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## **Bankruptcy according to the bankruptcy law and postponement of payment perspective of creditor legal protection**

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**Abstract.** The development of the business world is strongly influenced by the business world as one of the economic actors, including the banking business. The business world is also very dependent on the conduciveness of the business climate that supports it. If the business climate conditions are not conducive, it will affect the stability of the business world, and can even cause business actors to suffer losses, which results in the capability and credibility of business actors in carrying out their business activities being disrupted, and can even result in bankruptcy. To maintain the smooth running of their business, business actors must obtain guaranteed protection through legal instruments established by the government. Legal protection given to banks as creditors is needed in maintaining business continuity. This legal protection is very important, considering that banking is an economic joint that supports the most vital national economy. Filing for bankruptcy which requires a minimum of 2 (two) creditors for a bankrupt debtor using the Postponement of Debt Payment Obligation mechanism based on the bankruptcy law and PKPU does not provide a guarantee of sufficient legal protection for creditors.

**Keywords.** bankruptcy; creditor; law; legal

### **Introduction**

The development of the business world is strongly influenced by the business world as one of the economic actors, including the banking business. The business world is also very dependent on the conduciveness of the business climate that supports it. If the business climate conditions are not conducive, it will affect the stability of the business world, and can even cause business actors to suffer losses, which results in the capability and credibility of business actors in carrying out their business activities being disrupted, and can even result in bankruptcy. To maintain the smooth running of their business, business actors must obtain guaranteed protection through legal instruments established by the government. Legal protection given to banks as creditors is needed in maintaining business continuity. This legal protection is very important, considering that banking is an economic joint that supports the most vital national economy.

Translated with DeepL.com (free version) Legal protection of banking is a form of state responsibility towards every citizen. Such legal protection has obtained its constitutional foundation Legal protection of every person has obtained its constitutional foundation in Article

28D paragraph (1) of the 1945 Constitution, which is formulated: "Everyone has the right to recognition, guarantees, protection, and certainty of a just law and equal treatment before the law." The phrase everyone in the article interpretatively shows the state's obligation to provide legal protection guarantees to all legal subjects including Banking as a legal subject of corporation, without being asked, the state must be present to protect Banking. Argumentatively, the provisions of the article lay the constitutional foundation for the legal protection of the rights of every person without discrimination on the basis of ethnicity, religion, race, origin, gender, and size, and so forth.

Legal protection of banking is the topic of this research. The issue of legal protection of banking in this study is based on the idea that law is an instrument that can be used to protect the interests and rights of everyone, including the rights of banking creditors as a whole in banking credit agreements from the possibility of debtor default. The use of law as an instrument of legal protection is based on the argument that the law has coercive power used by the state to provide protection against the possibility of other parties.[1]

Discussions about legal protection for creditors are not limited to respecting creditors' rights to repayment of Debtors' debts, but also certainty in terms of payment terms for debt and credit issues. According to Ida Ayu Kade Winda Swari and others (2014), during the bankruptcy process, it is not uncommon to find fraudulent acts committed by Debtors, such as hiding their assets to avoid settlement of assets which is detrimental to creditors, and by the Curator. Debtors who have bad intentions will transfer their assets to other parties in various ways. Legal protection for creditors in the event of a debtor's bankruptcy arises when the debtor, as the debtor, based on an agreement or law whose repayment can be recovered in court, has been proven to have failed to pay his debts to creditors by agreement or based on law, which can be sued in court. The problem raised in the research related to postponing debt payment obligations is legal protection for creditors when the debtor goes bankrupt.[2]

### **Research Method**

This research is normative legal research.[3]

### **Results Method**

The government as the embodiment of the state has attempted to guarantee legal protection for creditors through the establishment of Law Number 34 of 2007 concerning Bankruptcy and Postponement of Debt Payment Obligations (hereinafter referred to as the Bankruptcy Law and PKPU). Legal protection for creditors in this law is carried out through the Bankruptcy Institute, as a civil law institution which aims to guarantee and ensure that creditors' rights over debtors' receivables can be repaid in accordance with the agreed agreements.

