Rejection of PT. Ramaldi Praja Sentosa's Application for Bankruptcy Declaration (Case Study: Supreme Court Judges in The Decision Number 196 K/PDT.SUS-PAILIT/2017)

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ABSTRACT
A request for a bankruptcy statement can be filed by a debtor who has two or more creditors and does not pay off at least one overdue debt which can be billed and then declared bankrupt by a court decision. This study aims to determine whether the legal considerations of the Supreme Court judges in the Decision Number 196 K / Pdt.Sus-Pailit / 2017 who rejected the request for a bankruptcy statement by PT Ramaldi Praja Sentosa as the debtor were in accordance with the provisions of Law Number 37 of 2004 concerning Bankruptcy and Postponement. Debt Payment Obligations. This type of research used in this research is normative legal research. The legal considerations of the Supreme Court judges in Decision Number 196 K / Pdt.Sus-Pailit / 2017 were slightly wrong because the judge decided based on SEMA Number 2 of 2016 which requires creditor approval of the appointed curator as a formal requirement, where in law it only requires that an application for bankruptcy can be accepted if there are at least two creditors and one debt that has matured and can be collected. The additional requirement is proof of the debt, which must be simple. In this case the law does not require the approval of the creditors regarding the appointed curator. Therefore, the judge should have considered the requirements for bankruptcy petition that have been fulfilled in the Bankruptcy Law.

Keywords*: Rejection, Debtor, Application for Bankruptcy Declaration*

1. INTRODUCTION

The business world is the world that suffers the most and feels the impact of the crisis that has hit, as companies that experience or are entangled in debt. [1] One of the legal means to overcome the foundation in settling debts and debts that are closely related to the bankrupt business world is the legislation on bankruptcy. [1]
Bankruptcy as regulated in Article 1 point 1 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations is a general confiscation of all assets of a bankrupt debtor whose management and settlement is carried out by the curator under the supervision of a supervisory judge as regulated in the Act. In general, bankruptcy is a condition or condition where a person (individual, partnership, company, municipality) is unable to pay its debts as they are at maturity, or in other words bankruptcy is a process where a debtor who is experiencing financial difficulties pays his debts. who have been declared bankrupt by the court. [1]
According to the provisions of Article 300 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, it is expressly stated that:
"The court as referred to in this law, apart from examining and deciding applications for declaration of bankruptcy and suspension of debt payment obligations, is also authorized to examine and decide other cases in the field of commerce whose stipulation is carried out by law".
Based on the provisions of Article 13 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations in the case of commercial cases, ordinary legal remedies can only be carried out in the form of cassation and extraordinary legal remedies in the form of reconsideration. Ordinary legal remedies in the law only recognize one level, namely cassation in the Supreme Court, so that in Article 11 paragraph (1) Law Number 37 of 2004 does not recognize appeals because in the bankruptcy process involving assets, a fast legal process is needed so that every decision of the commercial court is immediately submitted for cassation to the Supreme Court, and in the case of cassation it is hoped that it can be a legal remedy that can be pleasant for both parties. [2]
A cassation can be taken either by a debtor or a creditor who is a party to the trial at the first instance, it can also be filed

by another creditor who is not a party to the trial at the first instance who is dissatisfied with the decision on the petition for bankruptcy declaration as stipulated in Article 11 paragraph (1) Law Number 37 of 2004. [2]

The Supreme Court which examines and hears bankruptcy-specific civil cases at the cassation level with Decision Number 196 K/Pdt.Sus-Pailit/2017 has rendered its decision on the appeal filed by PT. Ramaldi Praja Sentosa as the applicant for cassation ("hereinafter referred to as the Petitioner") which is a Limited Liability Company (PT) established by Deed Number 3 dated June 23, 1999 drawn up by/before M. Ali Basiran, SH, Notary in Jakarta, lastly amended by Deed Number 95 dated 30 September 2012 made by Sri Intansih, SH, Notary in Jakarta in conjunction with Deed of Statement of Meeting Resolutions of PT Ramaldi Praja Sentosa Number 27 dated 14 December 2015 made by Alfi Sutan, SH, Notary in Jakarta.

