



The Role of Special Bankruptcy Civil Law in the Global Business Legal System

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Abstract. The world of law and the Indonesian economy was shaken when the bankruptcy of several large companies which were solvent in the district court occurred. Some of these companies eventually can be saved but there are also those who are but bankrupt. As a result of recent legal and economic developments, the field of business law known as bankruptcy law is currently undergoing a very significant transformation. Instead of civil lawsuits being used to settle debt-receipt disputes between debtors and creditors, commercial courts are now used to do so. As a result, bankruptcy law occupies a crucial space in the framework of American business law. Additionally, bankruptcy law, which is a component of the national business law system, cannot exist in a vacuum; rather, it has connections and relationships with other legal disciplines. Some of these disciplines include contract law, guarantee law, and company law. Due to voting procedures, bankruptcy law can force minor creditors to participate in a scheme and provide a mechanism through which creditors can jointly decide whether the debtor's business should continue as a going concern.

Keywords: Bankruptcy Law, Commercial Courts, National Business Law System.

1 Introduction

In the business world, failure to pay debts usually begins with the inability of one of the parties to fulfill the achievements in the agreement. Agreements that are often a source of debtor default are credit agreements [1]. Failure to pay the debtor in the credit agreement if it drags on can result in the bankruptcy of the debtor. A credit agreement is a contract in which the bank acting as the creditor lends money to the borrower, the debtor, who then promises to pay back the money in accordance with the terms of the agreement.

In Indonesia, bankruptcy is regulated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt. According to Section 1(1) of the UUK-PKPU, bankruptcy results in the general seizure of all of the bankrupt debtor's assets, which are then managed and settled by the curator under the supervision of a supervisory judge in accordance with this law.

Bankruptcy itself can be interpreted as follows "a process in which a debtor who has financial difficulties paying their debts is declared bankrupt by a court, in

this case, a commercial court, because the debtor is unable to pay his/her debts. In Indonesia." So this is where the importance of a bankruptcy institution should be a law that functions to provide guarantees of protection for every aspect of life and every legal relationship, then bankruptcy law plays a role in providing guarantees of certainty over the settlement of debt disputes between the parties. As explained that "Bankruptcy has become an inseparable part of society and touches various lines in people's lives".

The national economy is anticipated to expand and improve, and the results of national development are anticipated to be secured and supported by national legal products that ensure consistency, order, enforcement, and legal protection with a foundation in justice and truth.

The nature of the bankruptcy case examination is brief and simple, the debtor is sufficient to prove that the debtor satisfies the requirements to be declared bankrupt as specified by Article 2 of Law Number 37 of 2004 regarding bankruptcy, and postponement of debt payment obligations are simple in court, so there is no need for answer-and-response procedures. These are some of the unique characteristics of the procedural law at the commercial court in bankruptcy cases. If the requirements are satisfied, the commercial court must grant the bankruptcy request right away after a brief trial process [3]. A law on bankruptcy and the postponement of debt payments, which was originally governed by bankruptcy regulations, is one of the laws required to support the growth of the national economy.

Civil cases that can be submitted to the commercial court are in the form of an application. In the structure of the civil procedure process, bankruptcy is included in the category of application forms, namely bankruptcy applications submitted by debtors and creditors, which aim to obtain a bankruptcy statement by a court that is constitutive for both debtors and creditors, namely a decision declaring a person or entity bankruptcy venture. In a lawsuit that occurs because of a claim from someone who feels their civil rights have been violated and by submitting a case to court then both parties are summoned to be heard, often referred to as a lawsuit against a lawsuit [2].

Bankruptcy law as a sub-topic of business law studies is of course inseparable from the legal framework of business as a system. In addition, bankruptcy law, which is a body of law that regulates how a debtor pays their creditors, is of course connected to other areas of law that are related to bankruptcy law itself.

As it is known that the bankruptcy process is a process of implementing the provisions of Article 1131 and Article 1132 of the Civil Code which aims to distribute debtors' assets fairly, intended so that creditors obtain prior implementation (*pari passu*) from others, as well as creditors obtain greater repayment against others (*protata*).

