

# Juridical Review Of Bankruptcy Law In Indonesia

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## *Abstract*

*The development of the era of globalization in the world has had an impact on several aspects of life in Indonesia, both in the social, economic, cultural, and other fields. Especially in the economic field, the development of the era of globalization has increasingly boosted the human mind to carry out a business or develop in the business sector. Various ways are taken by business actors to develop their business so that their business is not left behind by other business actors. This is done by conducting large-scale advertisements, opening investment channels for both domestic and foreign investors, opening various company branches and the most often done is taking out debt to expand their business, because nowadays it is to do business development. does not require a small fee.*

*Keywords: Juridical, Creditors, Debtors, Bankruptcy in Indonesia.*

## **Abstrak**

Berkembangnya era globalisasi di dunia, sangat membawa dampak terhadap beberapa segi kehidupan di Indonesia baik di bidang sosial, ekonomi, budaya, dan lain-lain. Khususnya di bidang ekonomi, berkembangnya era globalisasi semakin mendongkrak daya pikir manusia untuk melakukan suatu usaha ataupun pengembangan di bidang usaha. Berbagai cara ditempuh oleh pelaku usaha untuk melakukan pengembangan usahanya agar usahanya tidak tertinggal dengan pelaku usaha yang lain. Hal itu dilakukan dengan melakukan iklan besar-besaran, membuka jalur-jalur investasi baik untuk investor dalam negeri maupun investor luar negeri, membuka berbagai cabang perusahaan dan yang paling sering dilakukan adalah melakukan utang untuk mengembangkan usahanya, karena di zamansekarang untuk melakukan suatu pengembangan usaha tidak membutuhkan biaya yang ringan.

**Kata Kunci : Yuridis, Kreditor, Debitor, Kepailitan di Indonesia.**

## A. Introductory Chapter

Debt for business actors is not a process that shows that the company has a bad balance sheet, debt in the business world is one of the incentive steps to get an injection of capital in order to carry out business development. However, this concept applies if at the due date of collection, the company is able to reverse the debt.

The problem is when the company as a debtor or party who has debt due to an agreement or law whose repayment can be collected in court, is unable to repay debt from creditors or parties who have debt receivables due to agreements or laws whose repayment can be collected in court. Therefore, in ensuring justice for each party, the government issued a regulation on bankruptcy. Bankruptcy arrangements have existed since the Dutch colonial era, namely Staatsblad 1905-217 juncto Staatsblad 1906-348. To ensure a more certain legal certainty, on April 22, 1998, Perpu 1 of 1998 was issued which was later ratified by Law Number 1 of 1998. Law Number 1 of 1998 was amended and replaced by Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. Bankruptcy is the general balance of all assets of the Bankrupt Debtor whose management and settlement is carried out by the curator under the supervision of the Supervisory Judge as regulated in this Law. This law increasingly answered various problems of bad credit that existed in Indonesia at that time. The bankruptcy of a company results in the entire assets of the debtor as well as everything obtained during the bankruptcy being in general confiscation from the time the bankruptcy declaration decision is pronounced, except:<sup>1</sup>

- a) Objects, including animals that are really needed by the debtor in connection with his work, equipment, medical equipment used for health, bedding and equipment used by the debtor and his family, and food for 30 days for the debtor and his family, in that place;
- b) Everything that is obtained by the debtor from his own work as a salary from a position or service, as wages, pensions, waiting fees or allowances, to the extent determined by the supervisory judge; or

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<sup>1</sup> Law Number 37 of 2004 concerning Bankruptcy and Postponement of Obligation to Pay Debt, Articles 21-22

- c) Money given to debtors to fulfill an obligation to provide a living according to law.

The legal consequences of bankruptcy of the bankrupt company destroy the shares of the company because the shares owned by the company must be paid by debt to creditors and investors who invest in public companies or issuers that experience bankruptcy will be greatly harmed. The principle of investment risk owned by investors is that if the issuer they invest in goes bankrupt and their shares run out to pay off debt, then the last investor or the smallest share in this case the minority shareholder will not get their rights, this is certainly very detrimental to the investor, especially structurally minority shareholder investors.<sup>2</sup>

## **B. Problem Statements**

From the explanation of the background above, some of the problem statements that will be discussed are:

- a. What are the regulations regarding bankruptcy in Indonesia?
- b. What are the legal consequences for debtors who are declared bankrupt?

