

A Review Model Of Pailit Decision By The Niaga Court

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Abstract. Bankruptcy law in Indonesia is regulated by Undang-Undang Nomor 37 Tahun 2004. Bankruptcy occurs when a debtor is unable to pay their overdue debts. A bankruptcy court decision results in a public seizure of the debtor's entire estate. In Case Nomor 2/Pdt.Sus-Pailit/2018/Pn.Niaga.Mdn, PT. Tri Murti Perkasa and Hotmaulin Simare-Mare, filed a bankruptcy petition against PT. Pro Mekanika Indonusa. The second petitioner also claims a debt from the company. The judge ruled for bankruptcy against PT. Pro Mekanika Indonusa, and Balai Harta Peninggalan (BHP) Medan was appointed as the Curator. Legal consequences of bankruptcy include the debtor losing control over their assets, the appointment of a supervising judge and curator, and the judge deciding on costs. The legal process must meet legal requirements and consider juridical, philosophical, and sociological considerations. To enhance the efficiency of the bankruptcy process, it is necessary to revise bankruptcy legal regulations, supervising judges and curators must maintain transparency, and the panel of judges must carefully examine evidence to avoid baseless lawsuits.

1. INTRODUCTION.

Bankruptcy is a situation in which the debtor is unable to make payments towards the debts of its creditors and the debt has matured. The inability to pay is generally caused by the difficult financial condition of the debtor's business which has experienced a decline. Bankruptcy is a court decision that results in a general confiscation of all the assets of the bankrupt debtor, both existing and future. Bankruptcy and postponement of debt payments are regulated in Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations. Through bankruptcy and postponement of debt payment obligations, it is expected to ensure security and guarantee the interests of the parties concerned.

The legal mechanism of bankruptcy, the concept of debt is very decisive, because without debt, bankruptcy loses its essence as a legal institution to liquidate the debtor's assets to pay his debts to his creditors. In simple terms, debt is money borrowed from another person with the obligation to pay back what has been received. Specifically, Article 1 Point (6) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations states that debt is an obligation that is stated or can be stated in the amount of money, either directly or that will arise in the future or contingent, arising from an agreement or law and which the debtor is obliged to fulfil and if it is not fulfilled, it gives the creditor the right to get its fulfilment from the debtor's assets.

The main effect is on the debtor's legal authority to manage his assets, with the bankruptcy decision, the debtor's assets are subject to general confiscation. The legal status of the debtor's assets subject to general confiscation is referred to as bankruptcy assets or *boedel faillite* in Indonesian bankruptcy law terminology. The bankruptcy case of PT Pro Mekanika Indonusa involved two creditors, PT Tri Murti Perkasa and Hotmaulin Simare-Mare, who filed a bankruptcy petition against PT Pro Mekanika Indonusa at the Medan Commercial Court. The crux of the matter was related to the amount of debt and the type of work disputed by the parties. The bankruptcy respondent (PT Pro Mekanika Indonusa) denied the debt obligations to the bankruptcy petitioners and the employment relationship with Bankruptcy Petitioner II.

The decision of the Commercial Court Number 2/Pdt.Sus-Bankruptcy/2018/PN.Niaga.Mdn dated 28 June 2018 declared PT Pro Mekanika Indonusa bankrupt. The legal consequences related to the bankruptcy debtor's assets are a concern in this case. Based on what has been described, it is necessary to study what the legal consequences are for the debtor after being declared bankrupt related to the debtor's assets according to the applicable law in Indonesia.

2. METHOD

This research is descriptive, which is research conducted to describe the object of research. The type of research used is empirical legal research. Empirical legal research or also called sociological legal research, which consists of research on legal identification and research on legal effectiveness. The type of data in this research is secondary data, which is carried out by means of a library study (library research).

