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The Position of Concurrent Creditors in Indonesian Bankruptcy Proceedings: Legal Challenges and Uncertainty

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Abstract

Suspension of Payment and Bankruptcy is a great tool for every entrepreneur in Indonesia, it provided a legal mechanism when a debtor unable to fulfill his obligation when it due. Indonesian government stipulated this proceeding process and requirement very well in the Law No. 37 of 2004 concerning Suspension of Payment and Bankruptcy. While PKPU proceeding act as some kind a legal moratorium that benefitted both Debtor and Creditors, Bankruptcy proceeding shall guaranteed Creditors able to recollect if not all, some of their wealth from the debtor. During the distribution of wealth in Indonesia's corporation bankruptcy procedures, the wealth is often used to satisfy the debts owed by the debtor towards preferred creditors and secured creditors. The long process and enormous cost of the bankruptcy process before paying back the concurrent creditors puts a lack of emphasis towards these types of creditors' rights since the company is dissolved and theoretically will not allow them to get any payment towards their loans given to the company. This leads to concurrent creditors earning a status of uncertainty and confusion in earning their credits. In Indonesia system, practically, concurrent always getting unfair preference and undervalued transaction that provides more wealth to another creditors

Keywords: *bankruptcy, concurrent creditors, company*

Abstrak

Penundaan Kewajiban Pembayaran Utang (PKPU) dan Kepailitan merupakan alat yang sangat penting bagi setiap pengusaha di Indonesia, karena menyediakan mekanisme hukum ketika debitur tidak dapat memenuhi kewajibannya pada saat jatuh tempo. Pemerintah Indonesia telah mengatur proses dan persyaratan ini dengan sangat baik dalam Undang-Undang No. 37 Tahun 2004 tentang Penundaan Kewajiban Pembayaran Utang (PKPU) dan Kepailitan. Sementara proses PKPU bertindak sebagai semacam moratorium hukum yang menguntungkan baik bagi Debitor maupun Kreditor, proses kepailitan menjamin Kreditor untuk mendapatkan kembali, jika tidak semua, sebagian dari kekayaan mereka dari Debitor. Dalam proses pembagian harta dalam prosedur kepailitan perusahaan di Indonesia, harta tersebut sering kali digunakan untuk memenuhi hutang debitur kepada kreditur preferen dan kreditur yang dijamin. Proses yang panjang dan biaya yang sangat besar dalam proses kepailitan sebelum membayar kreditur konkuren membuat hak-hak kreditur ini kurang diperhatikan karena perusahaan dibubarkan dan secara teoritis tidak memungkinkan mereka untuk mendapatkan pembayaran atas pinjaman yang diberikan kepada perusahaan. Hal ini menyebabkan kreditur konkuren mendapatkan status ketidakpastian dan kebingungan dalam mendapatkan haknya. Dalam sistem kepailitan di Indonesia, secara praktis,

kreditur konkuren selalu mendapatkan preferensi yang tidak adil dan transaksi yang kurang menguntungkan sehingga memberikan keuntungan yang lebih besar kepada kreditur lain.
Kata kunci: kepailitan, kreditur konkuren, perusahaan

INTRODUCTION

Bankruptcy law is a law which designed to protect the debtor from incurring further losses upon the interests that will accrue when the debtor is not eligible to pay for their debts and pay back creditors with what the debtor has left. Losses that are accrued needs to be prevented since the debtor itself should have the rights for a blockade of payments that is necessary since a financially unstable debtor will contradict itself in becoming even more financially unstable through the pursuit for a payment by the creditors. This will cause more deterioration towards the debtor's life either through economical stance, social stance, and their own health.

In Indonesia Bankruptcy be regulated by law no. 37 year 2004 concerning bankruptcy and suspension of payment. However, the debtor itself is not always a natural person as seen in the case of a legal entity some a corporation. A corporation distinguishes itself from a natural person as it is a form of unity in work represented by a name in which multiple natural persons work together to represent that legal entity as one whole body of ideas and work. Since Indonesia has already created the legal framework for a separation of liability in Law No. 40 of 2007 on Limited Liability Company ("Law No. 40/2007"), this inhibits certain rights for creditors to obtain the full reclamation of the debtor's debts being owed to them.