## **C. Research Method**

In connection with the research method used, namely normative juridical, the legal approach (statue approach), historical approach, and case approach.<sup>3</sup>

The statutory approach used to further examine the legal consequences for debtors who are declared bankrupt in Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations.

## **D. Discussion**

### **a) Bankruptcy Regulations in Indonesia**

The regulation regarding bankruptcy was initially regulated in 2 (two) legal sources, namely:

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<sup>2</sup> According to Eduardus, investment risk is the possible difference between the actual return received and the expected return, the bigger the difference, the greater the investment risk. (Yogyakarta: 48)

<sup>3</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, (Surabaya: Kencana, 2010), cet. Ke-6, p. 96-126

1. Book III of the Commercial Code with the title "*Van De Voorzieningen in geval van onvermogen van de koopman* (regulations on the inability of traders), Articles 749-910 of the Trade Code.
2. Title VII of Book III Burgerlijke Rechtvordering (Rv) entitled "*Van De Toestand Van Kennelijk Onvermogen*" (the real situation of injustice that applies to non-traders, Articles 899-915.

In 1983 Prof. Molengraff has advanced a proposed Law Plan to replace Book III of the Dutch Commercial Code (*Voorzieningen in Geval Van Onvermogen van kooplieden*) into Law in 1983, namely the Bankruptcy Law (Faillissementswet) S. 1983 No.140 which is in effect. on September 1<sup>st</sup> , 1986. These two regulations have caused many difficulties in their implementation, including: many formalities that must be taken, high costs, too few for creditors to be able to interfere with the bankruptcy process; and the execution of bankruptcy takes a long time.

Due to these difficulties, there is a desire to make a simple bankruptcy regulation at a low cost, in order to facilitate its implementation. This regulation in full is called *Verordening op het Faillissement en de Surseance van Betalin voor de Europeanen in Nederlands Indie* (Rules for Bankruptcy and Postponement of Payments for Europeans). Based on *the Verordening ter invoering van de Faillissementsverordening* (S.1906-348), *the Faillissementsverordening* (S.1905-217) was declared to come into force on November 1, 1906 ("Bankruptcy Regulations"). The Bankruptcy Regulation consists of 2 (two) chapters, namely:

1. Chapter I concerning Bankruptcy, Articles 1 to 211; and
2. Chapter II concerning Postponement of payments, Article 212 to Article 279.

The Bankruptcy Regulation only applies to people belonging to the European class. This was in accordance with the principle of legal discrimination imposed by the Dutch East Indies government at that time against the inhabitants of the Dutch East Indies. At that time, in accordance with the provisions of Article 163 of the *Indische Staatsregeling*, the population of the Dutch East Indies was divided into several groups as follows: (1) European group; (2) Bumiputra Group; (3) Foreign

Eastern Group, which is further divided into: (a) Chinese Foreign Eastern Group; and (b) Foreign Easterners who are not Chinese (India, Pakistan, Arab and others). The Dutch Occupation Government in Jakarta had issued an Emergency Bankruptcy Regulation (*Noordregeling Faillissementen*) in 1947 (S.1947-214) which came into force on December 19, 1947.

The preamble to the Bankruptcy Emergency Regulation reads: "*Dat Hij, het noodzakelijke achtende bijzondere voorzieningen te treffen voor de opheffing van voor de japanse capitulative uitgesproken faillissementen alsmede voor het uitspreken van faillissementen*". This means: "That he, deems it necessary to specifically regulate the abolition of the bankruptcy decision which was pronounced before Japan surrendered (fallen) and to decide the bankruptcy (*Noordregelling Faillissementen*) 1947 mentioned above, has ceased to function which resulted in invalidity for reasons :

1. Based on article II of the Transitional Rules of the 1945 Constitution which reads: "All existing state bodies and regulations are still in effect immediately as long as new ones have not been enacted according to this Constitution", then the ratification referred to in article II of the Transitional Rules of Law -The 1945 Constitution, means all State Bodies and regulations issued/enacted before 1945, while the Emergency Bankruptcy Regulation was issued in 1947, so that the ratification referred to in Article II of the Transitional Rules of the 1945 Constitution does not cover/covers Bankruptcy Emergency Regulation 1947 referred to above.
2. The 1947 Bankruptcy Emergency Regulation is "Emergency" (temporarily) which means to abolish or nullify bankruptcy decisions that occurred before.

