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Legal protection against curators as a result of the dualism bankruptcy decisions for same debtor (Analysis of Commercial Court Decision at Surabaya District Court Number 08/Pdt.Sus - Other Lawsuits/2018/PN-Niaga.Sby. Jo. Number 02/Pdt.Sus-PKPU/2017/PN.Niaga.Sby. Date July 16, 2018)

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Abstract. Bankruptcy is a condition of debtor's failure to pay his debts to his creditors. The debtor's failure to pay debts continuously will result in the debtor's bankruptcy. One of the legal instruments that can be used to settle debts as debtor's obligation. Historically, the presence of bankruptcy institutions in Indonesia since Dutch East Indies government in Indonesia, which was enacted known as Faillissements verordening, Staatsblad 1905:217 juncto Staatsblad 1906:348), which was later referred to as the Bankruptcy Law. However, in its development, the substance of Faillissements verordening was considered no longer in accordance with development and legal needs of today's society. Therefore, the Faillissements verordening has been amended by Government Regulation in Lieu of Law Number 1 of 1998 concerning Amendments to Law on Bankruptcy, which was then stipulated as a Law based on Law Number 4 of 1998 concerning Bankruptcy. However, these changes to law have not been able to meet the developments and legal needs of society.

Keywords. bankruptcy; legal protection; obligation

Introduction

Bankruptcy is a condition of debtor's failure to pay his debts to his creditors. The debtor's failure to pay debts continuously will result in the debtor's bankruptcy. One of the legal instruments that can be used to settle debts as debtor's obligation. Historically, the presence of bankruptcy institutions in Indonesia since Dutch East Indies government in Indonesia, which was enacted known as Faillissements verordening, Staatsblad 1905:217 juncto Staatsblad 1906:348), which was later referred to as the Bankruptcy Law. However, in its development, the substance of Faillissements verordening was considered no longer in accordance with development and legal needs of today's society. Therefore, the Faillissements verordening has been amended by Government Regulation in Lieu of Law Number 1 of 1998 concerning

Amendments to Law on Bankruptcy, which was then stipulated as a Law based on Law Number 4 of 1998 concerning Bankruptcy. However, these changes to law have not been able to meet the developments and legal needs of society.

The development and legal needs related to bankruptcy are increasingly complex, and bankruptcy problems are also increasingly complicated, so that Law Number 4 of 1998 concerning Bankruptcy was then replaced by Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as UUK-PKPU). Regardless of the weaknesses of UUK-PKPU, it is certain that it is still in effect to this day. The presence of bankruptcy institutions through UUK-PKPU is one of the very important needs in business activities.

When debtor is insolvent, the UUK-PKPU gives creditors or one of creditors right to file a bankruptcy petition against the debtor who has failed to pay his creditors. According to Article 2 paragraph (1) of UUK-PKPU, a petition for a declaration of bankruptcy against a debtor can be filed by one debtor whose debts have not been paid. In full, Article 2 paragraph (1) of the UUK-PKPU is formulated as follows: "A debtor who has two or more creditors and doesn't pay in full at least one debt that has matured and can be collected, is declared bankrupt by court decision, either at request of one or more of his creditors".

This study analyzes a bankruptcy case that occurred in Surabaya, the position of which can be described as follows: The bankruptcy case began with a request for Postponement of Debt Payment Obligations (PKPU) by one of the creditors against the debtors consisting of 1). PT Semesteraya Abadijaya, 2). Vony Endrawati, 3). Arief Iskandardinata Woen, 4)) PT Mekar Usaha Nasional, 5). Bernard Iskandar Dinata, and 6) Anindita Juliasih. The request was granted by the Commercial Court at the Surabaya District Court (Vide. Decision No. 02/Pdt.Sus-PKPU/2017/PN.Niaga.Sby. dated February 6, 2017), and at the same time an administrator was appointed, Mr. Albert Riyadi Suwono, SH., M.Kn. and a Supervisory Judge was appointed from the Commercial Court at the Surabaya District Court.