Initially, the Petitioner's efforts, namely the procurement of spare parts/repairs for the AWP component of MBAU's HAWK aircraft, went smoothly, but in February 2016, the Petitioner had an accident with embezzlement by one of the Petitioners' directors, namely Ms. Michelle Palar, where she has withdrawn funds without the knowledge of other Directors in the amount of Rp. 15,500,000,000.00 (fifteen billion five hundred million rupiah), in accordance with the mutation of the applicant's bank statement for the period up to February 28, 2016 and has been reported to the authorities and Currently, the suspect is still in search of the authorities (DPO) for fleeing.

Since then the Petitioners have experienced financial difficulties, eight months since the embezzlement incident the Petitioners are still trying to survive with moral assistance from the Petitioners' colleagues, but the financial difficulties remain unresolved, the debts are not paid to the Third Party, because the Applicant does not have cash or reserve funds to settle their obligations to pay debts as debtors to creditors in addition to their obligations to pay the company's operational costs.

Financial liquidation difficulties plus the outstanding principal and interest on the lending bank, namely PT BNI (Persero) Tbk. which was due on October 20, 2015 became swollen and had to be resolved immediately by the Petitioner in which case the Petitioner was unable to settle his obligations other than operating his company again.

Due to the reasons for the existence of the Bank's debts or debts to other Creditors, while the Petitioner is unable to continue his business and is unable to fulfill his obligations to pay the debt, then refer to the provisions in Article 104 paragraph 1 of Law Number 40 of 2007 concerning Limited Liability Companies, the Applicant has obtained the approval of the GMS to file an application for bankruptcy to the Commercial Court and for further settlement of debts to the Creditors through the Curator.

Furthermore, the Petitioners request the Chairman of the Central Jakarta Commercial Court who examined and adjudicated this case so that the Petitioners are declared bankrupt because the provisions of Article 2 paragraph 1 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations have been fulfilled which states that the Debtor has two or more Creditors and do not pay off at least one debt that has matured and can be collected, is declared bankrupt by a Court Decision, either at his own request or at the request of one or more creditors, and for the purpose of settling bankrupt assets, a Curator is required, so that in this case the Petitioner proposes to the Assembly. Judge to appoint Br. Tafrizal H. Gewang, S.H., M.H., to be the Curator in this case.

Therefore, in this petition for bankruptcy, the Petitioner requests the Commercial Court in the Central Jakarta District Court to render the following decision:

1. Granting the Petitioner's application in its entirety;
2. To declare PT Ramaldi Praja Sentosa bankrupt with all the legal consequences;
3. Pointing:
   - Mr. Tafrizal H. Gewang, S.H., M.H., as Curator, with License Number AHU.AH.04.03.09 dated February 16, 2016, having his/her address at Ruko Goden Boulevard Blok 0-17, Jalan Pahlawan Seribu, BSD City, Tangerang 15322;
   As a Curator to carry out the settlement of bankrupt assets;
4. Sentencing to pay the entire cost of this case;

Regarding the petition for bankruptcy declaration, the Commercial Court at the Central Jakarta District Court has issued a decision Number 49/Pdt.Sus-Pailit/2016/PN Niaga.Jkt.Pst., dated December 8, 2016, which is as follows:

1. Reject the petition for declaration of bankruptcy filed by the Petitioner;
2. Sentencing the Petitioner to pay the cost of this case in the amount of Rp. 616,000.00 (six hundred and sixteen thousand rupiah);

However, with respect to the petition for a declaration of bankruptcy, the Commercial Court at the Central Jakarta District Court rejected the request so that in this case the Petitioner finally filed a cassation request along with its objections which had been filed within the timeframe and in the manner specified in the law, and which in the end The appeal filed by the Petitioner was rejected by the Supreme Court based on the following considerations:

That the reason cannot be justified, because after carefully examining the memorandum of cassation dated December 13, 2015 related to Judex Facti's considerations, in this case the Commercial Court at the Central Jakarta District Court did not misapply the law with the following considerations:

