

Analysis of Equality on Creditor Standing Principle on The Process of Arrangement and Settlement of Bankruptcy Asset in Indonesia

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Abstract- The process of arranging and clearing bankrupt assets carried out by the curator is not carried out properly and professionally and does not meet the principles in bankruptcy law, so there will be legal problems in the distribution of bankrupt debtor assets. This is mainly related to the existence of three types of creditors in the Bankruptcy Law, namely Preferred Creditors, Separatist Creditors and Concurrent Creditors, where in the process of distributing bankruptcy debtor's assets it is possible that the assets of bankrupt debtors are insufficient for the number of creditors of creditors. The problems discussed in this paper are about the implementation of the principle of equality of the position of creditors and the principle of *pari passu pro rata parte* in the management and settlement of bankrupt assets, as well as what are the obstacles that arise in the implementation of the settlement of the management and settlement of bankrupt assets. The results of the study show that the principle of equality of the position of creditors and the principle of *pari passu pro rata parte*, in the management and acquisition of bankrupt assets, are carried out simultaneously and cannot be separated. The principle of creditorium parity is found that all creditors have the same rights to all assets of bankrupt debtors. On the other hand the *pari passu pro rata parte principle* emphasizes the distribution of debtor assets to pay off debts to creditors in a more just manner in accordance with the proportion.

Keywords- *Bankruptcy, Equality on Creditor Standing Principle, Pari Passu Pro rata Parte*

I. INTRODUCTION

The main purpose of bankruptcy is to divide the creditors' wealth of the Debtor by the Curator. Bankruptcy is intended to avoid the occurrence of a separate confiscation / separate execution by the Curator and replace it by holding a joint confiscation, so that the wealth of the Debtor can be distributed to all Creditors in accordance with their respective rights.

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Bankruptcy institution is basically an institution that provides a solution to the parties if the Debtor is in a state of stopping / unable to pay. Besides that, bankruptcy institutions basically have two functions at once [1], namely (a) Bankruptcy as an institution providing guarantees to creditors that the debtor will not cheat and remain responsible and (b) Bankruptcy as an institution that also provides protection to the debtor against the possibility of mass execution by its creditors.

In Article 1132 of the Civil Code it is stated, the material is a joint guarantee for all those who impose it, the income from the sale of the objects is divided according to balance, that is, according to the size of the respective receivables, except if among the debtors. there are valid reasons to take precedence.

According to M. Hadi Shubhan if it turns out that in relation to property law, a person has more than one obligation that must be fulfilled for more than one person entitled to fulfill these obligations, so Article 1132 of the Civil Code determines that, each party or creditor entitled to fulfillment of the agreement, must obtain fulfillment of the agreement of the assets of the parties that have the obligation (debtor) in (1) *pari passu*, that is, collectively obtaining repayment, without prioritizing, (2) *pro rata*, that is, proportionally calculated based on the amount of each receivable is compared to their overall receivables, against all of the debtor's assets [2].

Since the issuance of the Bankruptcy Decision by the Court there are legal implications in the form of the legal consequences of the bankruptcy decision, for the bankrupt debtor and his property with the issuance of the bankruptcy decision, has an influence on the debtor and his assets [3]. As stipulated in article 24 paragraph (1) of the Bankruptcy and PKPU Law which states "the debtor by law loses his right to control and manage his assets which are included in bankrupt assets, from the date the statement of the bankruptcy statement is pronounced" [4].

The philosophy of bankruptcy is a mechanism for distributing assets fairly and evenly to creditors related to the debtor's non-payment condition due to the inability of the debtor to carry out these obligations.

The implementation of the principle of *creditorium parity* and *pari passu pro rata parte* is actually not simple, because it is related to efforts to obtain bankruptcy assets that will face many problems which include (a) concerning how the treatment of creditors is known to various creditors and (b) in terms of assets bankruptcy is not proportional to the amount of debt, while in it there are separatist creditors and creditors who have preference rights, who hold material security, how is the treatment of creditors who do not hold material guarantees at all?

In the event of an attempt to repay a bankrupt debtor's debt, to many creditors, then the amount of bankrupt assets cannot meet the entire amount of debtor's debt, then the curator will face the problem of what percentage should be paid to each creditor. Therefore, it is necessary to regulate parameters on how to calculate the distribution of bankrupt assets, while on the other hand how the parameters of the distribution of bankrupt assets are not concretely regulated in the Bankruptcy Act.

Based on the identification of the aforementioned problems, the problem to be investigated is the implementation of the *creditorium parity principle* and the *pari passu prorata parte principle* in the settlement of bankruptcy disputes at the stage of arranging and clearing bankrupt assets. Then it is analyzed so that the creditors, both preferred creditors, separatist creditors and concurrent creditors can get a part of debtor's debt repayment in the process of arranging and clearing palette assets.

II. RESEARCH METHOD

This research is a normative juridical study, however to support this normative juridical research, the researcher conducts field research to obtain primary data, but is not intended to carry out sociological juridical research. While the specification of this study is descriptive analysis, which seeks to describe the implementation of the principle of equality of the position of creditors and the principle of *pari passu prorata parte*. This research is also intended to test certain hypotheses, besides describing what they are about a variable, symptoms and circumstances, it is also intended to develop and discover new theories, so that the source of data is primary and secondary legal material.