Primary legal materials, namely legal materials that are authoritative, meaning that they have authority consisting of legislation, official records or minutes in making legislation and judges' decisions, in this study the primary legal materials used, namely:

1. Staatsblad Number 23 of 1847 concerning Burgerlijk Wetboek Voor Indonesië (BW) or referred to as the Civil Code
2. Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations
3. Law No. 40 of 2007 on Limited Liability Companies
4. Law No. 4 of 1996 on Mortgage Rights, Law No. 42 of 1999 on Fiduciary Guarantee
5. Law No. 19 of 2003 on State-Owned Enterprises, Law No. 8 of 1995 on Capital Market
6. Law Number 16 of 2001 concerning Foundation
7. Law Number 25 of 1992 on Cooperatives
8. Decision Number: 2/Pdt.Sus-Bankruptcy/2018/PN.Niaga.Mdn

Secondary legal materials, all publications on law that are not official documents. Publications on law include textbooks, legal dictionaries, legal journals and comments on court decisions. Tertiary legal materials, namely legal materials that provide information about primary and secondary legal materials, for example bibliographies and cumulative indexes. The analysis applied in this research is qualitative analysis. The qualitative method was developed to study human life in limited cases, casuistic in nature but in depth and total or holistic in nature.

3. RESULT AND DISCUSSION

Bankruptcy Law in Indonesia

According to Black's Law Dictionary, the notion of bankruptcy is associated with a condition of inability to pay a debtor's overdue debts. This inability must be accompanied by an actual action to file, either voluntarily by the debtor himself, or at the request of a third party (outside the debtor), a bankruptcy petition to the court. The purpose of filing such a petition is to fulfil the principle of publicity of a debtor's insolvency.

The formulation given in Article 1 Paragraph (1) of Law Number 37 Year 2004 concerning Bankruptcy, it can be seen that the declaration of bankruptcy is a court decision, this means that before the court's decision to declare bankruptcy, a debtor cannot be declared bankrupt. With the announcement of the bankruptcy declaration, the provisions of Article 1131 of the Civil Code in conjunction with Article 1132 of the Civil Code apply to all assets of the bankrupt debtor, which applies generally to all concurrent creditors in bankruptcy, without exception to obtain payment of all their concurrent receivables.

The legal foundation of bankruptcy is only one, namely bankruptcy law. There are many legal bases under the legal foundation. How to implement it must fulfil the principles of bankruptcy law. concretely, the legal basis of bankruptcy is in the realm or domain of civil law. The legal basis in bankruptcy law is four articles contained in the Civil Code (BW), namely Articles 1131 to 1134.

1. Article 1131 of the Civil Code

All movable and immovable goods belonging to the debtor, both existing and future, become collateral for the debtor's personal bond.

2. Article 1132 of the Civil Code

The goods become joint security for all creditors against them; the proceeds from the sale of the goods are divided according to the ratio of their respective receivables unless among the creditors there are legitimate reasons for precedence. From these two articles, it can be concluded that in principle every individual has property, which on the positive side is called property and on the

negative side is called a bond. In Article 2 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy, namely: A debtor who has two or more creditors and does not pay in full at least one debt that has fallen 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. The purpose of this article is that in order for Articles 1131 and 1132 of the Civil Code to apply as security for the repayment of creditors' debts, the declaration of bankruptcy must be made by a court decision which is first filed with the Commercial Court.

The legal basis for bankruptcy can be found in the formulation of the provisions of Article 21 of Law Number 37 of 2004 concerning Bankruptcy which reads: Bankruptcy covers all of the debtor's assets at the time the bankruptcy verdict is pronounced as well as everything obtained during bankruptcy. The legal principles in Law Number 37 of 2004 concerning Bankruptcy are (1)

- a. Balance of Creditors and Debtors Providing protection to creditors without harming debtors.
- b. Recognition of the Rights of Creditors Holding Security Rights The rights of secured creditors are recognised, and execution is suspended for 90 days.
- c. Bankruptcy as a Last Resort Provides alternatives to bankruptcy, such as postponement of debt payments or restructuring.
- d. Openness
- e. Transparency in the bankruptcy process that involves various related parties.
- f. Quick Examination: Judgement must be issued within 60 days to avoid protracted proceedings.
- g. Simplified Proof The evidentiary process is simplified to avoid delays.
- h. Balance Prevent abuse of the bankruptcy institution by debtors and creditors.
- i. Business Continuity Providing the possibility of the debtor's prospective business continuity.
- j. Fairness Ensuring fairness for all parties involved.
- k. Integration The formal and material legal systems become one unit.

These principles colour the application of bankruptcy law in Indonesia, in this regard, Adrian Sutendi explains as follows:

- a. Encouraging foreign investment, capital markets, and access to foreign credit.
- b. Provide balanced protection for creditors and debtors and uphold justice.
- c. Bankruptcy judgement is based on the approval of the majority of creditors.
- d. Bankruptcy applications are only for debtors who are insolvent (unable to pay debts).
- e. Apply automatic standstill since the bankruptcy filing.
- f. Recognise the separatist rights of creditors holding security rights.
- g. Bankruptcy verdict must be quick.
- h. Bankruptcy proceedings are open to the public.
- i. Personal liability of the management of the company that caused the bankruptcy.
- j. Set up the possibility of debt restructuring before bankruptcy.
- k. Criminalisation of fraud in bankruptcy.

