

Commercial Court Legal System of Bankruptcy: Debtor Assets Less Than the Amount of Debts

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Abstract—The purpose of this research is to find out regulation of bankruptcy procedures and the authority of the receiver in Indonesia. Type of research employed in this study is normative legal research with statute and conceptual approach. The results show that bankruptcy procedure in Indonesia begins with petition for bankruptcy, commercial court declarations, establishment of supervisory judges, announcements, meetings, settlement plans, suspension of payment, bankruptcy, insolvency, stay period, liquidation and revenue sharing of debtor assets. Revenue sharing of debtor assets is if the amount of assets is smaller than the debts has the potential to fulfill the obligations to the concurrent creditors is not paid in full. Fair sharing solutions proportionally and made sharing list. The authority of receiver includes the authority of administrator, as an administrator in the process of suspension of payment and as a Receiver in the bankruptcy process.

Keywords—Bankruptcy; receiver; legal system; commercial court; Indonesia

I. INTRODUCTION

Bankruptcy law institution, is not a new institution at all in the legal system of Indonesia. Even compared to some developed countries in the world, Indonesia had earlier had regulations governing bankruptcy because inherited with *Faillissement verordening* [1]. The Bankruptcy institution has existed since the time of the Indies set in *Verordening op het Faillissement en de Surseance van Betaling en Europeanen in Nederlands Indie (Faillissement Verordening/FV)*, *Staatsblad* 1905 No. 217 junto *Staatsblad* 1906 No. 348. Based on regulations stipulating the coming into effect of the bankruptcy rule, i.e., *Staatsblad* 1906 No 348, the bankruptcy rules shall come into force on November 1, 1906 and subsequently shall no longer be applicable to the provisions of several laws and regulations, including all of the three books of the Commercial Code (KUHD) together with the previous rules set forth therein. Although the former Bankruptcy Regulation (S.1905-217) is a valid positive law, it is rarely used in practice. Based on existing data in the National Legal Development Board that the bankruptcy ruling between 1950 to 1996 only about 130 sentences [2]. In terms of quantity it can be concluded that few legal subjects use such bankruptcy order [3].

In its development, *Faillissement Verordening* is amended to adjust conditions and to refine the insolvency provisions contained therein. On 22 April 1998, the Government

promulgated a Government Regulation in Lieu of Law No. 1 of 1998 concerning Amendment to the Law on Bankruptcy (Statute Book of 1998 No. 87 Supplement to Statute Book No. 3761) [4]. In the next time, Government Regulation as a law substitute Number 1 Year 1998 is stipulated to become Law Number 4 Year 1998 regarding Stipulation of Government Regulation of Substitute Law Number 1 Year 1998 concerning Amendment to Bankruptcy Laws to be Law (State Gazette Year 1998 Number 135) [5].

In its journey, after more than five years of the 1998 Bankruptcy Act, there are many flaws and weaknesses in the Bankruptcy Act, so that changes in some provisions are needed. To overcome the weaknesses and shortcomings of the Bankruptcy Law, Law Number 37 Year 2004 concerning Bankruptcy and Suspension of payment, announced in the State Gazette Number 131 and Supplement to the State Gazette Number 4443 [6].

One of the important changes of the Bankruptcy Regulation as amended by the Bankruptcy Act of 1998 is the establishment of a Commercial Court. The establishment of the Commercial Court is still within the scope of the district court. The establishment of the Commercial Court within the scope of the District Court at that time was based on Law Number 14 Year 1970 on the Basic Provisions of Judicial Power *jo* Law Number 35 Year 1999 on Amendment to Law Number 14 Year 1970.

Law Number 37 Year 2004 concerning Bankruptcy and Suspension of payment is based on several principles, among others: the principle of balance, the principle of business continuity, the principle of justice, and the principle of integration [7].

Bankruptcy provisions are rules that have a purpose to share the debtor's assets to its creditors by making general confiscation of all debtor's assets which is then distributed to creditors in accordance with the right of proportion [8]. Revenue sharing of debtor assets is if the amount of assets is smaller than the debts has the potential to fulfill the obligations to the concurrent creditors is not paid in full [9]. Fair sharing solutions proportionally and made sharing list. This bankruptcy provision is a further implementation of the provisions of Article 1131 *juncto* 1132 Civil Code.

This provision is a realization of the principle *paritas creditorium* and *principle pari passu prorata parte* [10].