Based on the Decision of Commercial Court at the Surabaya District Court No. 02/Pdt.Sus-PKPU/2017/PN.Niaga.Sby. dated February 6, 2017 related to PKPU application, then the Supervisory Judge determines schedule for the first creditor meeting, the deadline for submitting bills to administrator, the schedule for the creditor meeting to verify receivables, the schedule for discussing the peace plan submitted by the debtors, and then the creditors are voted on by taking their votes on whether or not they agree to the peace plan, and even though requirements of Article 281 paragraph (1) letter a of the UUK-PKPU are not met, which is formulated as follows: "The peace plan can be accepted based on: a). approval of more than 1/2 (one half) of the number of concurrent creditors whose rights are recognized or temporarily recognized who are present at the Creditors' meeting as referred to in Article 268 of the UUK-PKPU, including Creditors as referred to in Article 280 of the UUK-PKPU, who together represent at least 2/3 (two thirds) of all claims recognized or temporarily recognized from concurrent creditors or their proxies who are present at the meeting".

By voting on whether or not to approve the peace plan, it turned out that Panel of Judges the Commercial Court at Surabaya District Court still ratified the peace agreement with a peace decision (*homologation*) (Vide. Decision No. 02/Pdt.Sus-PKPU/2017/PN.Niaga.Sby.dated 14 June 2017). The peace decision (*homologation*) was then filed for cancellation through an extraordinary legal remedy for judicial review to the Supreme Court by one of concurrent creditors of PT. Cahaya Mas Makmur, on the grounds that the peace agreement was forced to be ratified and was in conflict with Article 281 paragraph (1) of the UUK-PKPU, because it didn't meet the required quorum.

Response to petition for judicial review, the Supreme Court granted judicial review as stated in Supreme Court Decision Number 4PK/Pdt.Sus-Pailit/2018 dated January 31, 2018, then Panel of Judges Supreme Court annulled the peace decision (homologation), and debtors 1). PT Semestaraya Abadijaya, 2). Vony Endrawati, 3). Arief Iskandardinata Woen, 4) PT Mekar Usaha Nasional, 5). Bernard Iskandar Dinata, and 6) Anindita Juliasih were declared bankrupt with all legal consequences, and appointed Albert Riyadi Suwono, SH., M.Kn. as the sole curator, and ordered Commercial Court at Surabaya District Court to appoint a Commercial Judge as the Supervisory Judge.

In the same year, namely 2018, precisely on February 19, 2018, one of the concurrent creditors named Kasmadi filed and registered a lawsuit for other matters regarding cancellation of peace under case register No. 08/Pdt.Sus-Other Claims/2018/PN.Niaga.Sby.jo. Decision Number 02/Pdt.Sus-PKPU/2017/PN.Niaga. Sby. against the debtors directly, without involving curator on that grounds, the debtors were in default at Commercial Court clerk's office at the Surabaya District Court, based on Article 170 paragraph (1) of the UUK-PKPU, which is formulated: "Creditors can demand cancellation of a peace that has been ratified if Debtor fails to fulfill contents of the peace". In paragraph (2), it is formulated: "The Debtor is obliged to prove that the peace has been fulfilled". Meanwhile, in paragraph (3), it is formulated: "The court has an authority to grant leniency Debtor in fulfill his obligations no later than 30 (thirty) days after decision granting leniency is pronounced". In its decision, the Commercial Court at Surabaya District Court No. 08/Pdt.Sus-Other Claims/2018/PN.Niaga.Sby. jo. Decision Number 02/Pdt.Sus-PKPU/2017/PN.Niaga. Sby. dated July 16, 2018, granted the request to cancel the peace agreement, and stated that the debtors 1). PT Semestaraya Abadijaya, 2). Vony Endrawati, 3). Arief Iskandardinata Woen, 4) PT Mekar Usaha Nasional, 5). Bernard Iskandar Dinata, and 6) Anindita Juliasih, were declared bankrupt with all legal consequences, and appointed Sigit Sutriyono, SH., M.Hum. as Supervisory Judge, and appointed 3 (three) curators, namely 1) Albert Riyadi Suwono, SH., M.Kn. 2) Agus Trianto, SH., MH. 3) Warakah Anhar, SH., MH.