Japan fell or surrendered. This provision is of course no longer valid, because the temporary task has been completed. Thus, based on Article II of the Transitional Rules of the 1945 Constitution, the Bankruptcy Regulations in force in Indonesia at that time were special regulations on Bankruptcy Regulations (*Faillissements-verordening*) S.1905-217 jo S.1906-348.

The monetary crisis that hit Asian countries including Indonesia since the middle of 1997 has caused great difficulties for the national economy and trade. The ability of the business world to develop its business is severely disrupted, even to maintain the continuity of its business activities is also not easy, this greatly affects the ability to meet its debt payment obligations. This situation results in the emergence of a series of problems, which if not resolved immediately will have a wider impact, including the loss of employment opportunities and other social problems. In the interest of the business world in resolving debt problems fairly, quickly, openly and effectively, it is necessary to have legal instruments that support it.

On April 22, 1998 based on Article 22 paragraph (1) of the 1945 Constitution, a Government Regulation in Lieu of Law No. 4 of 1998. The changes were made because the Law on Bankruptcy (*Faillissements-Verordening Staatblad 1905-217 jo Staatblad 1906-348*), which is a statutory regulation inherited from the Dutch East Indies government, is no longer in accordance with the needs and developments of the community's law for settlement debts.

Finally, to meet the development and legal needs of the community, on October 18, 2004, Law No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations was promulgated, providing a definition of Bankruptcy, namely: general confiscation of all assets of the Bankrupt Debtor, the management and settlement of which is carried out by Curator under the supervision of the Supervisory Judge as regulated in this Law.<sup>4</sup>

From the definition above, it can be concluded that the elements of bankruptcy are:<sup>5</sup>

1. General confiscation is meant by general confiscation is the confiscation or settlement of all assets of the bankrupt Debtor. The definition of general confiscation is different from special confiscations, such as *beslag revindicoir*, *beslag conservator*, and *executors of beslag*, all of which are

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<sup>4</sup> Article 1 of 1. Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.

<sup>5</sup> Man S Sastrawidjadja, *Hukum Kepailitan dan Penundaan Kewajiban Pembayaran Utang*, (Bandung: PTAlumni), 2010, 2<sup>nd</sup> edition, p. 78-81.

special confiscations or confiscations due to certain objects. Even though the bankruptcy is said to be a general confiscation, as according to Article 21 of the Bankruptcy Law and Suspension of Debt Payment Obligations, "Bankruptcy includes all assets of the Debtor at the time the bankruptcy declaration is pronounced as well as anything obtained during the bankruptcy". However, there are some items that are outside the bankruptcy budget, meaning they are not confiscated. Items outside the bankruptcy budget are contained in Article 22 of the Bankruptcy Law and Suspension of Debt Payment Obligations.

- a) Objects, including animals that are really needed by the debtor in connection with his work, equipment, medical equipment used for health, bedding and equipment used by the debtor and his family, and food for 30 days for the debtor and his family, in that place;
- b) Everything that is obtained by the debtor from his own work as a salary from a position or service, as wages, pension, waiting money or allowances, to the extent determined by the supervisory judge; or
- c) Money given to the debtor to fulfill an obligation to provide a living according to the law.

Article 22 protects objects outside of bankruptcy that cannot be confiscated, namely personal objects or those related to the family.

2. Against the Wealth of the Bankrupt Debtor. This shows that the bankruptcy is against the assets and not against the debtor personally.

3. Management and settlement by the Curator.<sup>6</sup> Thus, from the moment of the declaration of bankruptcy, the Debtor of bankruptcy loses his right to manage and control his assets.

This is confirmed in Article 24 of the Law on Bankruptcy and Suspension of Debt Payment Obligations, "The debtor by law loses his right to control and manage his assets which are included in the bankruptcy estate, from the date the bankruptcy declaration decision is pronounced." After the Bankruptcy was declared, the Debtor loses his rights or loses his authority

(onbevoegd) to manage and control his assets is one of the general principles of bankruptcy. Thus, the bankrupt debtor is considered incompetent (*onbekwaan*) to manage and control his assets. Management and control over the assets of the Debtor shall be transferred to the Curator.<sup>6</sup>

4. There is a Supervisory Judge.<sup>7</sup> The main task of the Supervisory Judge in the bankruptcy of the Debtor concerned is to supervise the management and control of the assets of the Bankrupt Debtor by the Curator.<sup>8</sup>

#### **b) Bankruptcy Terms**

Bankruptcy requirements are regulated by Article 2 of the Bankruptcy Law and the PDPO concludes that the juridical requirements for a company to be declared bankrupt are as follows:<sup>9</sup>

1. Existence of Debt.<sup>10</sup>
2. At least one of the debts is due.
3. At least one of the debts that can be collected.
4. The existence of a debtor.
5. The existence of creditors.