Article 1131 of the Civil Code determines: "All material objects of the debt, whether moving or immovable, existing or new, will be borne in advance for all personal engagement". Article 1132 of the Civil Code determines: "The material shall be collateral for all those who bring it to him; the revenues of the sale of the objects are subdivided according to their equilibrium, i.e., according to the size of their respective accounts, except where there are legitimate reasons for precedence" [11]. Based on the above legal facts, then the legal issues (LI) to be discussed in this paper are as follows:

LI1: How is bankruptcy procedure regulated in Indonesia?

LI2: What would happen if the debtor asset is less than the amount of debt?

II. METHOD

This type of research is normative law research with statute approach and conceptual approach [12]. The legal substances used in this study are primary legal materials and secondary legal materials, since 1998 until now. The technique of collecting legal materials used in this study is to use a card consisting of a quote card, summary card, and a review card [13]. The analysis used in this research is descriptive analysis that is by describing the results of research that has been collected and analyzed [14].

III. RESULT AND DISCUSSION

Bankruptcy procedure in Indonesia preliminary bankruptcy process with petition for bankruptcy, followed by suspension of payment, commercial court declaration, temporary suspension of payment, establishment of supervisory judge, announcements, meetings, settlement plans (accord), suspension of payment, bankruptcy, insolvency, stay period, liquidation and revenue sharing of debtor's assets [15].

Bankruptcy petition is filed to the Commercial Court through the Clerk of the Commercial Court. Anyone who can apply for bankruptcy are: Debtor, Creditor, and Parties authorized by Bankruptcy Act [16].

Such bankruptcy petition shall be filed through an advocate, unless the applicant is not a debtor and creditor but is authorized by the Bankruptcy Act [17].

The requirements for filing a petition for bankruptcy are provided in Article 2 paragraph (1) and Article 8 paragraph (4) of Law Number 37 Year 2004 concerning Bankruptcy and Suspension of Payment (hereinafter referred to as *UUK*). The debtor having two or more creditors and not paying off at least one debt that has been matured and collectible shall be declared bankrupt by the decision of the Court, either on his own request or on the request of one or more of its creditors (the provision of Article 2 paragraph (1) of the *UUK*). The request for bankruptcy statement must be granted if there is a fact or condition that proves simply that the requirements for declaring bankruptcy as referred to in Article 2 paragraph (1) have been fulfilled (the provision of Article 8 paragraph (4) of *UUK*).

In principle there are two patterns of suspension of payment, namely first, suspension of payment which is a

debtor for the debtor against bankruptcy petition filed by its creditors. Second, suspension of payment on its own initiative the debtor predicts he cannot afford to pay his debts to creditors.

In Article 222 Paragraph (3) of Law Number 37 Year 2004 concerning Bankruptcy and Suspension of payment, it is determined that the creditors who predict that the debtor cannot continue to pay the debts that have been matured and can be billed can apply to the debtor to be suspension of payment the debt, allowing debtors to propose a settlement plan that includes a partial or total debt offer to its creditors.

In the event that the petition is filed by the debtor, the court within no later than 3 (three) days from the date of registration of the petition must grant the temporary suspension of payment and must appoint a supervisory judge from the judge of the court and appoint 1 (one) or more the administrator takes care of the debtor's assets.

Whereas in the case of a petition filed by a creditor, a court within no later than 20 (twenty) days from the date of registration of the petition shall grant a temporary suspension of payment and shall appoint a supervisory judge from a court judge as well as appoint 1 (one) or more along with the administrator of the debtor's assets [18].

Duration of Temporary Suspension of Payment is a maximum of 45 days. Immediately after the verdict on temporary suspension of payment, the court through the Administrator shall summon debtors and creditors known by registered mail or courier, to appear in the siding which shall be held no later than the 45th day after the declare of the temporary suspension of payment is pronounced [19].

The duties, authorities and responsibilities of the Supervisory Judge under the bankruptcy law shall, inter alia not later than 5 (five) days after the date of the sentence of the temporary suspension of payment, be received by the Administrator and Supervisory Judge, the Supervisor shall set at least two daily newspapers to announce the bankruptcy of the summary of the declaration of bankruptcy, declaration containing: The name, address, and occupation of the Debtor; Name of Judge of Supervisor; The name, address, and work of the Administrators; The name, address, and work of members of the Provisional Creditor Committee when appointed; Place and time of the first meeting of the Creditor; Creditor's billing registration deadline; Place and time of meeting Tax verification and Creditor's invoice.

Based on the determination of the Supervisory Judge, the Administrator shall announce the Sentence of bankruptcy declaration in 2 (two) daily newspapers and in the State Gazette, the place and time of the Creditor's first meeting, the Creditor's billing registration deadline, and the place and time of the Tax and Creditor's verification meeting.