Bankruptcy institutions are the actualization of two principles in civil law contained in Article 1131 of the Criminal Code and 1132 KUHPdt. Article 1131 of the Criminal Code formulated: "All the debtor's property, whether movable or immovable, whether existing or new that will exist in the future, becomes a liability for all his individual obligations." Meanwhile, Article 1132 the Criminal Code formulated: "The object becomes a joint guarantee for all the people who owe it, the income from the sale of the said object is distributed to the creditors according to the balance, namely based on the size of the respective receivables, unless there are legitimate reasons among the debtors to take precedence".[4]

The principle of responsibility contained in Article 1131 of the Pdt. Criminal Code. This means that every Debtor must be aware that his debt to the Creditor has the consequence

that all his assets become collateral for his debt, whether the assets already exist, or will exist in the future, whether they move or not. Therefore, Debtors must be aware that if at any time they fail to fulfill their obligations to pay their debts on time, then all their assets will be confiscated and sold at public auction based on a commercial court decision.

Based on Article 1131 of Criminal Code and 1132 KUH Penal Code which is a concrete actualization of legal protection for the principles in the Bankruptcy Law and PKPU providing legal remedies to Creditors to claim their rights against Debtors through *actio pauliana* carried out by the curator.[5] This is a natural consequence of the curator's position as the party tasked with protecting and managing bankruptcy assets for the benefit of all parties with an interest in the bankruptcy assets. The *actio pauliana* regulations are contained in Articles 41 to 49 of the Bankruptcy and PKPU Laws, while they are regulated in Civil Code by Article 1341 of Criminal Code.

Although the *Actio Pauliana* is one of the efforts of creditors to enforce their rights through the application of Bankruptcy Law and PKPU, in practice the provisions of the *Actio Pauliana* are not able to provide maximum protection of the interests of creditors, due to several reasons, namely the difference in meaning between Article 1341 of the Civil Code. Civil law with Article 41 of the Bankruptcy Law and PKPU, as well as various obstacles faced by bankrupt debtors, namely limited jurisdiction in examining the *Actio Pauliana* lawsuit, and also procedural legal obstacles to the examination of the *Actio Pauliana* petition, obstacles related to matters that could become demands against *Actio Pauliana* and obstacles to completing the *Actio Pauliana* application, resulting in the fact that legal protection for Creditors is not optimal *Actio pauliana* is a condition for canceling an act that was not requested, because it is deemed to have harmed the Creditor.[6] If bankruptcy occurs, creditors want the bankruptcy debtor's debt not to decrease so that the debtor's debt payments can be processed optimally.[7]

Paying attention to the description of the forms of legal protection for creditors and creditor rights in Postponement of Debt Payment Obligations (PKPU) provides an illustration that the essence of Postponement of Debt Payment Obligations (PKPU) basically provides several options to protect the interests of creditors. Apart from that, Creditors can also take part in the PKPU process by providing input and opinions regarding the peace plan and offering alternative solutions such as restructuring or liquidating the Debtor's assets. If necessary, the Creditor can sue the Debtor to Court if the Debtor violates his obligations or does not fulfill the PKPU requirements. It is important to understand that the substance of this may vary depending on the particular law or jurisdiction.[8]

The fundamental issue related to submitting a PKPU application is in connection with the provisions in Article 224 paragraph (4) of the Bankruptcy Law and PKPU, which states that "A request for a postponement of debt payment obligations is legally obligated to be granted by the court, especially when there is a bankruptcy application submitted by a creditor as stated in which is regulated in Article 229 paragraph (3) and paragraph (4) the Bankruptcy and PKPU Law. Based on the Bankruptcy Law and PKPU, both creditors and debtors have the right to apply for PKPU. Because PKPU is a legal remedy provided by law that can be taken by creditors and debtors in the bankruptcy law and PKPU. This right is guaranteed in the provisions of Article 225 paragraph (2) and paragraph (3) of the Bankruptcy and PKPU Law, that "the Court is obliged to grant PKPU applications submitted by Debtors or Creditors".

The Bankruptcy Law and PKPU provide different time limits for applications to be granted, namely a maximum of 3 days for applications submitted by Debtors and a maximum of 20 days for applications submitted by Creditors. Ease of granting PKPU applications, the role of the judge has a very important role to examine and consider the adequacy of the evidence

submitted by the applicant in the PKPU application before making a decision. If during the examination there is not enough evidence and the requirements are not fulfilled, the judge should not decide to grant the application because he is required to check whether Sufficient evidence and proper fulfillment of the requirements for a Debtor to be submitted in the PKPU application.

