

Legal Implication of the Constitutional Court's Decision Number 67/PUU-X/2013 on Creditor Concurrent's Rights in Bankruptcy Case

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Abstract-*The implication of the Constitutional Court Decision Number 67 / PUU-XI / 2013 is very interesting to study, it is because of after the decision, the repayment of workers' payment in the case of bankruptcy of a company must take precedence over other creditors. On the one hand, the decision provides benefits to workers and in the opposite, it suffers the concurrent creditors because it is less likely to obtain debt repayments from debtors. Furthermore, this following question arise e.g. the protection of the concurrent creditors. This is not taken into discussion in the Constitutional Court decision No. 67 / PUU-XI / 2013 above, which implies the undermining the position of concurrent creditors and minimizing the guarantee of repayment of debts from bankrupt debtors.*

Keywords-*Concurrent Creditors, Bankruptcy, Decision of the Constitutional Court*

I. INTRODUCTION

Monetary turmoil that has occurred in several countries since in the mid of 1997 has brought a huge influence on national economic activities, especially in the business world in maintaining its business activities, even including the ability to fulfill payment obligations to creditors.[1] In the business world, the funding need is an issue that must be fulfilled by business persons to maintain and / or to support the continuity of their business activities, so that to overcome this problem the need for capital loans in the form of debt and receivable is the last solution which are often taken by business actors. However, the problem of debt and receivable in the future will arise if in the agreed time, in this case, the debtor's debt is due, but the debtor does not have the ability or good intention to repay the loan in the form of debt along with the predetermined interest to one or several creditors.

Bankruptcy is a method that is taken to be able to solve the problem of debt and receivable that is suffered by a debtor, where the debtor does not have the ability or good intention to pay the debts to the creditors. There are two solution namely the creditor informs the bankruptcy status to the debtor or debtor submits the act of bankruptcy to himself.

The actions of the Indonesian government to protect the rights of the parties relating to the issue of bankruptcy are by revising the Bankruptcy Law as originally regulated in the Staatsblaad in the year of 1905 No. 217 juncto Staatsblaad In 1906 No. 348 becomes Government Regulation in Lieu of Law (Perpu) No. 1 in the year of 1998 concerning Amendments to the Bankruptcy Law issued on April 22, 1998. September 9, 1998 Government Regulation in Lieu of Law No. 1 of 1998 was passed into Law No. 4 in the year of 1998 concerning Amendments to the Bankruptcy Law into Law, finally on October 18, 2004 Law No. 4 in the year of 1998 was changed to Law No. 37 in the year of 2004 concerning Bankruptcy and Postponement of Obligations of Debt Payment (hereinafter referred to as Law 37/2004).

According to the provisions of Law 37/2004 concerning bankruptcy and postponement of debt repayment obligations referred to as debt is an obligation that is stated or can be stated by the amount of money either Indonesian currency or foreign currency, either directly or in which it will arise in the future or contingent, arising from agreement or because of the law and the fulfillment of debtor responsibility and as it is not fulfilled, it will pick a side to the creditor to obtain fulfillment from the debtor's assets.[2]

Based on this case, it can be concluded that the nature of debt is an obligation that must be fulfilled by the debtor. Although the debt is an obligation for debtors to be fulfilled or repaid, sometimes debtors do not fulfill their obligations or debtors stop paying their debts. The situation of stopping paying can occur because the debtor is unable to pay or does not want to pay.[3] But along with the development of the era of credit or debt in a case of not just capital lending, this situation can be seen in accordance with Article 95 paragraph (4) of Law Number 13 in the year of 2003 concerning Labor.