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<sup>6</sup> According to Article 1 point 5 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, that the Curator is the Balai Harta Peninggalan or an individual appointed by the Court to manage and settle the assets of the Bankrupt Debtor under the supervision of the Supervisory Judge in accordance with this Law.

<sup>7</sup> Article 1 point 8 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, defines Supervisory Judges as judges appointed by the Court in the bankruptcy decision or the decision to postpone the obligation to pay debts.

<sup>8</sup> Arrangements regarding matters relating to the Supervisory Judge are in Article 65-68 Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations

<sup>9</sup> Munir Fuady, *Hukum Kepailitan dalam Teori dan Praktek*, (Jakarta: Citra Aditya Bakti), 2010, cet. Ke-4, p. 8-9.

<sup>10</sup> Article 1 point 6 of the Bankruptcy and PKPU Law provides the definition of debt, namely an obligation that is stated or can be stated in the amount of money, both in Indonesian currency and foreign currency, either directly or will arise in the future or contingent, arising from agreement or law and which must be fulfilled by the debtor and if it is not fulfilled, it gives the creditor the right to obtain fulfillment from the debtor's assets.



6. More than one creditor.<sup>11</sup>
7. Declaration of Bankruptcy is made by a Special Court called the “Commercial Court”.
8. Applications for declaration of bankruptcy shall be submitted by the competent authorities, namely:
  - a) the Debtor;
  - b) One or more creditors;
  - c) Prosecutors for the public interest;
  - d) Bank Indonesia if the debtor is a bank;
  - e) Bapepam if the debtor is a securities company, stock exchange, clearing and guarantee institution, and depository and settlement institution;
  - f) The Minister of Finance if the debtors are insurance, reinsurance, pension funds, and state-owned enterprises that are engaged in the field of public interest.
- 1) Other juridical requirements as stated in the Bankruptcy Act.
- 2) If the conditions are met, the judge “declares bankrupt”, not “can declare bankrupt”.

**c) Parties Who Can File for Bankruptcy**

According to Lilik Muljadi, the party who can file for bankruptcy or the petitioner for bankruptcy is the party who submits and requests the competent Commercial Court to declare the Debtor bankrupt with all the legal consequences, then a Curator and Supervisory Judge are appointed for the assets of the Bankrupt Debtor. In accordance

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<sup>11</sup> According to Jono, in general there are 3 (three) types of creditors known in the Civil Code, namely:

- a. Concurrent Creditors, which are regulated in Article 1132 of the Civil Code, namely creditors with *pari passu* and *pro rata* rights, meaning that creditors jointly obtain repayment (without any precedence) which is calculated based on the amount of their respective receivables compared to their receivables as a whole, to the entire assets of the debtor.
- b. Preferred (privileged) creditors, namely creditors who by law, solely because of the nature of the receivables, get paid off first.
- c. Separatist creditors, namely creditors holding rights to material guarantees *in rem*, which in the Civil Code are referred to as pawns and mortgages. (Jono: 2010).

with Article 2 of Law Number 37 of 2004 concerning Bankruptcy and PDPO, parties who can file an application for bankruptcy are:

1. The Debtor Himself (Article 2 paragraph (1) of the Bankruptcy Law and PDPO)

Debtors who have two or more creditors and do not pay off at least one debt that have matured and are collectible are declared bankrupt.<sup>12</sup> By a court decision, either at its own request or at the request of one or more of its creditors.

The article above states that the Act allows a Debtor to file an application for a declaration of bankruptcy against himself. If the debtor is still bound in a legal marriage, the application can only be submitted with the consent of the husband and wife who are the spouses.<sup>13</sup>

2. One Creditor or More (Article 2 paragraph (1) of the Bankruptcy Law and PDPO)

Elucidation of Article 2 paragraph (1) of the Bankruptcy Law and PDPO describes creditors who can file bankruptcy applications against their debtors, namely concurrent creditors, preferred creditors, and separatist creditors.