The requirements for a PKPU application are easy, as stipulated in Article 2 paragraph (1) of the Bankruptcy and PKPU Law, which only needs to be submitted by at least two creditors, one of whom has not paid his receivables, to be granted, while on the other hand there is no provision of legal action that can be taken against. The PKPU statement decision as regulated in the provisions of Article 235 paragraph (1) of the Bankruptcy and PKPU Law, will have legal consequences for the parties who still have the opportunity to prevent the implementation of the Postponement Debt Payment Obligations. Although there is still a legal mechanism available regarding the termination of the Postponement of Debt Payment Obligations due to the decision to ratify peace by the Commercial Court.[9]

Provisions related to the absence of legal remedies are regulated in Article 285 paragraph (4) of the Bankruptcy and PKPU Laws which can be understood to mean that there are no legal remedies that can be taken by any party to reject the PKPU statement decision. In fact, a PKPU statement decision can be detrimental to all parties, especially creditors because they cannot obtain their rights from their business activities. However, the Constitutional Court has invalidated the provisions of Article 235 paragraph (1) and Article 293 paragraph (1) of the Bankruptcy and PKPU Law, regarding PKPU decisions which cannot be submitted to any legal action. Based on Decision Number 23/PUU-XIX/2021, the Constitutional Court allows the PKPU decision to be submitted for cassation. The judge's consideration in the Constitutional Court Decision Number 23/PUU-XIX/2021 is that the court decision on the PKPU application can basically be revised as part of the mechanism [3].

The effectiveness of Postponing Debt Payment Obligations depends on whether there is good faith and a sense of cooperation on the part of Debtors and Creditors so that the peace plan through PKPU can be realized. The existence of a new legal remedy mechanism that allows creditors to cassation can avoid the PKPU process as the most effective and quickest mechanism for achieving bankruptcy which is used by parties with bad intentions.[10] Or in other words, with the existence of a new legal remedy mechanism that allows creditors to cassation, it is hoped that the misuse of PKPU by parties with bad intentions can be avoided.

Creditors are parties who have the right to make claims on the Debtor's assets and have the right to demand payment of their debts from the debtor. In the bankruptcy process or PKPU, Creditors have the right to ensure that the Debtor's assets are sold and the proceeds from the sale are used to pay Creditor claims. Therefore, the minimum requirements for creditors as bankruptcy applicants or PKPU ensure that creditor interests are represented in the process (Ali, T.H.S.B. 2018). Decisions taken take their interests into account. Without these conditions, Debtors may be able to avoid responsibility towards Creditors and avoid paying Creditor claims [4]. Thus, the minimum requirements for Creditors as bankruptcy or PKPU applicants are certainly important to ensure that bankruptcy or PKPU process runs fairly and effectively for all parties involved.

Legal facts have shown that creditors' rights are often not protected. This fact can be seen in the Commercial Court Decision Number 12/PKPU/2015/PN.Niaga Sby, that the Judge rejected the PKPU application from the Creditor applicant. The rejection of the PKPU application was based on the reason that the PKPU defendant was not proven to have more than one creditor or at least two creditors because the other creditors were witnesses at the trial.

Considering that the conditions are not met, the action ceases to be a PKPU action and is outside the jurisdiction of the Commercial Court.[11]

According to the provisions of Article 1 point (6) the Bankruptcy Law and PKPU, debt is an obligation that can be expressed in amounts of money, either directly or that will arise at a later date, which arises due to an agreement or law, and must be fulfilled by the Debtor. If the debt is not fulfilled, the Creditor has the right to obtain fulfillment from the Debtor's assets. The Bankruptcy Law provides a broad definition of debt, so that debt is not only related to money lending and borrowing agreements.[3], [12]

The importance of determining the minimum debt amount requirements in the Bankruptcy Law and PKPU has an important urgency for creditors to protect their interests and ensure the smooth running of an effective bankruptcy process. Sutan Remy Sjahdeini believes that it is necessary to set a minimum limit on the amount of debt, because if unpaid receivables are not limited, this will be very detrimental to debtors and in the end it will also have a negative impact on shareholders (creditors). In practice, the absence of regulations regarding the minimum amount of debt as a condition for bankruptcy as regulated in Article 2 paragraph (1) of the UUKPKPU will be very detrimental to both Debtors and Creditors. For example, several countries have set a minimum debt amount of 30,000 Malaysian ringgit. In the UK, the minimum debt amount is £20, in Australia it is USD 1,500, while in Singapore it is USD 10,000 [8]. Thus it is important to consider appropriate arrangements regarding the minimum amount of this debt, with the aim of protecting the interests of all parties involved and ensuring the smooth running of an effective bankruptcy process.

### **Conclusion**

Filing for bankruptcy which requires a minimum of 2 (two) creditors for a bankrupt debtor using the Postponement of Debt Payment Obligation mechanism based on the bankruptcy law and PKPU does not provide a guarantee of sufficient legal protection for creditors.

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