During the bankruptcy process in Indonesia, creditors are divided into three tiers which are separatist creditors, preferred creditors and concurrent creditors. The tiers itself separates the obligations of payment where preferred creditors are always put first in an amount of payment where there must be a satisfaction of all preferred debts in order to commence towards the next payment. Preferred party owns a security over an asset or has the right given by the law to have a preferred status. Meanwhile, unsecured creditors / concurrent creditors are creditors who do not have any security over any types of assets and are paid last during the wealth distribution process in bankruptcy. This creates a bubble where the rights of ownership towards a certain money that they should have obtained to be wrongfully claimed morally by certain parties where they will not obtain a satisfactory result out of the bankruptcy process. Concurrent creditors are heavily burdened with the way Indonesia has formulated its bankruptcy law specifically if a company goes bankrupt since it loses all of its legal titles after the process has ensued and people who are responsible for conducting the company's operations will not be held liable if they did not commit any bad faith or negligence during the company's business operations. Moreover, a time frame of 1 year for *actio Paulina* is deemed not substantial enough to provide the rights needed by concurrent creditors in clawing back assets used for the general auction.

Even if in Indonesia, Article 204 gives the rights for creditors to enforce a payment from their debtors after the bankruptcy process has ended if they have not received full payment for the debts owed by the debtor, a distinguishment in a company leaves them

in a very vulnerable position to lose their rights towards their property. Concurrent creditors are often left with nothing since a company's bankruptcy will eventually dissolve the legal entity capable of the payment itself where no other parties will be obligated to pay back the amount of money owed to the creditor. This article is intended to identify certain problems for concurrent creditors on a company's bankruptcy contained in the Indonesian law on issues that may impede concurrent creditors' rights where reforms will be suggested by looking into Singapore's law concerning bankruptcy.

Even if Singapore has relatively the same stance for payments towards concurrent creditors, there are a lot more ways to earn extra assets for allocation of assets for the general auction being held and the distribution of wealth may be affected by public opinions which gives insights over procedures that may be held to claw back assets for the general auction. Moreover, Singapore provides a wider time frame for clawing back assets that have been allocated to undervalued transactions and unfair preference. By following several implementations in Singapore, Indonesia can provide better enforcement for concurrent creditors' rights in earning their credits. Therefore, this paper will explore how concurrent creditors rights differ between both countries and how Singapore's bankruptcy law system for concurrent creditors is more beneficial for them and what kind of reformations needs to be done to pave a better way for concurrent creditors in Indonesia.

METHODS

Normative methods are used as there will be no statistics provided in the paper but only through judicial comparison in which tries to answer the possibility of heightening the rights for Indonesia's concurrent creditors during the bankruptcy process by comparing it to statutes in Singapore. Hence, a juridical normative method for research is deemed necessary since the author is determined to obtain legal knowledge between the law by seeing issues that happen between entities in the society by studying statutory regulations. The source for writing this article is contained in the form of primary, secondary, and tertiary legal materials.

This research examines Law No. 37/2004 on Bankruptcy and Suspension of Debt Payment Obligations (PKPU) as the main legal framework. In addition, this research also examines other relevant laws and regulations, such as the Civil Code and other relevant regulations that regulate the rights and position of creditors in the bankruptcy process.

Data obtained from document studies and case analysis will be analyzed qualitatively to explore a deeper understanding of the legal problems faced by concurrent creditors in the bankruptcy process. This research aims to find answers to the legal questions raised and provide recommendations for improvements in the bankruptcy legal system in Indonesia.

This article is written through the method of online research and reading books or journals by viewing the statutes and explanations contained in both Singapore's bankruptcy law and Indonesia's bankruptcy law. By using this method, this research is expected to make a significant contribution to the development of bankruptcy law theory, particularly in relation to the protection of concurrent creditors' rights in Indonesia.