- Whereas in accordance with SEMA Number 2 of 2016 it is determined that among other things the formal requirements for a petition for a declaration of bankruptcy submitted by the Debtor must be approved by the Creditor regarding the nomination of a candidate for Curator submitted by the Debtor, and in the a quo case it is not accompanied by a letter of approval from the Creditor regarding the name of the candidate. The Curator proposed by the Debtor is Tafrizal H. Gewang, SH, MH. Therefore, the a quo petition for bankruptcy declaration does not materialize the principle of balance

between the interests of the Debtor and Creditor so that it does not meet the formal requirements;
- Whereas the rejection of the a quo bankruptcy petition is in accordance with the law.
  With these considerations, PT. Ramaldi Praja Sentosa submitted an application to the cassation level, but the Judge still rejected the petition for a bankruptcy statement because PT Ramaldi Praja Sentosa did not meet the requirements as stipulated in the following considerations:
- Considering, whereas based on the considerations above, it turns out that the Decision of the Commercial Court at the Central Jakarta District Court Number 49/Pdt.Sus-Pailit/PN Niaga.Jkt.Pst, dated December 8, 2016 in this case does not contradict the law and/or the law the law, so that the cassation application submitted by the Cassation Petitioner PT Ramaldi Praja Sentosa must be rejected;
- Considering that because the appeal for cassation from the Cassation Petitioner is rejected, the Cassation Petitioner must be punished to pay court fees at this level of cassation.

Based on the things as described previously, the authors are interested in researching and reviewing the reasons for the rejection of the appeal against the petition for bankruptcy declaration of the petitioner for the cassation based on Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations with the title "REJECTION OF PT RAMALDI PRAJA'S DECLARATION APPLICATION. SENTOSA AT THE CASE STUDY (CASE STUDY: SUPREME COURT JUDGES DECISION NUMBER 196 K/PDT.SUS-PAILIT/2017)".

2. METHOD

The type of research method used in this research is normative. The nature of this research is prescriptive, which means that the research used to solve the problem under study uses theories, arguments and new concepts that are used as prescriptive. Types and sources of data include: primary materials, namely the Civil Code, Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, and Circular Letter of the Supreme Court of the Republic of Indonesia Number 2 of 2016 concerning Increasing Efficiency and Transparency in Case Handling Bankruptcy and Suspension of Debt Payment Obligations In court, secondary materials consist of books and journals and non-legal materials consist of KBBI. The research approach uses statutory research and case research. The data analysis technique uses deductive logic.

3. DISCUSSION

3.1 Issue

The problems that will be studied by the author in writing this proposal is: "What are the legal considerations of the Supreme Court judges in Decision Number 196K/Pdt.Sus-Pailit/2017 which rejects the petition for a declaration of bankruptcy of PT Ramaldi Praja Sentosa as the Debtor?"

3.2. Conditions for Statement of Application for Bankruptcy Based on Law Number 37 Year 2004 concerning Bankruptcy and Suspension of Obligation for Payment of Debt

The requirements for filing a bankruptcy petition can be seen from Article 2 paragraph (1) of the UUK-PKPU which stipulates that:
"A debtor who has two or more creditors and does not pay off at least a debt that has matured and is collectible, is declared bankrupt by a competent court decision, either at his own request or at the request of one or more creditors."
Judging from the provisions contained in Article 2 paragraph (1) of the UUK-PKPU, it can be explained that to apply for a declaration of bankruptcy, a debtor must meet the following requirements:

1. The existence of two or more creditors
   That is, the debtor must have at least two creditors. Having two or more creditors is one of the conditions that must be met to apply for a declaration of bankruptcy. Every creditor has the same right to get debt repayment from the debtor's assets. If the debtor has only one creditor, then all of the debtor's assets automatically become collateral for the repayment of the debt. Therefore, it is clear that the debtor cannot be sued for bankruptcy, if the debtor has only one creditor. The UUK-PKPU does not explicitly stipulate that the petition for a declaration of bankruptcy must prove that the debtor has two or more creditors, but because according to Article 299 of the UUK-PKPU that "unless stipulated otherwise by law, the applicable civil procedural law shall also be applied to the Court. Commerce".
   Whereas in the civil procedural law applicable to Article 163 HIR or Article 1865 of the Civil Code, it is emphasized that the burden of proof is borne by the applicant or plaintiff to prove the argument for his claim, therefore the applicant for a declaration of bankruptcy must be able to prove that the debtor has two or more creditors as required in the Article 2 paragraph (1) UUK-PKPU.
2. There is a debt
   In principle, bankruptcy law is based on Articles 1131 and 1132 of the Civil Code. The two articles provide certainty in the distribution of bankrupt assets for creditors, while also providing justice and balance between creditors and debtors.