Subsequently, Article 95 Paragraph (4) of Law 13/2003 is strengthened by the Decision of the

Constitutional Court (hereinafter referred to as "MK") Number 67 / PUU-XI / 2013, due to the contradiction between Article 95 paragraph (4) of the Law Number 13 in the year of 2003 with Article 55 paragraph (1) Bankruptcy Law and Postponement of Obligations of Debt Payments and Article 21 paragraph (1) and (3) UU KUP.[4]

Article 95 paragraph (4) of Law 13/2003 certainly has indicated that debt and receivable in bankruptcy is no longer talking about capital lending. More than that, debt and receivable includes various aspects including payment of salaries to employees / laborers. In addition, in the bankruptcy, it is known in various types of creditors that differentiate creditors from one another such as 1. Separatist creditors, they are creditors who obtain material guarantees such as mortgage holders, fiduciary guarantees, the rights of guarantee, mortgage and other material guarantee. This means that the execution of rights of the Separatist Creditors can still be carried out as if there is no bankruptcy on the debtor. 2. For the creditor that the receivable is without special guarantees, the creditor is referred to as a concurrent creditor. [5]

According to the author, the concurrent creditors who provide the receivable without special guarantees are a reflection of the spirit of the Indonesian people with mutual cooperation characteristics. As Sartono Kartodijo said, mutual cooperation is a culture that has grown and developed in the social life of Indonesian society as a cultural heritage that has existed for generations. For this reason, referred to the author, a legal analysis is necessary to increase the protection of concurrent creditors in an effort to increase the sense of justice among creditors. It happens because so far the position of the creditors of this type is the weakest in bankruptcy cases, and several creditors sometimes do not get their repayment rights.[6]

II. RESEARCH METHODS

This research is normative legal research that is also often referred to as doctrinal research with objects or research aims which are in the form of regulations, legislation and other legal materials. The results of legal research are not new legal theories; however, at least it results new arguments. The conducted research is normative juridical by examining the main problem as mentioned in the problem formulation. In addition, the researcher also completed it from other relevant aspects based on the scope and identification of the problems formulation. [7]

In normative legal research, the processing data is essentially an activity to systematize legal material. Systematization means making a classification of legal

materials to facilitate analysis and construction work. The obtained legal materials are reviewed to perceive relevance of the research topic, both in the form of ideas, proposals and arguments from the reviewed legal provisions. This research used a statute approach, conceptual approach, and historical approach.[8]

III. FINDINGS AND DISCUSSION

1. *The Position of Creditors in the Occurrence of Bankruptcy*

Bankruptcy is a commercial solution of debt and receivable between Creditor and Debtor, where the Debtor does not have the ability to repay these debts to the Creditors. Therefore, when the Debtor's debt is due and the Debtor has to pay the debt, the request for the bankruptcy status against the Debtor becomes possible. Under these conditions, institutions handling bankruptcy case are expected to function as alternative institutions to settle Debtor's obligations to Creditors more efficiently, effectively and proportionally.[9]

Bankruptcy is defined as a public seizure according to the law on all the assets of the Debtor, so that peace can be reached between the Debtor and the Creditors or in order that the assets can be distributed fairly among the Creditors. In this case, the seizure is carried out by the court and then the execution of all assets of the Debtor is for the mutual benefit of the Creditors, in accordance with the principles of the general guarantee of Articles 1131 and 1132 of the Civil Code. Bankruptcy according to the provisions of article 1 paragraph (1) of Law 37/2004 which is a definition of bankruptcy; which is in line with the nature of bankruptcy; bankruptcy is a public seizure of all the assets of a bankrupt debtor whose management and settlement is carried out by the Curator under the supervision of the Supervisory Judge as regulated in this law.

In the case of bankruptcy, not all creditors have the same position. The difference is determined by the type or nature of the receivable. The natures of this receivable are in the following:

- a. Separatist receivables, namely receivable with certain material guarantees (such as guarantee rights, mortgage, Fiduciary guarantee) - Article 1133 Civil Code.
- b. Receivables with general preference rights. This receivable is related to bankrupt assets in general - Article 1149 of the Civil Code.
- c. Receivables with the rights of the Special Prefect. This receivable is related to certain bankrupt assets-Article 1139 Civil code.