The lack of popularity of this bankruptcy issue occurs because so far many parties are dissatisfied with the implementation of bankruptcy. Many bankruptcy matters are not completed, the length of time required for trials, the absence of clear legal certainty, are some of the many reasons that exist. The loss of the value of receivables due to the debtor's assets being declared insolvent not being enough to pay all of his debts to creditors may make this psychologically acceptable. As a result, not all creditors in bankruptcy cases are in agreement, and some even make a strong effort to oppose it.

2 Methodology

Due to the decline in the value of receivables as a result of the debtor's assets being declared insolvent and not being enough to pay off all of his creditors' debts, this may be psychologically acceptable. Due to this, not all creditors are on the same page in bankruptcy cases, and some even make a concerted effort to resist it.

The sources of legal information used are primary legal materials, secondary legal materials, and tertiary legal materials. The legal information for this study was gathered through a search of laws, other literature on the issues under consideration, and what is more commonly referred to as legal research literature. It was done using secondary data as the foundational source for the study. The method of processing legal materials is descriptive, i.e., describing a phenomenon as it is or a position or proposition, whether it be one that is legal or not. Additionally, once the legal information has been processed, an analysis of the information is done to determine the unique qualities of the commercial court in handling bankruptcy cases.

3 Result and Discussion

3.1 Position of Bankruptcy Law in the Framework of the National Business Law System

In its latest development, after being in force for 6 years, the bankruptcy law is felt to contain many weaknesses in it, so it requires changes. Additionally, due to the fact that this bankruptcy law has many flaws and does not provide legal certainty, the numerous bankruptcy cases that occurred at the time as well as the lack of legal certainty shocked the Indonesian bankruptcy justice system. According to Indonesia's history of development, the bankruptcy law institution is not a particularly recent addition to the country's legal system. The statute bankrupt of 1570 which was valid in England was a bankruptcy law that was in effect during the colonial period in the United States. The first bankruptcy law issued by the federal government was the bankruptcy act of 1800. Only after the passage of the Bankruptcy Act of 1841 did the option for a debtor to voluntarily apply for a declaration of bankruptcy against himself become part of US bankruptcy law.

On October 18, 2004, the government passed Law No. 37 of 2004 regarding bankruptcy and postponement of debt payment obligations to address the bankruptcy law's numerous shortcomings. The word bankruptcy is then modified by the suffixes ke and a to become bankruptcy, which denotes a procedure or method. According to bankruptcy law, bankruptcy is defined as a general seizure of the bankrupt debtor's assets, which are managed and settled by a conservator under the guidance of a supervisory judge. According to Hadi Shubhan, bankruptcy is an order from a court that generalizes the seizure of a debtor's assets with the intention of paying off the debtor's debt to his creditors. All of the debtor's assets, both those that were present when the bankruptcy declaration decision was made and those that were acquired during the

bankruptcy process, are generally forfeited as a result of bankruptcy, according to the provisions of bankruptcy law.

3.2 Procedural Law at the Commercial Court in Bankruptcy Cases

As a dispute-resolution court, the Commercial Court handles two matters: bankruptcy and intellectual property rights (IPR). The Commercial Court continues to primarily refer to Law Number 37 of 2004 Concerning Bankruptcy and Suspension of Obligations for Payment of Debt, which governs procedural law in bankruptcy cases. The Commercial Court's bankruptcy procedural law differs somewhat from regular civil procedural law. Some particulars in bankruptcy cases include.