The Administrators invite debtors and creditors who are known by registered mail or sent directly to attend the first creditor meeting, verification meeting, discussion of settlement plan (accord) and panel of judges' proceeding.

Although the debtor has been declared bankrupt by the Commercial Court by its Declare, it is for the Bankrupt to be

given the opportunity by law to propose a settlement plan with its creditors. Settlement in bankruptcy is different from bankruptcy in Suspension of payment. Settlement in bankruptcy leads more to the process of debt settlement of debtor accounts through the imposition of bankruptcy property, while settlement in suspension of payment is more emphasized on the payment offer plan or restructure debt payments.

The Administrator and the Debtor may apply for a Fixed Suspension of Payment prior to the discussion of the Settlement Plan. The application of the Fixed Suspension of Payment is submitted at the time after the meeting of the creditor's billing match and tax verification. If the request is approved by the Creditors or the majority of creditors, the approval of the creditor shall be submitted to the Supervisory Judge to be reported in the Consultative Meeting of the Panel of Judges which shall be held no later than the 45th day after the Declare of the Constitutional Judge as outlined in the Decision of the Assembly grant the application of Temporary Suspension of Payment. The Time of the Fixed Suspension of Payment is maximum 270 days from the declare granting the Payment of Suspension.

If the Debtor does not make the settlement plan or the settlement plan proposed by the Debtor is not approved by the majority of the Creditors, the Debtor is Bankrupt. If the Debtor is Bankrupt, then the Debtor loses his right to manage and control his assets. Under the circumstances of Bankruptcy, all the debtor's property is in general confiscation to pay off its debts to its creditors. The handling and disposition of a bankrupt debtor's assets is done by the Receiver and supervised by a Supervisory Judge.

A bankrupt debtor who is unable or unwilling to pay his debts by not making a settlement plan or a settlement plan offered by the Debtor is rejected by the Creditor or a settlement plan approved by the Creditor but not approved by the Panel of Judges then the Debtor is declared insolvency.

When the Debtor has been declared bankrupt and in Insolvency state, before the Receiver has made an impression on the bankruptcy property of Debt Bankrupt, there is a 60-day stay period which can be used by the Separatist Creditors who hold the security right to sell the property of a bankrupt debtor owned by a separatist creditor as debt guarantee of Debt Bankrupt.

After the stay period is exceeded and the Separatist Creditors cannot or will not execution their right to sell their own bankrupt assets as collateral to the separatist creditor, the Receiver shall make a public sale (auction) of the bankrupt assets. The proceeds of the sale of the bankrupt property shall be distributed to the Creditors by the Receiver proportionately to the position of the creditor.

Revenue sharing of debtor assets is if the amount of assets is smaller than the debts has the potential to fulfill the obligations to the concurrent creditors is not paid in full [9]. Fair sharing solutions proportionally and made list of the concurrent creditors objected and feels displeased with the condition. Fair sharing solutions proportionally and made sharing list.

Bankruptcy has the potential to harm the creditors because the claims is not fully paid. Bankruptcy is also detrimental to the debtor because the business is disrupted and can even stop the business. Bankruptcy should be avoided as much as possible.

The bankrupt debtor in the form of a legal entity is immediately liquidated and which is not in the form of a legal or personal body in the rehabilitation, all debt has been settled. The authority of the Receiver shall include the authority of the Administrator in the process of Suspension of Payment and as the Receiver in the Bankruptcy Process. In addition to the authority of the Administrator and Receivers, it is also authorized to make the Announcement of the Judgment of Supervisors, to receive the Billing Registration, to hold the Meeting of Creditors I, to make the Creditors List, to hold the Verification Meeting, to assist the Debtor in preparing the Settlement Plan, to create an Accountability Report, to create a Debtor's assets (*boedel*) List, make the Auction Announcement, organize the Auction, Conduct Submission and make Announcement of Bankruptcy Termination.

IV. CONCLUSION

From the results and discussions that have been implemented, it can be concluded as follows: Bankruptcy process in Indonesia preliminary bankruptcy process with petition for bankruptcy, followed by suspension of payment, commercial court sentence, temporary suspension of payment, determination of supervisory judge, announcements, meetings, settlement plans (accord), fixed suspension of payment, bankruptcy, insolvency, stay period, liquidation and revenue sharing of debtor's assets. The authority of the Receiver shall include the authority of the Administrator in the process of Suspension of Payment and as the Receiver in the Bankruptcy Process. We recommend that the Suspension of Payment can only be conducted by the Debtor as a defense against the bankruptcy petition filed by its creditors. The debtor must immediately prepare a settlement plan properly so that Bankruptcy can be prevented or terminated immediately with settlement.

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