RESULTS AND DISCUSSION

The Bankruptcy Process in Indonesia

The procedure of a company in Indonesia, going bankrupt in general is relatively simple where there must be a requirement of owing debts to at least 2 debtors where the company fails to pay either debtor in the time determined by agreement,[1] then the debtors may file for a declaration of bankruptcy to the district court of the company's domicile.[2] A differentiation of creditor specifically if the company is a bank and is in need of declaration of bankruptcy, then only the Indonesian Bank owns the jurisdiction to give the request for a declaration of bankruptcy.[3] Moreover, other types of companies such as financial institutions and insurance companies have different governmental institutions that are eligible t declare them as bankrupt pursuant to Article 2 paragraph 3, Article 2 paragraph 4, Article 2 paragraph 5 of Law No. 37 of 2004 Bankruptcy & Suspension of Debt Payment ("Law No. 37/2004"). The requirement of owning debts at least2 debtors or more debtors is called *concursus creditorium.*[4] In general, other companies in Indonesia that are not mentioned in the above can file for bankruptcy if it was deemed necessary by the basic budget of the company, a decision of the shareholders meeting when a company keeps incurring loss, or if the access to a conduct of business was prohibited by the government.[5] Post filing for bankruptcy, the judge will in turn cause the company to seize all of its action and loses all rights to represent itself in a conduct of business.[6]

1.2. Assembly Process

An application for a declaration of bankruptcy can be submitted to the Commercial Court and an examination hearing on the application for a declaration of bankruptcy is carried out within a period of no later than 20 days after the date the application is registered or 25 days if the debtor submits an application based on sufficient reasons. When the trial is conducted, the Commercial Court has the authority to :

Obligation to summon the debtor, in the event that the application for a declaration of bankruptcy is submitted by the Creditor, the Prosecutor's Office, Bank Indonesia, the Capital Market Supervisory Agency, or the Minister of Finance; and

Can summon creditors, in the event that the application for declaration of bankruptcy is submitted by the Debtor and there is doubt that the requirements to be declared bankrupt as referred to in Article 2 paragraph (1) have been fulfilled.

As long as the decision on the petition for declaration of bankruptcy has not been pronounced, any Creditor, prosecutor, Bank Indonesia, Capital Market Supervisory Agency, or the Minister of Finance may submit an application to the Court for:

Place a confiscation of security on part or all of the assets of the Debtor; or

Appoint a temporary Curator to supervise:

Debtor's business management; and

Payments to Creditors, transfers, or guarantees of Debtor's assets in bankruptcy are under the authority of the Curator.

[1] Law No. 37 of 2004 on Bankruptcy & Suspension of Debt Payment Obligation ("Law No. 37/2004"). Article 2 paragraph 1.

[2] Law No. 37.2004, Article 3.

[3] Law No. 37/2004. Article 2 paragraph 3.

[4] Aspek-Aspek Hukum Kepailitan, perusahaan dan Asuransi. Page. 38.

[5] Law No. 40/2007 on Limited Liability Company, Article 142.

[6] Law No.40/2007 on Limited Liability Company, Article 143.

In the event that the decision of the Commercial Court on the application for bankruptcy must contain several things, namely:

- Certain articles of the relevant laws and regulations and/or unwritten sources of law that are used as the basis for adjudicating; and
- Legal considerations and differing opinions from the member judges or the chairman of the panel.

Legal remedies that can be filed against a decision on a petition for declaration of bankruptcy are cassation to the Supreme Court which is submitted no later than 8 (eight) days after the date on which the decision for which cassation is made is pronounced. 2004, namely:

- It is submitted no later than eight days after the date on which the decision on the revocation of bankruptcy is pronounced;
- The application is registered with the Registrar of the Court who has decided on the application for a declaration of bankruptcy; and
- The applicant for a cassation must submit to the Registrar of the Court a memorandum of cassation on the date the cassation application is registered.