- a) Events with letters. The procedures for civil proceedings at the Commercial Court apply in writing or by letter (*schiftelijke procedure*), in contrast to the procedures in force at the District Court which allow for oral procedures (*mondeling procedure*).
- b) Liability with expert assistance. The Bankruptcy Law and PKPU require the assistance of a legal expert. This is because in a bankruptcy process which requires legal knowledge and technical skills, it is necessary for both parties to the dispute to be assisted by a person or a technical person.
- c) Passive judge. The procedural law in bankruptcy proceedings is based on the conviction that judges are essentially passive. The judge only supervises that the procedural regulations stipulated by law are carried out by both parties [19].
- d) Proof. simple. Examination. bankruptcy cases. at the Courts. takes place more quickly, this is because the Bankruptcy Law provides a time limit for bankruptcy proceedings. In addition, the faster time for examining cases at the Commercial Court is influenced, among other things, by the evidentiary system adopted, which is simple or summary proof.
- e) limited time for inspection. The Bankruptcy Law states that the Court must decide on a bankruptcy statement application no later than 60 (sixty) days following the date the application was registered.
- f) The choice is made right away. The Commercial Court's decision regarding an application for a declaration of bankruptcy may be made in advance, though legal challenges to the decision may still be made.
- g) Arbitration Clause. The existence of the Commercial Court, as a court formed under Article 280 paragraph (1) of Perpu No. 1 of 1998 has special authority in the form of exclusive substantive jurisdiction over the settlement of bankruptcy cases. With legal status and power, the Commercial Court has the legal capacity to resolve bankruptcy applications. The Commercial Court has the authority and standing to decide bankruptcy applications
- h) It is impossible to appeal. According to Article 11 paragraph 1 of Law Number 37 of 2007, a response to a decision on an application for a declaration of bankruptcy may be made in the form of a legal appeal to the Supreme Court. Therefore, no appeal can be made against the Commercial Court of First Instance's decision.

The Commercial Court is, in theory, a part of the judiciary, specifically as a part of an independent state's ability to administer justice in order to uphold the law and the principles of justice established by Pancasila and the Republic of Indonesia's 1945 Constitution, for the purposes of putting the Republic of Indonesia into effect. The Commercial Court's jurisdiction is divided into the following regions in accordance with Article 306 of the UUK-PKPU juncto Decree of the President of the Republic of Indonesia Number 97 of 1999.

- a) Provinces governed by the Commercial Court at the Medan District Court include North Sumatra, Riau, West Sumatra, Bengkulu, Jambi, and the Special Region of Aceh.
- b) The Commercial Court at the Central Jakarta District Court has jurisdiction over the Special Capital Region of Jakarta, West Java, South Sumatra, Lampung, and West Kalimantan.
- c) Central Java's provinces and the Special Region of Yogyakarta are subject to the jurisdiction of the Commercial Court at the Semarang District Court.
- d) The Surabaya District Court has jurisdiction over the provinces of East Java, South Kalimantan, Central Kalimantan, East Kalimantan, Bali, West Nusa Tenggara, and East Nusa Tenggara.
- e) The Commercial Court at the Ujung Pandang District Court has jurisdiction over the provinces of Southeast Sulawesi, Central Sulawesi, North Sulawesi, Maluku, and Irian Jaya.

4 Conclusion

The Commercial Court is different from the General Court, where a judge's decision cannot be appealed, is specific and exclusive. A unique court is the Commercial Court. Where only debt disputes and other trades are resolved in commercial courts. From these provisions it can be concluded that bankruptcy means a situation when the debtor stops paying, either because of the condition of being unable to pay or because of the condition of not wanting to pay. When the bankrupt debtor loses control of the property, it will be given to the curator under the supervision of a designated court judge.

Theoretically, filing for bankruptcy includes both the debtor's assets as of the filing date and any wealth accumulated after filing. A bankruptcy statement formally relinquishes the bankrupt debtor's management and control over the property used to file for bankruptcy, with effect from the filing date. The Commercial Court continues to use Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt as the procedural law in bankruptcy cases, in general. The bankruptcy procedural law of the Commercial Court differs somewhat from the procedural law of other civil cases.

5 Authors' Contribution

Regarding the Commercial Court's authority in adjudicating and deciding commercial cases including bankruptcy cases and Intellectual Property Rights, the government must continue to improve and update the arrangements regarding the authority of the Commercial Court so that they are in accordance with current developments and can cover new cases that arise in the trade sector.

6 Acknowledgements

The process at the Commercial Court for the settlement of bankruptcy cases is appropriate, because it is in accordance with the wishes of the community in terms of business activities who want the settlement of cases quickly and simply and not protracted to prioritize efficiency in carrying out their business activities.

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