Legal Protection of PKPU Management Actions After Constitutional Court Decision Number 23/PUU-XIX/2021 from a Pancasila Justice Perspective

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***Abstract*—One strategy to deter money laundering is confiscating personal assets associated with the offenders, done in conjunction with predicate crimes. However, it is essential to note that not all initial criminal activities or crimes that lead to money laundering (predicate crime) qualify as such, as outlined in paragraph (1) of Article 2 of the PPTPU Law, which governs asset tracing activities (i.e., assets not owned by the perpetrators that do not constitute corpora delicti or stolen proceeds). The ability of predicate crime perpetrators to amass substantial wealth or funds through their illicit activities may have enabled them to engage in money laundering before coming to law enforcement's attention. Consequently, enforcement officials frequently seize instruments of crime and goods believed to result from criminal activity (corpora delictie) in exchange for assets that predicate crime perpetrators claim as their own and not as the tangible output of illegal activities.**

***Keywords*—Legal Protection, Constitutional Court Decision, Curator**

I. INTRODUCTION

The fact that assistance for PKPU applications submitted by creditors is exclusively available to debtors has generated discontent among specific individuals. They assert that this calls the Constitutional Court's authority to protect the people's constitutional rights into question. The ad hoc decision effectively undermines the implementation of the provision specified in Article 28D Paragraph 1 of the 1945 Constitution of the Republic of Indonesia, which is contrary to its intended purpose of upholding the principle of equality before the law. Article 28D Paragraph 1 of the 1945 Constitution of the Republic of Indonesia stated, "In addition to equal treatment before the law, everyone has the right to recognition, protection, guarantees, and fair legal certainty." The state must consistently enforce this article, which embodies the assurance of the principle of equality of rights (equality before the law) by the Pancasila legal state. Effectively reflecting the state's confidence that debtors and creditors are treated equally before the law, the PKPU arrangement in UUK-PKPU precludes legal remedies for bankruptcies initiated by a PKPU application filed by creditors or debtors. Inconsistency may ensue regarding the accessibility of justice for creditors and debtors involved in PKPU cases due to this implementation, which is a decision in its current state [1].

According to paragraph (2) of Article 39 of Law Number 37 of2004 on Bankruptcy and Postponement of Obligations for Payment of Debt, wages owed before or after the proclamation of bankruptcy become debts of the bankruptcy estate as of the date the bankruptcy decision is declared. Unpaid amounts not by the Manpower Act, such as wages, severance pay, and other rights to laborers, are classified as debts associated with the insolvent assets if the debtor from the bankrupt company fails to fulfill their financial obligations. Consequently, the laborer or employee is rendered a creditor in the bankruptcy proceedings. On the contrary, Law No. 37 of 2004 concerning

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Bankruptcy and Suspension of Debt Payment Obligations does not elaborate in Article 39, paragraph (2) concerning the status of laborers or employees as creditors in bankruptcy proceedings. Hence, further elucidation is required, specifically about the hierarchy of priorities for collecting the debts owed by laborers or employees.[2]

Legislation No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, Article 55, paragraph (1), grants separatist creditors the ability to exercise their executorial rights by the executorial titles that are affixed to each object that is obligated to provide specific material guarantees. This authority commences on the 61st day after the bankruptcy determination and concludes two months after the declaration of bankruptcy by the insolvent debtor. In addition to the privileges granted to them under paragraph 1 of Article 55, creditors of separatists are also granted privileges under paragraph 1 of Article 59 and Article 138 of Law No. 37 of 2004 about Bankruptcy and Suspension of Debt Payment Obligations. Tax expenses further erode the position of employees, in addition to the negative impact of separatist creditors. James Purba asserts that taxes hold the highest creditor status because Law No. 6 of 1983, as amended by Law No. 16 of 2009 concerning General Provisions and Tax Procedures, explicitly designates taxes as having precedence over other creditors.

The decision of the Constitutional Court, which initiates legal proceedings amidst the ongoing peace process at PKPU, can render all previous endeavors futile [3]. Due to the existence of this decision, there is uncertainty in handling cases that the curator has previously handled. This article will discuss the Pancasila Justice View on the Legal Protection of PKPU Management Actions (Delaying Debt Payment Obligations) Following the Constitutional Court Decision Number 23/PUU-XIX/2021.

II. LITERATURE REVIEW

Bankruptcy is an official legal proceeding that is instigated by entities or individuals who are confronted with severe financial hardships and are unable to meet their remaining financial responsibilities. The objective is to ensure that the obligations of creditors are settled in a just, equitable, and proportionate manner. Pro-ratapart means that the bills are paid pari passu with pro-ratapart insofar as creditors are entitled to an equitable portion of the debtor's assets in proportion to the value of their claims. In practice, however, the process is governed by the priority or rating of the receivables that are due first; therefore, this principle only applies to concurrent creditors. According to paragraph (2) of Article 39 of Law Number 37 of2004 on Bankruptcy and Postponement of Obligations for Payment of Debt, wages owed prior to or subsequent to the proclamation of bankruptcy become debts of the bankruptcy estate as of the date the bankruptcy decision is declared. Unpaid amounts that are not in accordance with the Manpower Act, such as wages, severance pay, and other rights to laborers, are classified as debts associated with the insolvent assets if the debtor from the bankrupt company fails to fulfill their financial obligations.Consequently, the laborer or employee is rendered a creditor in the bankruptcy proceedings. On the contrary, Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations does not elaborate in Article 39, paragraph (2) concerning the status of laborers or employees as creditors in bankruptcy proceedings. Hence, further elucidation is required, specifically with regard to the hierarchy of priorities for collecting the debts owed by laborers or employees.[2]