- d. Concurrent Receivables. Receivables with the payment by prorated bases - articles 1131-1132 Civil code.
- e. Special privileges Receivable. Tax Receivables - Article 1137 of the Civil Code jo Article 21 of Law No. 6 in the year of 1985 amended by Law No. 28 in the year of 2007 concerning General Provisions and Procedures of Taxation).

Based on the nature of the receivables, creditors in bankruptcy cases are classified into various forms, namely:

- a. Separatist creditor. Separatist creditors are defined as creditors who have materials debt guarantee (guarantee rights), such as guarantee holders, mortgages, pawning, fiduciary guarantees and others (Article 55 of Law No. 37 in the year of 2004). Creditors with guarantees that are not material guarantees, such as bank guarantees, they are not separatist creditors. It is said that separatists connote "separation" because the position of Creditors is indeed separated from other Creditors, in the sense that Creditors can sell by themselves and collect by themselves from the result of sale, which are separated from general bankruptcy assets.
- b. Preferred Creditors. The privileges owned by the preferred creditor are rights originating from the Law given to a creditor so that the creditor's level is higher than the other creditors (concurrent creditors), according to the nature of the creditor's receivable (Article 1134 of the Civil Code). Preferred creditors are creditors whose receivables have a special position. It means that the creditor has the right to get a first repayment from the sale of bankrupt assets. Preferred creditors are types of creditors whose repayments are more prioritized than separatist and concurrent Creditors as in the bankruptcy process. Therefore it can be said that the preferred creditor is the highest type of creditor compared to other creditors, unless the law determines otherwise.
- c. Concurrent Creditors. Concurrent creditors are creditors who do not belong to the same group of creditors or preferred creditors. Repayment of their receivables is sufficient from the results of the sale/auction of bankrupt assets after the separatist and preferential groups have taken the rights of the sale. The results of the sale of bankrupt assets are divided according to the category of the measurement of the concurrent Creditors' receivables. Concurrent Creditors are Creditors who do not hold collateral and

who do not have special rights and whose bills are not recognized or recognized conditionally.

Based on the nature of the receivables, it is clear that the position of the concurrent creditors is weak, this also causes on the efforts of repaying the concurrent creditor's receivables. This is different from the type of separatist creditor who has the right if there is a bad credit, and the debtor is bankrupt, so that the creditor holder of the material guarantee is given the authority to execute the debt guarantee. Separatist creditors are also allowed to sell and take the results of the sale of debt guarantees as if there was no bankruptcy, even if the estimated collateral sales results have not covered all of their debts, the separatist creditors can request that the remained is re-considered as concurrent creditors. However, if the results of the asset sale exceeds the amount of the debt, together with interest after the bankruptcy statement by the court, costs and debt, then the excess must be given to the Debtor. Thus, separatist creditors are given priority over concurrent creditors, where the determination of levels aims to provide legal protection. In addition, separatist creditors are also given the right to inform or submit his bankruptcy without releasing the rights of their separatists.

Certainly, this condition contrasts against the rights obtained by concurrent creditors regarding the opportunities to obtain payment of receivables. Although the authority to execute the guarantee is also limited in the provisions of Article 56 paragraph (1) Law No. 37 in the year of 2004 which states that, "The right of execution of Creditors as referred to in Article 55 paragraph (1) and the rights of third parties to claim their assets which the control of bankrupt Debtors or Curators are suspended for a maximum period of 90 (ninety) days from the date of the bankruptcy statement announced."

2. *The Implications of Constitutional Court Decision Number 67/PUU-XI/2013 on Concurrent Creditors' Rights*

Law has the character of regulating relational interests among humans. The aim is to achieve and protect common interests. Relational interests among humans will cause problems and conflicts if they are left to subjective rules. Desires of individuals and groups that will stand out. Ignoring common interests and goals. Therefore, the rule of law must be maintained in order to gain trust as a regulator of common interests. Therefore, in order that the law affords the objectives, the law is made to be obeyed. Obedience to the law will result in order in society, and on the contrary disobedience to the law will cause chaos.

