010).

After the PKPU decision is still pronounced or after the decision to ratify the settlement has permanent legal force, then all confiscations that have been carried out are declared invalid. However, if the management or Supervisory Judge deems it still necessary, the Court is obliged to issue an order to re-lift the confiscation of the debtor's assets. There are exceptions in situations where the Court has set an earlier forfeiture date at the request of Management. In addition, if the debtor is detained, according to Article 242 paragraph (2) UUK-PKPU, the debtor must be released immediately after the PKPU decision is pronounced or after the decision, ratification of the peace agreement has permanent legal force (Dewi & Tjatrayasa, 2017). The provisions regarding cancellation of executions that have been described previously also apply to executions and confiscations that have been initiated for objects that are not encumbered, even if they involve creditors' receivables that are secured by pledges, fiduciary guarantees, mortgages, hypothecations, mortgages, collateral rights over other property. or rights that must take precedence based on laws relating to certain assets (Article 242 paragraph (3) UUK-PKPU).

In principle, creditors who have mortgage rights, fiduciary guarantees, mortgage rights, or mortgage rights over other assets can still exercise their rights, as if bankruptcy had not

occurred, as long as they fulfill the conditions set out in Articles 56, 57, and 58. Bankruptcy and Legal Tensions. Debt Payment Obligations. However, in situations where the PKPU is in effect, Article 246 UUK-PKPU confirms that the implementation of creditors' rights will be postponed as long as the PKPU is still in effect until the end of the PKPU (Fuady, 2005).

Analysis of the Effectiveness of Using Bankruptcy in Debt-Receivable Dispute Cases in the Case of PT Jawa Barat Indah

Before the definition of debt was set out in the 2004 UUK and PKPU, there were different views among judges. For example, in the case between Sumeini Omar Sandjaya and Widyastuty against PT. West Java Indah in 1999 regarding sale and purchase contracts, there are differences between the two. Commercial Court judges are of the opinion that debt does not only involve money, but also goods and services. However, the Supreme Court judges were of the opinion that the debt was related to the payment of a sum of money and if the debtor did not fulfill his obligation to deliver the goods, then this was considered a default in the view of the Supreme Court judges (Ismail, 2018).

This limited definition of debt is also applied by the decision of the Supreme Court of the Republic of Indonesia in the bankruptcy case between; PT Jawa Barat Indah (Respondent for Bankruptcy) with Sumeini Omar Sandjaya and Widyastuty (Petitioner for Bankruptcy) regarding the decision of the Supreme Court when canceling the decision of the Commercial Court, in the bankruptcy case between Helena Melindo Sujutomo (Respondent for Bankruptcy), and PT Intercon Interprises (Petitioner for Bankruptcy), and with the Commercial Court decision in the bankruptcy case, between Sangyong Engineering and Construction Co. Ltd. (Bankruptcy Petitioner), with PT. Citra Jimbaran Indah Hotel (Respondent for Bankruptcy) (Sridadi, 2009). In Judicial Review Decision (PK) no. 05PK/N/1999 The Supreme Court decided that according to Article 1 of Law no. 37 of 2004, the debt consists of principal and interest. Therefore, what is meant by “debt” in this context is the legal relationship of borrowing and borrowing debt or the obligation to pay a sum of money, which is a special form of various forms of engagement in general (Tejaningsih, 2016).

The decision of the Commercial Court and the Supreme Court at the cassation level in the case of Sumeini Omar Sandjaya and Widyastuty against PT. West Java Indah provides a broader understanding of the meaning of “debt”. This case is related to the purchase of a Laguna Pluit apartment unit which had been paid in full by the buyer to the developer, PT Jawa Barat Indah. According to the agreement, the developer is obliged to hand over the completed apartment units to the buyer. However, the developer PT Jawa Barat Indah did not fulfill this obligation due to the 1998 economic crisis and did not have the ability to complete construction. Sumeini Omar Sandjaya and Widyastuty assessed that PT Jawa Barat Indah was reluctant to fulfill its obligation to hand over the flats to buyers who had paid in full and did not want to compensate for the losses incurred (Kusumaningrum, 2011).

In the Commercial Court decision Number 27/Pailit/1998/PN.NIAGA/Jktst. On January 12 1999 there was an explanation regarding the broader meaning of the word “debt”. The judges in the panel of judges gave the following considerations: “Article 1 paragraph (1) of Law Number 4 of 1998 determines that debtors who have two or more creditors do not pay at least one debt that is due and collectible. The legal relationship that exists between the debtor and the creditor is an engagement relationship in the field of property law (vermogen recht), there is a creditor who has the right, there is a debtor who is obliged, there is also an object, thus giving rise to a “debt.”

From the legal facts in this case it was revealed that PT Jawa Barat Indah as the developer and seller of housing did not fulfill its obligations as regulated in Article 8 of the sale and purchase agreement. Therefore, the debtor has a debt that is due and can be requested for payment. The bankruptcy applicant has sent a summons to the developer

(creditor), but the developer answered that they cannot hand over the apartment units that have been purchased due to forced circumstances or force majeure which prevents them from continuing their obligation to build the apartments. The Panel of Judges at the Commercial Court rejected the force majeure reason submitted by PT Jawa Barat Indah and stated that the party had filed a bankruptcy petition (Kusumaningrum, 2011).