The PKPU provisions, which remain in effect in Indonesia, remain an essential component of the Bankruptcy Law from both the Faillissement Verordening Stb period (1905 No. 217 J.o Stb) and the 1906 No.348 Stb period. The Bankruptcy Law is structured into two chapters: Chapter I, encompassing Articles 1 through 211, governs Postponement of Payment (surseance vanbetalinng or suspension of payment); and Chapter II, commencing with Articles 221 to 279, pertains to Postponement of Payment (surseance vanbetalinng or suspension of payment).In the midst of the 1998 monetary crisis in Indonesia, the President attempted to coerce the opposition into implementing Government Regulation in Lieu of Law (Perpu) Number 1 of 1998 regarding Amendments to the Law on Bankruptcy. This regulation was subsequently enforced on April 22, 1998. However, it was subsequently superseded by Law Number 37 of 2004, which continues to govern Bankruptcy and Postponement of Debt Payment Obligations. Article 222 to 264 pertain to PKPU and its repercussions, while Article 265 to 294 concern peace. CHAPTER III of Law Number 37 of 2004 (UUK-PKPU) contains the PKPU provisions themselves. This section is divided into two sections. PKPU may be voluntarily submitted by the debtor or submitted by creditors who have determined that the debtor will be unable to continue making payments on his owed and collectible debts, in accordance with Article 222 paragraphs (1), (2), and (3) of Law No. 37 of 2004.9 The PKPU application may be filed concurrently with the bankruptcy declaration application or while the debtor's application is under review by the Commercial Court, as stipulated in Article 222 in conjunction with paragraph (4) of Article 229 UUK-PKPU.[4]

III. METHOD

The research method that the author uses is juridically normative research. Normative juridical research is a study that focuses on the study of literature in the form of reading, studying and analyzing legal materials. The data obtained by the literature study method comes from the study of documents analyzed qualitatively juridically.

Then, the author uses analytical descriptive to analyze data based on systematic rules to overview the problems raised in this authorship.

IV. RESULT AND DISCUSSION

The legal uncertainty and injustice caused by the Constitutional Court of the Republic of Indonesia Number 23/PUU-XIX/2021 decision concerning the permissibility of legal action against PKPU decisions are evident. If the parties can successfully attain peace, the PKPU decision may ultimately be annulled due to ongoing legal challenges. The attainment of peace will almost certainly never be a realized objective or endeavor. This is because the party (debtor) initially opposed PKPU will undoubtedly request a postponement of the outcome [5]. Ultimately, the presence of legal remedies in the PKPU process will create an environment of insecurity and injustice for parties acting in good faith. As a proactive legislator, the Constitutional Court seems to say that all creditors always use the PKPU to hurt businesses and put debtors out of business, which is what the status quo decision is about. Indeed, both creditors and debtors can act in bad faith. If so, what is the purpose of a legal standing arrangement for creditors to apply for PKPU as stated in UUK-PKPU Article 222 Paragraph 3? In fact, by the principle of balance and the PKPU mechanism in the existing UUK-PKPU, creditors who disagree will be precluded from pursuing legal action if the PKPU request is granted [6].

By acting as a proactive legislator in the context of the status quo decision, the Constitutional Court appears to imply that all creditors consistently exploit the PKPU institution to bring about the demise of businesses and bankrupt debtors [7]. Indeed, both creditors and debtors are capable of behaving in bad faith. If this is the case, what purpose does Article 222, Paragraph 3, UUK-PKPU serve through a legal standing arrangement for creditors to apply for PKPU? Creditors who hold differing views will be precluded from initiating legal proceedings under the PKPU mechanism of the current UUK-PKPU by the principle of balance, should the PKPU request be approved [8].

From a scientific standpoint, it is possible that bankruptcy institutions and PKPU could serve as operational channels for dishonest debtors seeking to advance their interests through deceit. In an earlier statement, former Supreme Court Justice Retno Wulan Sutantio opined that an individual who had intentionally incurred debts to evade the payment of their entire debt burden (escape plan) might file for bankruptcy[9].

PKPU institution debtors could still exploit this legal loophole despite Retno Wulan Sutantio not mentioning the institution specifically. Such mistakes are very likely to happen in the UUK-PKPU because of the limits put on simple evidence arrangements and the legal effects of not having any legal options for bankruptcy because of PKPU. This perspective can be rationalized, given that debtors who wish to evade their debt payment obligations maliciously may initially file for PKPU to block the way for legal action, including cassation or review by creditors. Thus, the debtor who initially incurred such obligations may ultimately be exempt from legal liability to repay the amount owed[10].