In addition to filing a bankruptcy petition, Law 37/2004 provides space for debtors by filing a Suspension of Payment (PKPU) in order to delay the determination of bankruptcy while at the same time carrying out a restructuring which this step can provide an opportunity to submit a reconciliation plan, for example paying in part or in full to creditors.

According to what is stated in Article 222 – Article 294 of Law 37/2004, when a Suspension of Payment (PKPU) can be filed and the legal consequences are:

- Before the application for bankruptcy is registered, the debtor submits a PKPU. If the Suspension of Payment (PKPU) is submitted to the debtor before the bankruptcy petition, then the bankruptcy petition cannot be filed with Suspension of Payment (PKPU); and
- If there is an application for bankruptcy, the Suspension of Payment (PKPU) can be filed at the time of examination by the Commercial Court, then the examination of the application must be stopped.

If the PKPU application is accepted, the commercial court will give the debtor a maximum of 45 days to submit a peace plan. And if on the 45th day the creditor has not provided certainty about the debtor's plan, then the commercial court will provide additional time for a maximum of 270 days.

If the peace plan can be accepted by credit, it will be legalized and have permanent and binding legal force for the parties, namely the creditor and the debtor. However, if the peace plan is rejected, the commercial court will immediately determine the bankruptcy status.

Types of Creditors

Creditors in a business context are divided into two main categories: secured creditors and unsecured creditors.

Secured Creditors

Secured creditors are further divided into two subcategories: those with a fixed charge and those with a floating charge. A fixed charge is placed on a specific asset that was financed by the lender, such as business premises, vehicles, or equipment, with the charge registered at Companies House. Another common example is when a factoring company provides a cash injection by purchasing a business's sales ledger, which becomes the asset over which the charge is held. On the other hand, a floating charge provides the lender with some security in the event of insolvency, though it is not tied to a specific asset like a fixed charge. Creditors holding a floating charge are ranked lower in the payment hierarchy during insolvency, especially if the charge was registered after certain dates.

Unsecured Creditors

Unsecured creditors include entities such as HMRC (tax authorities), suppliers, contractors, and customers. They are among the last groups to be paid during the distribution of a bankrupt company's assets, positioned just above the shareholders. It is often the case that this group receives little to no money once all other creditor groups have been paid. This lack of recovery may lead unsecured creditors to feel they have little involvement or influence in the insolvency process compared to secured and preferential creditors. However, they are still involved in the initial stages through a creditors' meeting, which provides them with formal notification of the company's financial situation and allows them to vote on the appointment of an Insolvency Practitioner.

The key difference between secured and unsecured creditors lies in the level of protection and priority they receive during insolvency proceedings. Secured creditors enjoy greater protection because their loans are backed by specific assets, ensuring they are paid before unsecured creditors. A fixed charge offers greater security compared to a floating charge, which is more susceptible to changes in the order of payment. On the other hand, unsecured creditors face higher risks as they are at the bottom of the payment hierarchy, often resulting in them receiving little to no repayment. This underscores the importance of understanding the roles and positions of each type of creditor within a company's financial structure, especially in the context of insolvency.Examples of secured and unsecured creditors

In General, Secured creditors are Banks are the major creditors in this group, often holding a fixed charge on property or other business assets, an invoice factoring company that has effectively 'bought' your sales ledger holds a fixed charge over the book debts in their control, Lenders with a charge over assets such as inventory, equipment and machinery.

In general, Unsecured creditors are Suppliers, Customers, HMRC, and Contractors. The defining feature of a secured creditor is the fact that their money is recouped by selling

the asset in question during the insolvency process. When business is running smoothly and a company is solvent, the fact that security is held over your premises may not appear to be a problem. It is only when a company runs into trouble financially and struggles to pay its bills, does the presence of a secure creditor become a threat to its very existence.