In Article 1131 of the Civil Code,
"All objects of the debtor, both movable and immovable, both existing and new in the future, are borne by all individual engagements".
Article 1132 of the Civil Code,
"The object becomes a mutual guarantee for all those who owe it, the income from the sale of the object is divided according to the balance, namely according to the size of the receivables."
Because the basis for bankruptcy in Indonesia is the Civil Code, it is necessary to enter into the definition of "debt" itself by looking at the basis for the emergence of a debt, namely from an obligation.

3. Terms of maturity and collection of debt
In the formulation of Article 2 paragraph (1) of the UUK-PKPU it can be stated that the bankruptcy law does not regulate the bankruptcy of debtors who do not pay their obligations only to one of their creditors (who does not control part of the debtor's debt) but the debtor must be in a state of insolvency.
A debtor is in a state of insolvency if the debtor is financially unable to pay most of his debts or the value of his assets or assets is less than the liability value. other creditors continue to carry out their obligations to pay off their debts properly unless one creditor controls most of the debtor's debt.
According to Article 1 point 6 UUK-PKPU Number 37 of 2004 what is meant by debt is:
Obligations that are stated or can be stated in the amount of money both in Indonesian currency and foreign currencies, either directly or arising in the future or contingent, arising from agreements or laws and which must be fulfilled by the Debtor and if not fulfilled entitles the Creditor to obtain fulfillment from the assets of the Debtor."

3.3. The principle of balance in the application for a declaration of bankruptcy

A law must be based on the principle of providing balanced benefits and protection for all parties related and interested in the bankruptcy of a person or a company.[3] In this regard, a good Bankruptcy Law should not only provide benefits and protection for creditors but also debtors and their stakeholders.
Government Regulation in Lieu of Law Number 1 of 1998 concerning Amendments to the Bankruptcy Law, which was later confirmed as Law Number 4 of 1998 concerning Stipulation of the Government in Lieu of Law as finally the law has been replaced by Law Number 37 of 2004 concerning Bankruptcy and PKPU have adopted the principle of balance by mentioning it as the "fair" principle. The protection of balanced interests is in line with the basis of the Republic of Indonesia, namely Pancasila. Pancasila not only recognizes the interests of a person, but also the interests of the people or society. Pancasila must not only pay attention to human rights, but must also pay attention to one's human obligations. Based on the precepts of a Just and Civilized Humanity, it is necessary to develop an attitude that is not arbitrary towards other people, even more so towards many people.
Based on the principle of balance according to Herlien Budiono [4], 2 (two) meanings of the principle of balance, namely the principle of balance as an ethical principle which means that a state of burden sharing on both sides is in a state of balance, where the meaning of balance here is on the one hand limited by the will (based on considerations or favorable circumstances).) and on the other hand belief (of ability). Within the boundaries of the two sides a balance will be realized. Then the principle of balance as a juridical principle means that the principle of balance can be understood as a proper or fair principle.
With regard to the principle of balance in bankruptcy law which is understood as the principle of fairness or justice, in this case the author is of the opinion that if fair is meant when the Debtor and Creditor have rights and obligations in accordance with the capabilities of each party. On the other hand, the supporting factors and efforts that have been made by the Parties must also be considered.

3.4. Identity of the Parties in Decision No. 196 K/Pdt.Sus-Pailit/2017

1. Debtor
PT RAMALDI PRAJA SENTOSA, represented by the Board of Directors of the Company PT Ramaldi Praja Sentosa, Raditya Amaldi, domiciled at Ruko Golden Florencia AA 32, Jalan Boulevard Bukit Gading Raya, Kelapa Gading, Jakarta 14240;
In this case, giving power to Bayu Rizal, S.H., M.H. and friends, Advocates, having their address at Ruko Golden Boulevard Blok O-17, Jalan Pahlawan Seribu, BSD City Tangerang, based on a Special Power of Attorney dated December 9, 2016.
2. Creditors
a) PT Bank BNI (Persero) Tbk;
Jalan Kramat Raya Number 154-156 Monday, Jakarta 10330
b) Indonesian Air Force (MBAU)
Cilangkap Street, East Jakarta
c) S'Net
Jalan KH. Mas Mansyur, 12th Floor Batavia Tower
3. Curator
Tafrizal H. Gewang, S.H., M.H., with Permit Number AHU.AH.04.03.09 dated February 16, 2016, having his/her address at Ruko Golden Boulevard Blok O-17, Jalan Pahlawan Seribu, BSD City Tangerang 15322.