Legal Consequences of Bankruptcy Declaration by the Commercial Court Regarding the Assets of Bankrupt Debtors

The declaration of bankruptcy judgement results in the debtor by law losing the right to control and manage the assets included in the bankruptcy, starting from the declaration of bankruptcy judgement. In bankruptcy cases, debtors lose their right to control and manage their assets since the bankruptcy declaration is pronounced. However, bankruptcy only applies to the debtor's assets, not the individual debtor. The debtor can still exercise other rights relating to him, such as his rights as a marriage guardian or his divorce claim.

Article 21 of Law No. 37/2004 on Bankruptcy explains that bankruptcy covers all assets of the debtor when the bankruptcy verdict is pronounced, including assets acquired during bankruptcy. Thus, some of the consequences of bankruptcy include:

- a. For Debtors:
 - 1) Losing the right to control and manage their assets.

- 2) Agreements that arise after the declaration of bankruptcy cannot be applied to the bankruptcy estate.
 - 3) Claims against the bankruptcy estate must be submitted to the curator.
 - 4) Confiscation is discontinued.
 - 5) If the debtor is detained, it must be released.
- b. Against certain right holders
- 1) Lien holders, fiduciary holders, mortgages, or other collateral rights may execute the assets as if there was no bankruptcy.
 - 2) The exercise of this right must be reported to the curator.
 - 3) The privilege of the security right holder.

As a result of the legal consequences of bankruptcy on property security rights, there are several types of creditors in bankruptcy law, including separatist creditors, preferred creditors, and concurrent or competing creditors. Separatist creditors have security rights that allow them to execute the bankruptcy debtor's assets secured by such rights. Preferred creditors have a special position according to the law, while concurrent creditors jointly receive their receivables from the bankrupt debtor's estate in accordance with the amount of their respective receivables.

The administration of the bankruptcy estate is the main task of the curator as the party authorised to manage and administer the bankruptcy estate, as mandated in Law Number 37 Year 2004. The curator begins the administration of the bankruptcy estate after the bankruptcy estate is unable to pay and the debtor's business is terminated. The curator decides how to dispose of the bankruptcy estate by taking into account the best value at the time of disposal.

The curator has two possibilities to maintain the value of the bankruptcy estate in a "going concern" condition, namely:

Sale of Bankrupt Debtor's Assets:

The curator sells the assets of the bankrupt debtor if it is considered that the cost of maintaining the debtor's business will be greater than the potential profit that may be obtained. This sale must be made at the highest value. When selling assets, the curator must consider:

- 1) Selling at the highest price.
- 2) Deciding whether some assets should be sold immediately or delayed as they may increase in value in the future.
- 3) Being creative to maximise the value of the assets.

Continuing the Bankruptcy Debtor's Business

The curator may decide to continue the business of the bankrupt debtor if there is potential to increase the value of the bankruptcy estate. This decision requires the approval of the creditors' committee or the Supervisory Judge if no creditors' committee is appointed in the bankruptcy declaration decision. To continue the business of the bankrupt debtor, the curator must also consider whether to continue all or part of the business for a certain period of time and appoint a specific individual or group to run the business.

Law No. 37/2004 on Bankruptcy stipulates that as soon as the creditors who have been matched are paid the full amount of their receivables or as soon as the closing distribution list has obtained permanent force, the bankruptcy is ended. If on re-examination the record of the bankrupt debtor's debts made by the curator is in accordance with the actual amount of debts acknowledged by the bankrupt debtor and the creditors, then the record of the bankrupt debtor's debts made by the curator is eligible to be published in the registry of the district court where the bankruptcy case was decided.

Analysis of Decision.