When realising assets in insolvency, status is the main difference between secured and unsecured creditors. Secured creditors are generally paid in full from the sale of the asset over which they hold the charge, after the liquidator's costs have been met. Problems that arise during the distribution of bankrupt assets to creditors

There are 3 (three) types of creditors in bankruptcy matters, namely concurrent creditors, preferred creditors, and separatist creditors (Article 1 point 2 of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations ("UU K-PKPU").

Types of Creditors

1. **Preferred Creditors**

Preferred creditors are those who have privileges or priority rights, allowing them to be paid before other creditors for legal reasons, as stipulated in Article 1134 of the Civil Code.

- **Tax Debt**: According to Article 21 paragraph (1) of Law 28/2007, the State has a preemptive right to tax debts on the property of the taxpayer, meaning these debts take priority over others in the event of insolvency.
- **Basic Wage of Workers/Laborers**: The Constitutional Court Decision Number 67/PUU-XI/2013 (MK Decision 67/2013) emphasizes that workers and laborers are considered preferred creditors. Their wages must be prioritized over the claims of separatist creditors, state rights, auction offices, curator fees, and others.

2. **Separatist Creditors**

Separatist creditors are those who hold material security rights, giving them privileged claims over specific assets in the bankruptcy estate. As stated in Article 138 of the Bankruptcy Law (UUKPKPU), these creditors can execute their security as if no bankruptcy occurred (Article 55 paragraph (1) UUKPKPU). Examples include creditors whose receivables are secured by a lien, fiduciary guarantee, mortgage, or other material collateral rights.

Concurrent Creditors

Concurrent creditors are those who do not hold material security rights but have the right to collect debts based on an agreement. They are not included in the preferred or separatist creditor groups, and as a result, their claims are settled only after the preferred and separatist creditors have been paid. Due to their last position in the payment

hierarchy and the lack of inherent material guarantees, it is common for concurrent creditors to receive nothing or only partial payment, as the bankrupt estate's assets are often already allocated to the other two main creditor groups.

Regulation and Practice in Bankruptcy Law for Concurrent Creditors in Indonesia

System of Payments

The distribution of a bankruptcy estate is determined by the decision of a panel of judges. The assets declared as part of the bankruptcy estate are divided among the creditors. Typically, the creditors are prioritized as separatist creditors, such as banks holding mortgage rights, followed by preferred creditors like workers, whose wages are considered priority claims.

Unfair Wealth Distribution for Concurrent Creditors

In several bankruptcy cases in Indonesia, the distribution of assets to concurrent creditors has been deemed unfair. Often, these creditors are left with little or nothing after the preferred and separatist creditors are paid. There should be a period of rebuttal to address these unfair conditions, particularly during creditors' meetings, where the allocation of assets can be contested and negotiated.

CONCLUSION

Indonesia has a good terms of payment and status for concurrent creditors. But, for concurrent creditors must have a good terms and condition which mean the concurrent creditors will not able to march a steal over other preferred creditors and separated creditors in a very low position in terms of capabilities too ern their credits on company. Indonesia’s regulation must have well-established principle that gives it an advantage over one another. Indonesia does hold the principle of debt recharged unless there is an order discharge to earn unpaid debts after the bankruptcy procedure has been finished. There’s no have shorter list preferred creditors available for payments during the distribution of wealth process. Another advantages specially upon securing the assets from unfair preference and undervalued transactions is astonishingly well established and gives concurrent creditors an advantage in earning their credits since companies will be reluctant to participate in those types of actions due to a large time frame.

Indonesia must protect and give more rights toward concurrent creditors, the regulation should be amendments on the bankruptcy law provide in Law no. 37/2004. Particularly the concurrent creditors must have guarantee for theirs right and more money instead of distribution of wealth. Government must understood about the unfair situation, because in UUD NRI 1945, every people have a same rights in front of the law. Indonesia can restrict these types of actions by putting a larger time frame like 5 years term and a regulation on a company’s associates that may earn benefits throughout the years prior to the company’s bankruptcy. In the procedurals, should have available time for disagree argument if concurrent feel bad on the decision of curators.

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