Legal compliance cannot be separated from legal awareness, and good legal awareness is obedience to the law, and good legal unawareness is disobedience. Statements of legal compliance must be placed together as causes and consequences of legal awareness and obedience. In reality, obedience to the law is not the same as other social obedience, legal obedience is an obligation that must be carried out and if it is not carried out, punishments will arise, but it is not for social obedience. If social obedience is not complied, punishments that is applicable to the community becomes a judge. It is not excessive if obedience in the law tends to be forced. Obedience itself can be divided into three types, cited from HC Kelman (1966) and L. Pospisil (1971) in the book "Revealing Legal Theory and Judicial Prudence Including the Interpretation of Legisprudence, Achmad Ali stated: (1) the obedience in the form of compliance, and (2) Obedience which tends to identification, namely if someone obeys a rule because he is afraid that his relationship with others will be broken; and (3) Obedience that tends to internalization, namely if someone obeys a rule, because he really feels that the rules are in accordance with the intrinsic values he holds on.

In connection with the obligation to obey the Constitutional Court Decision, it is necessary to explore the opinion of the Jutta Limbach (Jutta Limbach, *The Concept of the Supremacy of the Constitution, in The Modern Law Review*, Vol. 64 No. 1: 3) concerning 3 (three) main characteristics which signify the principle of constitutional supremacy, namely: (1) Distinction among constitutional legal norms and other legal norms; (2) The binding of legislators by constitution; and (3) There is an institution that has the authority to test the constitutionality of Government legal actions or legislators.

As the supreme law of the land for the state and nation of Indonesia, the 1945 Constitution must be guided and carried out by all elements of this nation, both state administrators and citizens in fulfilling their respective duties. In such a position, the constitution must be established and functioned as a reference in finding solutions to solve state and national problems that arise. In this case, it includes the effort of creating loyalty to the constitution. It is adherence to the Constitutional Court's decision because each MK's decision is a reflection of the ongoing constitution. Symptoms of disobedience to the Constitutional Court's decision began to arise. Even though it has not been proven correct, the symptom can be seen from the lawmakers' intention to re-enter the articles that

had previously been canceled by the Constitutional Court.

Agus Riewanto stated that in the constitutional law, MK's decision is the same as the Law and it must be obeyed since it was read. It means that the decision must be obeyed and applied. Maruarar Siahaan said that the nature of the holding from Constitutional Court's decision was declaratoir, condemnatoir, and constitutief. A decision is said to be condemnatoir if the decision contains a judgment against the defendant to bring about an achievement (tot het verrichten van een prestatie). The result of the condemnatoir decision is to provide the right to the plaintiff / applicant to request an executive action against the defendant. The nature of this condemnatoir decision can be seen in the decision of some dispute cases over the authority of a state institution. The declaratoir decision is a decision in which the judge declare which will be the law. This includes the decision of the judge who declared and refused the claim. Declaratoir decisions in the testing of laws by the Constitutional Court are shown more clearly in the holding. But every declaratoir decision, especially those that assert the parts of law, paragraph and / or article , is on the contrary to the 1945 Constitution and they do not have binding legal powers as well as constitutief decisions.

IV. CONCLUSION

The implication of the MK's Decision Number 7/PUU-XI / 2013 is every bankruptcy of the company, the rights of workers related to their salary must be preceded after the rights of creditors in general. Under the terms of imperative normative, since the decision has been pronounced. Based on the findings of this study, the decision of the Constitutional Court is increasingly undermining the position of concurrent creditors and minimizing concurrent creditors' opportunities for securing debt repayment from bankrupt debtor, and for this moment, guaranteeing the return of receivables is better for all creditors in providing credit to be accompanied with a guarantee material to obtain separatist nature and prioritized in comparison to other creditors.

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