III. FINDINGS AND DISCUSSION

1. Description of Bankruptcy Management and Procurement Processes

Based on field research and secondary data collection primarily from primary legal materials and secondary legal materials, the bankruptcy process in the management and settlement phases begins when the bankruptcy verdict falls on the debtor. In this process the curator has a very large role. Because since the debtor has been declared bankrupt by the Commercial Court, the curator determined in the bankruptcy decision shall

immediately be tasked with carrying out the management and settlement of bankruptcy assets [5].

Based on the results of the study as a whole the bankruptcy process can be seen as follows:

- (1) The Decision of Bankruptcy Is Sentenced by a Judge of the Commercial Court (first instance).
- (2) Bankruptcy Management Procedure Phase.
- (3) Phase Verification Actions Done
- (4) Receivables Matching Meeting
- (5) Phase of Bankruptcy.
- (6) Distribution of Bankrupt Debtor Assets

2. Analysis of the Implementation of the Creditorium Parity Principle and Pari Passu Prorata Parte Principle in the Management and Procurement of Bankruptcy.

The implementation of the *creditorium parity principle* stipulates that all creditors, whether creditors who have the right to guarantee or not, or creditors who have priority and privileged rights or not, have the same rights to all assets of bankrupt debtors. The principle of *creditorium parity* means that all debtors' assets, both in the form of movable or immovable property, as well as current and future goods, are bound by the debtor's settlement obligations, so that by law will become a general guarantee against debt fulfillment debtor debts to his creditors.

On the other hand the *pari passu prorata parte* principle is a principle that states that the assets of bankrupt debtors are joint guarantees for creditors and the results must be distributed proportionally among creditors, except if there are creditors who according to the law must take precedence in receiving bill payments. The *pari passu prorata parte* principle emphasizes the distribution of debtor assets to repay debts to creditors more equitably by means of proportions (ponds) and not in an equal manner [6].

The principle of *creditorium parity* aims to provide justice to all creditors without differentiating the condition of the debtor's assets even though the debtor's assets are not directly related to the transactions made, the *pari passu prorata parte principle* provides justice to creditors with the concept of proportional justice, where creditors own larger receivables, then the portion of the payment receivables from the debtor is greater than the creditors who have smaller receivables. If the creditor is equalized without seeing the size of the receivables, it will cause an injustice. Injustice in the distribution of *creditorium parity* in the distribution of assets of bankrupt debtors will appear unfair in the event that the assets of bankrupt debtors are smaller than the amount of their debts.

Thus, the principle of *creditorium parity* is more often interpreted as the equal position of creditors, in the sense that they have the same rights so that their position on

bankrupt debtor assets which turns out to be smaller than the amount of debt, the concept of distribution will be divided equally or equally. On the other hand we know the position of various creditors, namely there are preferred creditors, separatist creditors and concurrent creditors.

Actually, the author wants to emphasize that the principle of *creditorium parity* and the principle of *pari passu prorata parte* in its implementation cannot be separated. The implementation of the two principles must accompany one another in sharing the assets of the bankrupt debtor. So that in the case of the process of arranging and clearing bankrupt assets, it turns out that there are various types of creditors, both preferred creditors, separatist creditors and concurrent creditors, then the process of distributing bankrupt assets to the three types of creditors is in accordance with their position and proportion.

Based on the author's observations in the process of arranging and clearing bankrupt assets carried out by the curator, the curator must try to place the two principles correctly and fairly. The author's analysis states that the steps taken and administered by the curator must be carried out correctly and fairly based on the process of the distribution of bankrupt assets. In the verification and matching phases of receivables, it was found that many creditors applied for billing. There are even preferred creditors who are employees of companies that are declared bankrupt.

In the case of bankruptcy acquisition in which there are employee rights that must be fulfilled first (employee in his position as preferred creditor) then there is relevance and urgency between labor dispute resolution (how to deal with Industrial relations) with the issuance of bankrupt assets in this case the distribution of assets bankruptcy of employees. Its relevance and urgency is for the legal protection of workers who work for companies declared bankrupt by the Court. Therefore, according to the opinion of the writer, even after the credit matching process has been carried out by the curator under the supervision of the Supervisory Judge, then in the distribution of Bankruptcy Assets, the rights of employees as preferred creditors should be provided and included in the Minutes of the distribution of Bankruptcy Assets, so that new legal problems do not occur.

IV. CONCLUSION

The principle of equality of the position of creditors and the principle of *pari passu prorata parte*, in the management and acquisition of bankrupt assets, carried out simultaneously cannot be separated, because the two principles are related to debts owed to many creditors in which debtor assets will be divided among several creditors proportionally. This provision is in line with the philosophy of the objective of bankruptcy, namely, the existence of a mechanism for distributing assets fairly and

evenly to creditors related to the situation of debtors not paying due to the inability of debtors to carry out obligations to creditors.

Analysis of the implementation of the principle of *creditorium parity* found that all creditors have the same rights to all the debtor's bankrupt assets. On the other hand the *pari passu prorata parte principle* emphasizes the distribution of debtor assets to pay off debts to creditors in a more just manner in accordance with the proportion.

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