Furthermore, Sigit Sutriyono, SH., M.Hum., as Supervisory Judge, Agus Trianto, SH., MH. and Warakah Anhar, SH., MH. as curators who were all appointed and appointed in Commercial Court Decision at Surabaya District Court No. 08/Pdt.Sus-Other Claims/2018/PN.Niaga.Sby. jo. Decision Number 02/Pdt.Sus-PKPU/2017/PN.Niaga. Sby. dated July 16, 2018 (*incasu*. Second bankruptcy statement decision) proposed the dismissal of Albert Riyadi Suwono, SH., M.Kn. as curator in the bankruptcy case with the bankrupt debtors 1). PT Semestaraya Abadijaya, 2). Vony Endrawati, 3). Arief Iskandardinata Woen, 4) PT Mekar Usaha Nasional, 5). Bernard Iskandar Dinata, and 6) Anindita Juliasih, and the motion for dismissal was granted, as stated in Decision No.08/Pdt.Sus-Other Lawsuits/2018/Pn.Niaga.Sby.Jo. No. 02/Pdt.Sus-PKPU/2017/PN.Niaga.Sby. Jo. 4PK/Pdt.Sus-Pailit/2018 dated April 11, 2019.

In relation to Decision No. 08/Pdt.Sus-Other Claims/2018/Pn.Niaga.Sby.Jo.No.02/Pdt.Sus-PKPU/2017/PN.Niaga.Sby. Jo. 4PK/Pdt.Sus-Pailit/2018 dated April 11, 2019 concerning the dismissal of Albert Riyadi Suwono, SH., M.Kn. as the curator. Then Albert Riyadi Suwono, SH., M.Kn. as curator appointed in first bankruptcy declaration decision (*Vide*. Supreme Court Decision No. 4PK/Pdt.Sus-Pailit/2018 dated January 31, 2018) filed a cassation appeal under case register No. 534K/Pdt.Sus-Pailit/2021) against Agus Trianto, SH., MH. and Warkah Anhar, SH., MH. Furthermore, the Supreme Court by legal considerations as stated in Supreme Court Decision No. 534K/Pdt.Sus-Pailit/2021 dated April 28, 2021, provided considerations that in essence the same debtors, namely 1). PT Semestaraya

Abadijaya, 2). Vony Endrawati, 3). Arief Iskandardinata Woen, 4) PT Mekar Usaha Nasional, 5). Bernard Iskandar Dinata, and 6) Anindita Juliasih have been declared bankrupt 2 (two) times, based on:

1. Supreme Court Review Decision Number 4PK/Pdt.Sus-Pailit/2018 dated January 31, 2018 which appointed Albert Riyadi Suwono, SH., M.Kn as Curator in the bankruptcy case;

2. Decision of the Commercial Court at the Surabaya District Court Number 8/Pdt.Sus-Other Claims/2018/PN.Niaga.Sby. jo. Number 2/Pdt.Sus-PKPU/2017/PN.Niaga.Sby. dated July 16, 2018 which appointed 1. Albert Riyadi Suwono, SH., M.Kn., 2. Agus Trianto, SH., MH. and 3. Warakah Anhar, SH., MH. as Curators in the bankruptcy case;

Based on description of the position case, this study analyzes the validity of the bankruptcy declaration decision due to dualism of bankruptcy declaration decisions against the same debtor which is related to legal protection for the curator in carrying out his duties to manage and settle the debtor's bankrupt assets.

Method

How is legal protection for curators due to dualism of court decisions regarding bankruptcy of the same debtor?

Research method

This research is a normative legal research.

Discussion

In the bankruptcy legal regime, to protect interested parties, law enforcement is required against UUK-PKPU, which aims to protect the interests of creditors, debtors, and curators. According to Poerwadarminta, bankrupt means bankrupt, and bankrupt means suffering major losses to point of collapse (companies, shops, and so on). Bankrupt comes from the word bankrupt, meaning bankrupt, insolvent, and bankruptcy means bankruptcy, insolvency. Article 1 number 1 of the UUK-PKPU defines "Bankruptcy is a general seizure of all assets of a bankrupt debtor whose management and settlement are carried out by curator under supervision of Supervisory Judge as regulated in this law".