3.5. Judges' Considerations in the Supreme Court's Decision Number 196 K/Pdt.Sus-Pailit/2017 Based on Law Number 37 Year 2004 concerning Bankruptcy and Postponement of Obligation to Pay Debt

Based on the objections to the cassation in the Supreme Court Decision Number 196 K/Pdt.Sus-Pailit/2017 filed by PT Ramaldi Praja Sentosa as the Cassation Petitioner in the

cassation memorandum, the legal facts that were set aside both before the trial and those revealed in the cassation memorandum were obtained. trial as follows:

1. Whereas the Judge of the first instance rejected the Application for a Statement of Bankruptcy (hereinafter referred to as the petition) of the Cassation Petitioner in the trial on December 8, 2016 with the consideration that among others there was no approval from the Creditors as a formal requirement in accordance with Circular Letter Number 2 dated April 25, 2016 (hereinafter referred to as circular);

2. Legal Facts Before the Trial:

- Whereas the reason why the Cassation Petitioner is unable to continue his business is that one of the Petitioners' directors, Ms. Michelle Palar has withdrawn funds in the amount of Rp. 15,500,000,000.00 (fifteen billion five hundred million rupiah) without the knowledge and consent of the Petitioner which matter has been reported to the competent authority by the Cassation Petitioner in accordance with evidences P4 and P5 in the a quo case;
- Whereas then the Cassation Petitioner filed a petition for a registered bankruptcy statement dated October 17, 2016 Number 49/Pdt.Sus-Pailit/2016/PN Niaga.Jkt.Pst;
- Whereas the existence of the circular, the Cassation Petitioner only found out after the petition for a declaration of bankruptcy was registered at the Central Jakarta District Court, namely on October 17, 2016;
- Whereas in order to comply with the provisions of Article 2 paragraph 1 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU), the Cassation Petitioners successively invite:
• PT Bank Negara Indonesia (Persero) (evidence K1);
• S'Net (evidence K2);
• TNI AU (MBAU) (evidence K3);
"Or collectively called the Creditors" to attend the first (first) session on October 31, 2016;
- Whereas in the first (first) trial on October 31, 2016, the Cassation Petitioner has given the original letter of approval to be signed and fulfilled the circular of the Supreme Court of the Republic of Indonesia Number 2 of 2016 dated April 25, 2016 to:
• PT Bank Negara Indonesia (Persero) (evidence K4);
• S'Net (evidence K5);
• TNI AU (MBAU) (exhibit K6);
- That during the trial process until the conclusion trial on Thursday, December 1, 2016 (approximately 1 (one) month) the Creditors did not return the approval letter and/or provide written answers in the a quo case examination, despite being reminded by the Commercial Judges Council. of their rights at the trial.

1. Legal Facts in Court:

- Whereas up to the hearing on December 1, 2016 on Thursday, in the closing ceremony attended by the Creditors, and the Cassation Petitioner stated in the Conclusion that the Petitioner had no objection to adding another Curator to add to the appointed Curator, namely Mr. H. Tafrizal H. Gewang, S.H., M.H.; and a letter of approval has been given to the Creditors on October 31, 2016, but they provide reasons that are still being studied by their superiors and until the decision on December 8, 2016, Thursday, the Creditors still did not bring the letter;
- Whereas according to the legal adage there is no response regarding the appointment of a Curator appointed from the Petitioner, it can be interpreted that the Creditors tacitly agree – quad non- if they do not agree, they will object/reject in court proceedings and this is not done by the Parties. Creditors either orally or in writing prior to the decision on December 8, 2016.

In SEMA RI Number 2 of 2016 concerning Efficiency and Transparency Regulations for Handling Bankruptcy Cases and Postponement of Debt Payment Obligations in Court dated April 25, 2016:

- Whereas the explanation of the circular in the second paragraph from above states:
"To realize this goal, there needs to be an effort to encourage the birth of a good case handling system, which is able to facilitate business failures that occur in the field, while avoiding greater losses to the business world on a macro basis due to payment failures that occur among business actors. At the same time, the process of handling bankruptcy cases must also provide protection for the interests of creditors and debtors";
- Whereas according to the opinion and knowledge of the Cassation Petitioner, the explanation means that there is a good, efficient and transparent case handling system capable of providing protection for the interests of both Creditors and Debtors, so that in the a quo case:

a) The Cassation Petitioner has made maximum efforts to make it happen, starting with notifying and inviting the Creditors for evidence of K1; K2; and K3;

b) Whereas BNI Creditors may because they feel they have mortgage rights over the assets of the Cassation Applicant and S'Net and MBAU Creditors as Ordinary Creditors, even though they have invoices in accordance with the claims submitted by them in the a quo trial, do not respond at all to the appointment of the Curator.