This case involved a company and an individual who claimed that the company they were dealing with had unpaid debts, so they filed a bankruptcy petition against the company. Here are the key points in the description: The case flow was that the Bankruptcy petitioner filed a bankruptcy petition against the Bankruptcy Respondent on the basis that the Bankruptcy Respondent had unpaid debts. The debt originated from a transaction between the Bankruptcy Petitioner I (an asphalt/hotmix material supplier) and the Bankruptcy Respondent who was originally CV. Pro Mekanika, which later

became PT Pro Mekanika Indonusa. Bankruptcy Petitioner II was the individual involved in this transaction as the executor of the work. The Bankruptcy Petitioner II also paid the bills for the materials used in the work that he performed and claimed that the Bankruptcy Respondent owed him. Further to the Exception, the Bankruptcy Respondent stated that the requirement of "more than one creditor" was not met in this bankruptcy petition, as the Bankruptcy Respondent had no debt to the Bankruptcy Applicant II. The Bankruptcy Respondent also argued that the Bankruptcy Petitioners' claims were vague and contained irrelevant claims, making them obscure (obscuur libel).

The Court decided to grant the bankruptcy petition filed by the Petitioners. The Bankruptcy Respondent was declared bankrupt. Judges of the Commercial Court and Balai Harta Peninggalan (BHP) Medan were appointed as Supervisory Judges and Curators in this bankruptcy. The costs of managing and administering the bankruptcy estate and the curator's fees were deferred until the curator completed his duties. The Bankruptcy Petitioner is required to pay the costs incurred in this petition, the court decides that the Bankruptcy Respondent is insolvent, and further actions such as the determination of costs will be deferred until the curator completes his duties. The exception filed by the Bankruptcy Respondent was not accepted by the court.

In Decision Number 2/Pdt.Sus-Bankruptcy/2018/PN.Niaga.Mdn, the Panel of Judges considered whether PT Pro Mekanika Indonusa could be declared bankrupt and all its legal consequences. Furthermore, the Panel of Judges considered whether Balai Harta Peninggalan (BHP) Medan could be appointed as the Curator in the bankruptcy. Finally, a Supervisory Judge authorised to oversee the bankruptcy must also be appointed. The Applicant filed for bankruptcy on the grounds that PT Pro Mekanika Indonusa had two or more creditors, namely PT Tri Murti Perkasa and Hotmaulin Simare Mare, who had not paid their debts. This refers to Article 2 Paragraph (1) of Law Number 37 Year 2004 on Bankruptcy and Suspension of Debt Payment Obligations.

The Panel of Judges examined the evidence submitted and found that PT Pro Mekanika Indonusa had two creditors, namely PT Tri Murti Perkasa and Hotmaulin Simare-Mare, and both had outstanding debts that were due and collectible. Therefore, the Panel of Judges considered that the requirements for filing a bankruptcy petition had been met. Next, the Panel of Judges examined whether PT Pro Mekanika Indonusa had ceased to pay or had failed to pay at least one debt that was due and collectible. The Panel of Judges took the view that "ceased to pay" does not only mean the debtor's inability to pay its debts, but also includes situations where the debtor does not fulfil its payment obligations when the bankruptcy petition is filed. Therefore, this requirement was also met.

The Panel of Judges also considered that Applicant I (PT. Tri Murti Perkasa) and Applicant II (Hotmaulin Simare-Mare) were creditors of PT Pro Mekanika Indonusa. Therefore, the third requirement, namely the submission of a bankruptcy petition by one or more of its creditors, was also met. Thus, the Panel of Judges decided to grant the Applicants' bankruptcy petition and declared PT Pro Mekanika Indonusa bankrupt, with all applicable legal consequences. The Bankruptcy Applicants won the lawsuit because the evidence they submitted was stronger and in accordance with the law. Judges must consider juridical truth, philosophical truth, and sociological considerations in making decisions. The judge must also ensure that the legal requirements for filing a bankruptcy petition, such as "the Debtor has two or more Creditors," have been met.

4. CONCLUSION

The following conclusions from the previous discussion are Bankruptcy Law in Indonesia is regulated in Law Number 37 of 2004, which provides , legal framework for the bankruptcy process and postponement of corporate debt payments in Indonesia. The legal consequences of a decision to declare bankruptcy by a commercial court involve the liquidation process and the distribution of the bankrupt company's assets to creditors after the commercial court declares the company bankrupt. Decision Number 2/Pdt.Sus-Bankruptcy/2018/Pn.Niaga.Mdn has legal consequences for creditors and debtors, including freezing of assets, prohibition of transactions by the debtor, supervision of the debtor's activities, determination of payments to creditors, submission of creditor claims, and payment of dividends from the sale of the debtor's assets.

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