After receiving this decision, PT Jawa Barat Indah as the debtor has submitted a Cassation Application. According to them, Article 1 paragraph (1) of Law Number 4 of 1998 and its explanation clearly states that what is meant by "debt" must refer to the principal debt and interest. In addition, the legal relationship between the Cassation Petitioner and the Cassation Respondent is a binding sale and purchase relationship. The Cassation Applicant submitted evidence showing the existence of a legal relationship between producers and consumers which was misinterpreted as a relationship between debtors and creditors in the context of debts and receivables (Kusumaningrum, 2011).

According to the Supreme Court's decision in Decision Number 04/K/N/1999 expressed by the Panel of Cassation Judges, a debtor can be declared bankrupt in accordance with the provisions of Article 1 paragraph (1) of the Bankruptcy Law, as long as the following conditions are met: a) there is debt; b) the debt is due and can be collected; c) have at least 2 (two) creditors.

From the author's analysis of the explanation above, several conclusions can be drawn: ***First***, the Commercial Court has unique and specific characteristics, where the court only examines related cases and has special authority. This results in debt becoming a legal relationship that occurs through a debt and receivable agreement or borrowing and borrowing money between debtors and creditors. In this regard, the debtor has an obligation to pay the principal amount or interest on a mutually determined date or time. ***Second***, outside of a debt agreement, or money loan between a debtor and a creditor, where the debtor has an obligation to pay the principal debt, or interest according to the agreed time, it is not included in the category of debt in a more general sense. ***Third***, parties who can file for bankruptcy are debtors and creditors involved in agreements or legal relationships related to debts or loans. If the debtor does not fulfill his obligations or fails to pay the principal or interest in accordance with the agreement that has been made, then this is considered a default which can be submitted to the Commercial Court for processing.

Fourth, if the debtor does not fulfill its obligations outside this category, it can be categorized as a default and the case must be resolved through the Ordinary District Court or District Court, because it cannot be proven directly. ***Fifth***, Debtors and Creditors who are involved in the legal relationship of buying and selling, are different from Debtors and Creditors who are involved in the legal relationship of borrowing and borrowing money or owing money. In the case of buying and selling, what is meant by Debtor is the Buyer who has the obligation to pay a certain amount of money and has the right to receive the goods that are the object of the agreement. Meanwhile, the creditor is the seller who has the right to receive a certain amount of money from the debtor which is payment for the goods that are the object of the agreement. Apart from that, the seller or creditor is also obliged to hand over the goods to the buyer or debtor according to the time limit agreed in the sale and purchase agreement.

Sixth, Maturity is the time limit agreed upon by the Debtor and Creditor, where the Debtor must complete its obligations to the Creditor, namely paying the principal or interest on the debt in accordance with the agreement. If the debtor does not meet the deadline, this is not an overdue right, but rather an act of default, and the authority to handle it rests entirely with the District Court. ***Seventh***, the impact of the monetary crisis on the economy which caused prices to rise significantly cannot be considered a force majeure condition because the monetary crisis is an economic risk that has actually been calculated beforehand by entrepreneurs or debtors.

CONCLUSION

Conclusions that can be expressed from the presentation of the problem formulation above include: ***First***, regarding the principles of debt in UUK-PKPU, there are two equally strong opinions, the definition of debt from a narrow and a broad angle. From a narrow point of view, judges in several judicial practices use restrictive interpretations, according to the Supreme Court PK decision number 05 PK/N/1999 of the opinion that the debt in question is the principal and interest debt. Thus, the meaning of debt in this context is related to the legal relationship of borrowing and borrowing money, or the obligation to pay a certain amount of money as a special form of various types of agreements in general. From a broad perspective: debt refers to the performance that must be paid as a result of an agreement. The definition of debt is related to obligations in civil law. Obligations or debts can arise from both contracts and law (as regulated in Article 1233 of the Civil Code).

Second, bankruptcy must be considered as the last action (ultimum remedium) that must be taken, not as the first choice (premium remedium) to resolve debt problems. The first step that must be taken is to reorganize the debtor's debts and bankruptcy is only carried out as a last step if the restructuring effort is unsuccessful or stops midway. Along is referred to as the "ultimate weapon" or ultimum remedium in criminal law. This aims to ensure that there are no gaps in implementation. ***Third***, before filing a bankruptcy petition, it is necessary to first understand whether the debtor has carried out what has been agreed, then if there is a default the case is resolved in the District Court (Ordinary Civil) and the parties who can file for bankruptcy are the debtor and creditor involved in the agreement, or legal relations relating to debts or loans.

SUGGESTION

In order not to cause debate among legal experts, academics and practitioners, regarding debt terminology in the interpretation of the phrase "debt" in Law no. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, the author's suggestion to the House of Representatives and the Government is that the a quo Law needs to be revised again to further clarify and emphasize the phrase "debt" in the a quo Law, so that it cannot give rise to multiple interpretations or broad interpretations in law enforcement, if there are no limitations to these phrases, the result can be legal uncertainty. Bearing in mind that the law must meet the principle requirements, one of which is Lex Certa (Hiariej, 2021), meaning that criminal provisions must be interpreted clearly and firmly.

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