UUK-PKPU is actually a manifestation Article 1131 of the Civil Code and Article 1132 of the Civil Code. Article 1131 of the Civil Code stipulates that, "All objects of debtor, both movable and immovable, both existing and new in future, become collateral for all individual obligations". While Article 1132 of Civil Code stipulates that, "The objects become joint collateral for all people who have credit for it, income from sale objects is divided according to balance, namely according by size of each receivable, unless there are legitimate reasons among the creditors for priority".

Regarding court decision on declaration of bankruptcy, in 2017 Commercial Court at the Surabaya District Court issued two court decisions on different declarations of bankruptcy against the same debtor as described in consideration of Supreme Court decision Number 534K/Pdt.Sus-Pailit/2021, regarding a special civil case of bankruptcy at cassation level. In this decision, Supreme Court annulled the Decision of Commercial Court at Surabaya District Court Number: 8/Pdt.Sus.Other Claims/2018/PN.Niaga Sby., in conjunction with Decision Number: 02/Pdt.Sus-PKPU/2017/PN.Niaga Sby., in conjunction with Decision Number: 4PK/Pdt.Sus-Pailit/2018 dated April 11, 2019.

From a legal perspective, the law must choose and determine between two bankruptcy decisions, which is valid and applicable according to the law between Supreme Court Review Decision Number 4PK/Pdt.Sus-Pailit/2018 dated January 31, 2018 (the first bankruptcy decision) or Commercial Court Decision at Surabaya District Court Number 8/Pdt.Sus-Other Claims/2018/PN.Niaga.Sby.jo.Number 2/Pdt.Sus-PKPU/2017/PN.Niaga. Sby. dated July 16, 2018 and Supreme Court Decision Number 72PK/Pdt.Sus-Pailit/2019 dated July 3, 2019 (the second bankruptcy decision).

The problem related by two Commercial Court Decisions at Surabaya District Court is that both Court decisions are related to bankruptcy decisions against the same debtors, and these decisions both have permanent legal force (*inkracht van gewijsde*), so that legally, which decision should be considered correct, theoretically, is Court decision regarding the bankruptcy statement that was pronounced first or earlier. In addition, it also concerns which curator according to law must be protected, so legally it is the curator appointed in first bankruptcy decision and not curator appointed based on the second bankruptcy decision.

Based on analysis of research results, it is also based on reason that the decision of the Supreme Court of Republic Indonesia Number: 4PK/Pdt.Sus-Pailit/2018 dated January 31, 2018 its the first bankruptcy declaration decision that cancels of Decision Commercial Court at Surabaya District Court Number: 02/PKPU/2017/PN.Niaga.Sby. dated June 14, 2017 regarding peace decision (*homologation*), on the grounds that homologation doesn't meet the requirements stipulated in Article 281 paragraph (1) and Article 289 of UUK-PKPU, so that the peace decision (*homologation*) dated June 14, 2017 has had its legal status canceled, namely since Decision of Supreme Court Republic Indonesia Number: 4PK/Pdt.Sus-Pailit/2018 was pronounced on January 31, 2018. Cancellation of Decision of the Commercial Court at Surabaya District Court Number: 02/PKPU/2017/PN.Niaga.Sby. June 14, 2017 regarding the peace decision (*homologation*), based on legal principle "*Res Judicata Proveritate Habetur*" (the judge's decision is considered correct and valid until its canceled by a higher judicial institution), meanwhile from a higher judicial institution in this case from the Supreme Court at the level of judicial review has canceled decision of the *judex facti* at the first level. In addition, and also considering by legal principle of "*Litis Finiri Oportet*" (every case must have an end).

Conclusion

Based on the analysis of research results on two Commercial Court decisions at the Surabaya District Court for the same bankrupt debtor, it can be concluded that the bankruptcy decision of the 2 (two) Court Decisions that is legally valid is the Supreme Court Decision No. 4PK/Pdt. Sus-PKPU/2018 which was pronounced on January 31, 2018. While the second bankruptcy decision as the Commercial Court Decision at the Surabaya District Court Number: 8/Pdt.Sus-OtherClaims/2018/PN-Niaga.Sby.Jo.Number: 02/Pdt.Sus-PKPU/2017/PN.Niaga.Sby. dated July 16, 2018 and the Supreme Court Decision Number: 72PK/Pdt.Sus-Pailit/2019 dated July 3, 2019, is legally invalid and not applicable.

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