Building upon the arguments mentioned above, it creates an opportunity to establish legal resistance mechanisms against PKPU. Furthermore, PKPU-preceded bankruptcy has the potential to create unpredictable and unfair circumstances for the parties who have since reached a good-faith peace. Moreover, the ratio decision of the Constitutional Court regarding the presentation of the cassation legal action is legally irrational. A PKPU application may also lead to bankruptcy, as highlighted in Articles 178 and 285 of UUK-PKPU if the debtor fails to present a peace proposal or the panel of judges declines to ratify (homologate) the peace agreement [11].

To realize legal protection so that justice can be felt by everyone as a citizen, including substantive justice for the PKPU Institution, if there is discriminatory treatment in obtaining such justice, this includes formal or procedural aspects. As stated by John Rawls, "where we find formal justice, the rule of law, and respect for legitimate expectations, we are likely to find substantive justice as well." This means that fair law is reflected both in terms of guarantees of procedural justice and substantive justice [12].

When considering Pancasila justice through the lens of the value enshrined in the fifth principle, justice for the entirety of Indonesian society emerges as its fundamental essence. Upon examination of the decision rendered by the Constitutional Court, it becomes evident that the curator, in this particular instance, encountered legal injustice despite being a party entitled to legal protection under the PKPU [13]. This means that the Constitutional Court's Ratio Decidendi Decision, which says that creditors must submit PKPU before starting a cassation legal action for bankruptcy to follow the principle of equality before the law set out in Article 28D Paragraph (1) of the 1945 Constitution of the Republic of Indonesia, is not legal (ipso jure). It is improper for the Constitutional Court to rule that the articles proposed in the status quo case are conditionally unconstitutional based on law errors rather than in law formation in principle. Because as the Constitutional Court noted in Decision No. 17/PUU-XVIII/2020, which stipulates[14]:

"In the PKPU decision, legal action as stipulated in Article 235 paragraph (1) and Article 293 paragraph (1) of Law 37/2004 is not permitted, considering that the PKPU process itself has given sufficient time to both parties, namely the debtor and creditors to hold deliberations to achieve peace in terms of settling their debts and receivables mediated by a judicial body. Thus, if the results of the PKPU decision are questioned again by one of the parties by taking legal action, then this will create deliberations between the two parties which have been taken through the court route, namely PKPU, and which have taken quite a long time, which will create uncertainty.

The law for the PKPU application itself, because the debt and receivable problem between creditors and debtors has not yet been resolved, cannot be ascertained when it will end. This confirms that apart from the fact that the PKPU case cannot be filed a second time because it will create legal uncertainty regarding the peace efforts that have been achieved, this also clearly contradicts the nature of the PKPU case itself and the principles of justice, namely fast, simple and low cost."[2]

Upon examination of this analysis, it appears that the custodian, who has diligently complied with the law throughout the PKPU process, is not entitled to justice under the Constitutional Court's ruling, which is grounded in the rights guaranteed by the Constitution of 1945. Regarding the quo vadis essence of the PKPU Institution, the Constitutional Court's decision generates fresh legal issues

V. CONCLUSION

As per Decision Number 23/PUU-XIX/2021, parties acting in good faith may inadvertently and lawfully encounter legal ambiguity and alter the fundamental essence of the UUK-PKPU's PKPU institution due to the Court's deliberations. In the status quo case, the Constitutional Court should not arbitrarily evaluate the petitioner's interests in light of its erga omnes ruling. As previously stated, the institution and society are impacted by inter partes enforcement and the Constitutional Court in ways that transcend the parties directly involved. Malicious entities may take advantage of the absence of insolvency test legislation at PKPU institutions and the bankruptcy laws of Indonesia. The Constitutional Court, in Decisions 071/PUU-II/2004 and 001-002/PUU-III/2005, affirmed an analogous line of reasoning. Legislators were deemed negligent by the Constitutional Court for their lenient PKPU and bankruptcy application procedures. In light of the situation, the Constitutional Court is cognizant that Indonesia's excessively simplified PKPU and bankruptcy laws constitute a fundamental flaw. Malevolent parties can exploit bankruptcy and PKPU institutions due to the absence of insolvency requirements. The conventional definition of insolvency, as stated in Paragraph (1) of Article 57 UUK-PKPU, is non-payment. Insolvency proceedings commence after the judge approves of both bankruptcy and PKPU. Ordinarily, judges need to adhere to the evidence standards outlined in Article 8 UUK-PKPU. The judge must evaluate the debtor's solvency before contemplating PKPU or bankruptcy. Finally, insolvent debtors are punished by PKPU with bankruptcy. The legal ratio between PKPU and bankruptcy and the UUK-PKPU's declared principle of business continuity (continuing concern) support this conclusion. Problems are not eliminated by arranging the legal status of creditors in PKPU applications under the UUK-PKPU framework. The creditors' repudiation of the peace agreement implies that measures other than initiating legal proceedings against PKPU's bankruptcy are more suitable. The UUK-PKPU amendment ought to significantly restructure the insolvency examination by domestic legislation.

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