In this case, it can be seen that there is no protection for Debtors / is ruled out, so that the meaning of the explanation of the circular does not apply as a whole and only applies to Creditors, but for Debtors it is ignored as seen from the application for a declaration of bankruptcy which was rejected according to the considerations of the Judge of the first instance and the Judge of cassation.

From the results of research conducted by the author in PT. Ramaldi Praja Sentosa found that PT. Ramaldi Praja Sentosa can be given legal protection or exceptions in the absence of a written response or silence from the Creditors which can be interpreted according to the law they agree to the appointment of a Curator proposed by PT Ramaldi Praja Sentosa as the Petitioner for Cassation, so that the bankruptcy process filed by PT Ramaldi Praja Sentosa can start immediately and at the same time avoid greater losses to the business world on a macro basis due to defaults that occur among business actors.

The petition for a declaration of bankruptcy submitted by PT Ramaldi Praja Sentosa should have been granted by the judges, both first instance judges and cassation, because the reasons for filing for bankruptcy have been fulfilled as

stated in the Law on Bankruptcy and Suspension of Obligations for Payment of Debt as follows:

1. The legal requirements for a company to declare or be declared bankrupt according to Article 2 paragraph 1 of the Bankruptcy Law and PKPU are as follows:

"A debtor who has two or more creditors and does not pay off at least one debt that has matured and can be collected is declared bankrupt by a court decision, either at his own request or at the request of one or more creditors."

2. In Article 8 paragraph 4 of the Bankruptcy Law and PKPU it also states that the application for a declaration of bankruptcy must be granted if there are facts or circumstances that are simply proven that the requirements to be declared bankrupt as referred to in Article 2 paragraph 1 have been met, which in this case is PT Ramaldi Praja Sentosa as a Debtor who has two or more creditors namely PT Bank Negara Indonesia (Persero), S'Net, and the Indonesian Air Force (MBAU) and is unable to pay off his debts due to embezzlement committed by the Director of PT Ramaldi Praja Sentosa amounting to Rp 15,500. 000,000.00 (fifteen billion five hundred million rupiah). As a result of this, PT Ramaldi Praja Sentosa was unable to fulfill its obligation to pay debts to creditors and filed for bankruptcy against itself to the Central Jakarta Commercial Court, but was rejected. Then PT Ramaldi Praja Sentosa filed an appeal to the Supreme Court which was also rejected.

So according to the researcher, the fulfillment of the requirements for the bankruptcy application in Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations submitted by PT Ramaldi Praja Sentosa as the Debtor can be considered by the judge to grant the petition for the bankruptcy statement.

According to the results of interviews with Drs. Khrisna Daswara, S.H., C.N., according to the Law on Bankruptcy and Suspension of Debt Payment Obligations, the judge may grant or reject the petition for bankruptcy. Although SEMA MA Number 2 of 2016 is an internal circular of the judiciary which is the legal basis for judges in making decisions, and the law still has a higher position, in this case it is a different norm because it is technical in nature and has legal substance. However, based on the Law on Bankruptcy and Suspension of Debt Payment Obligations, the judge may grant or reject the proposed bankruptcy petition.

In this case, the author is of the opinion that although SEMA MA is a guide for judges to decide a case, judges must also prioritize the position of the existing law above which in this case is UUK-PKPU. In the case in Decision Number 196K/Pdt.Sus-Pailit/2017, the reason the judge rejected the application for a declaration of bankruptcy was due to the non-fulfillment of the formal requirements in submitting the application for a declaration of bankruptcy, namely the absence of creditor approval of the appointed curator. In the facts of the trial as stated in Decision Number 196K/Pdt.Sus-Pailit/2017, a letter of approval has been given to the Creditors dated October 31, 2016, but they provide reasons that are still being studied by their superiors and until the decision on December 8 2016, Thursday , The Creditors still do not bring the letter and in accordance with the legal adage that there is no response regarding the appointment of a Curator appointed from the Applicant, it can be interpreted that the Creditors tacitly agree and if they do not agree, their Creditors should in the trial object/reject and This was not done by the Creditors either orally or in writing prior to the decision on December 8, 2016.