3. Prosecutor's Office (Article 2 paragraph (2) of the Bankruptcy Law and PDPO)

The application as referred to in paragraph (1) may also be submitted by the public prosecutor's office. The prosecutor's office can also apply for bankruptcy against the debtor in the public interest. The definition of public interest according to Jono is in the interests of the Nation and the State and/or the interests of the wider community,<sup>14</sup> for example:

a) The debtor runs away;

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<sup>12</sup> Lilik Mulyadi, *Perkara Kepailitan dan Penundaan Kewajiban Pembayaran Utang*, (Bandung: PT Alumni), 2010, cet. ke-1, p. 127.

<sup>13</sup> If the statement of bankruptcy petition is submitted by the debtor who is still bound in a legal marriage, the petition can only be submitted with the approval of the husband (Article 4 paragraph (1) of the Bankruptcy Law and PDPO).

<sup>14</sup> Jono, *Hukum Kepailitan*, Jakarta: Sinar Grafika, 2010, cet. Ke-2, p. 12.

- b) The debtor embezzles part of the assets;
- c) The debtor has debts to BUMN or other Business Entities that collect funds from the public;
- d) The debtor has debt that comes from raising funds from the wider community;
- e) The debtor does not have good intentions or is uncooperative in resolving the issue of overdue debts; or
- f) In other cases, according to the prosecutor's office, it is in the public interest.

In Article 1 of Government Regulation Number 17 of 2000 concerning applications. Declaration of Bankruptcy in the Public Interest, it is expressly stated that the authority of the public prosecutor's office to file a petition for a declaration of bankruptcy is for and on behalf of the public interest. Then Article 2 paragraph (2) PP Number 17 of 2000 states that the Prosecutor's Office may apply for a declaration of bankruptcy on the grounds of public interest, if:

- a. The debtor has two or more creditors and does not pay at least one debt that is due and collectible; and
- b. Neither party has submitted a petition for a declaration of bankruptcy.

#### 4. Bank Indonesia (Article 2 paragraph (3) Bankruptcy Law and PDPO)

In the event that the Debtor is a bank, the application for a declaration of bankruptcy may only be submitted by Bank Indonesia. Bank Indonesia's application for bankruptcy can only be filed by Bank Indonesia based on an assessment of the financial condition and the overall condition of the banking system. Law Number 7 of 1992 concerning as amended in Law Number 10 of 1998 concerning banking provides a definition of a bank, namely a business entity that collects from the public in the form of savings and distributes it to the public in the form of credit and/or other forms of other forms in order to increase the standard of living of the people at large.<sup>15</sup>

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<sup>15</sup> Article 1 point 2 Law Number 10 of 1998 Concerning The Revision of Law Number 7 of 1992 about Banking.

Bank Indonesia is regulated in Act Number 23 of 1999 concerning Bank Indonesia as amended by Act number 3 of 2004. The objective of Bank Indonesia is to achieve and maintain stability in the value of the rupiah by implementing sustainable, consistent, transparent monetary policy and must taking into account the general policy of the government in the economic sector.<sup>16</sup>

5. Capital Market Supervisory Agency (Article 2 paragraph (4) Bankruptcy Law and PDPO)

In the event that the Debtor is a Securities Company, Stock Exchange, Clearing Guarantee Institution, Depository and Settlement Institution, the application for a declaration of bankruptcy can only be submitted by the Capital Market Supervisory Agency.

There are several terms that are defined by Law Number 8 of 1995 concerning the Capital Market, including:

- b. Stock Exchange is a Party that organizes and provides a system and or means to bring together offers of buying and selling Securities of other parties with the aim of trading Securities between them.<sup>17</sup>
- c. Clearing Guarantee Institution is a Party that provides Clearing and Guarantee Services for the settlement of Exchange Transactions.<sup>18</sup>
- d. Depository and Settlement Institution is a Party that organizes central Custodian activities for Custodian Children, Securities Companies, and Other Parties.<sup>19</sup>
- e. Securities Company is a Party that conducts business activities as an Underwriter, Broker-Dealer, and/or Investment Manager.<sup>20</sup>

Explanation of several terms defined by the Capital Market Law that the above companies can be declared bankrupt by the Capital Market Supervisory Agency (Bapepam)

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<sup>16</sup> Article 7 point (1) and (2) Law Number 3 of 2004 Concerning Bank Indonesia.