In this case, when viewed from the theory of legal certainty according to Van Apeldoorn, legal certainty has two aspects, the first is regarding the question of whether law can be formed (bepaalbaarheid) in concrete matters. That is, parties seeking justice want to know the law in a particular way before starting a case. Second, legal certainty means legal security. This means protection for the parties against the arbitrariness of the judge. In the positivism paradigm, the definition of law must prohibit all rules that are similar to law, but are orders from a sovereign authority, legal certainty must always be upheld regardless of the consequences and there is no reason not to uphold it because in the paradigm positive law is the only law.

Based on the second aspect, namely legal certainty means legal security which means protection for the parties against the arbitrariness of the judge, in this case the researcher focuses more on the judge who decides to reject the petition for a bankruptcy statement from PT Ramaldi Praja Sentosa as the Debtor only because the judge decides based on Point II number 2 SEMA RI No. 2 of 2016 which states:

"In the event that an application for bankruptcy or suspension of debt payment obligations is submitted by the debtor, the application must be accompanied by a letter of approval from the creditor regarding the nomination of the name of the management/curator in the application. The approval letter is a formal requirement for the acceptance of the application."

Where in this case according to the judge due to the absence of a letter of approval from the Creditors in the application for a bankruptcy statement, the application for a bankruptcy statement cannot be granted, and the judge overrides the legal facts of the trial which state that the Debtor has attempted to send an approval letter which has been ignored by the Creditor.

4. CONCLUSION

The conclusion of the thesis entitled: Rejection of PT Ramaldi Praja Sentosa's Application for Bankruptcy Declaration (Case Study: Supreme Court Judges in the Decision Number 196K/Pdt.Sus-Pailit/2017) and answer description of the formulation of the problem of this author's thesis as follows:

The judge's consideration in the Supreme Court's Decision Number 196 K/Pdt.Sus-Pailit/2017 based on Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations is slightly wrong, if the panel of judges rejects the petition for a bankruptcy statement with legal considerations that PT Ramaldi Praja Sentosa does not meet the formal requirements determined by SEMA Number 2 of 2016, namely the absence of creditor approval of the appointed curator. Meanwhile, as it is known that in Law Number 37 of 2004 concerning Bankruptcy and

Postponement of Debt Payment Obligations only requires that the application for bankruptcy can be accepted if there are at least two creditors and one debt that has matured and can be collected. The additional requirement is proof of the debt, which must be simple. In this case, the Law does not require the approval of the creditors regarding the appointed curator.

And if you look at the principle of balance as in the judge's consideration so that the judge decides based on SEMA Number 2 of 2016, in legal facts it is stated that it is the Creditors who do not respond to the appointment of a curator that has been given by the Debtor, and the Debtor is also willing if The Creditors want to appoint a Curator from their side who again has no response, so in this case it should mean that the Creditors tacitly agree, because the Creditors in the trial did not give objections/rejections prior to the decision on 8 December 2016 It can be seen if there is no protection for Debtors/overrides, so the meaning of SEMA Number 2 of 2016 does not apply as a whole and only applies to Creditors, but Debtors are ignored as seen from the petition for a declaration of bankruptcy which was rejected according to the considerations of the Judges at the first instance and the Judges at the cassation level .

The author's advice on of the thesis entitled: Rejection of PT Ramaldi Praja Sentosa's Application For Bankruptcy Declaration (Case Study: Supreme Court Judges in the Decision Number 196K/Pdt.Sus-Pailit/2017):

The cassation judge in deciding the case in the Supreme Court Decision Number 196 K/Pdt.Sus-Pailit/2017 should pay more attention to the provisions of higher laws and regulations, namely Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations rather than Circular Letters Supreme Court (SEMA) Number 2 of 2016 concerning Improvement of Efficiency and Transparency in Handling Bankruptcy Cases and Postponement of Debt Payment Obligations which are under it because the requirements for the bankruptcy application submitted by the Debtor have been fulfilled. This should be taken into consideration by the judge before giving the verdict as in Decision Number 196K/Pdt.Sus-Pailit/2017.

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