<sup>17</sup> Article 1 point 4 Law Number 8 of 1995 Concerning Capital Market

<sup>18</sup> Article 1 point 9 Law Number 8 of 1995 Concerning Capital Market

<sup>19</sup> Article 1 point 10 Law Number 8 of 1995 Concerning Capital Market

<sup>20</sup> Article 1 point 21 Law Number 8 of 1995 Concerning Capital Market

## **1. Minister of Finance (Article 2 paragraph (4) of the Bankruptcy Law and PDPO)**

In the event that the Debtor is an Insurance Company, Reinsurance Company, Pension Fund, or State-Owned Enterprise operating in the field of public interest, the application for a declaration of bankruptcy can only be submitted by the Minister of Finance. The above companies can only be proposed by the Minister of Finance, with the aim of building the level of public trust in these businesses.

There are several definitions of terms that are important to mention here, including:

### **a. Insurance company**

Law Number 2 of 1992 concerning Insurance Business defines insurance companies as loss insurance companies, life insurance companies, reinsurance companies, insurance brokerage companies, reinsurance brokerage companies, insurance agents, loss appraisal companies, and actuarial consulting companies.<sup>21</sup>

### **b. Reinsurance Company**

Law Number 2 of 1992 concerning Insurance Business defines an Insurance Company as a company that provides services in reinsurance against risks faced by loss insurance companies and/or life insurance companies.<sup>22</sup>

### **c. Pension fund**

Article 1 point 1 of Law Number 11 of 1992 concerning Pension Funds defines that a pension fund is a legal entity that manages and runs programs that promise pension benefits.

### **d. BUMN engaged in the field of public interest**

Elucidation of Article 2 paragraph (5) of the Bankruptcy Law and PDPO confirms that what is meant by State-Owned Enterprises engaged in the public interest are state-owned enterprises whose entire capital is owned by the state and is not divided into shares. Currently, BUMN is regulated in Law Number 19 of 2003 concerning State-Owned Enterprises (BUMN).

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<sup>21</sup> Article 1 point 9 Law Number 2 of 1992 Concerning Insurance

<sup>22</sup> Article 1 point 7 Law Number 2 of 1992 Concerning Insurance

## 2. Legal Consequences of Bankrupt Debtors

### a. Against the Debtor's Wealth

Article 1131 of the Civil Code states that all debtor assets, both existing and in the future, are dependent on the debtor's debt. Article 21 of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations confirms the legal consequences of the debtor being bankrupt. Bankruptcy includes the entire assets of the Debtor at the time the bankruptcy declaration decision is made as well as everything obtained during the bankruptcy. The debtor by law loses his right to control and manage the assets included in the bankruptcy estate, from the date the bankruptcy was decided.<sup>23</sup>

According to Sunarmi, if prior to the declaration of bankruptcy, a transfer of funds has been carried out through a bank or an institution other than a bank on the date of the Decision, the transfer must be continued.<sup>24</sup> Likewise, if before the bankruptcy declaration is pronounced, a securities transaction has been executed on the Stock Exchange, then the transaction must be completed. Elucidation of Article 24 of the Bankruptcy Law and PDPO states:

- 1) In the event that the debtor is a Limited Liability Company, the organ of the company continues to function provided that if the implementation of that function causes a decrease in the bankruptcy estate, the expenditure of money which is part of the bankruptcy estate is under the authority of the curator.
- 2) What is meant by "local time" is the time at which the decision on the declaration of bankruptcy is pronounced by the Commercial Court, for example, the decision is pronounced in Jakarta on July 1, 2001 at 13.00 WIB, then the Decision shall be counted as effective as at 00.00 WIB on July 1, 2001.

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<sup>23</sup> Article 24 point (1) Law Number 37 of 2004 Concerning Bankruptcy and Postponement of Debt Payment Obligations.

<sup>24</sup> Sunarmi, *Hukum Kepailitan Edisi 2*, (Jakarta: Softmedia), 2010, cet. Ke-1, p .96.

3) Fund transfers through Banks need to be excluded to ensure the smoothness and certainty of the transfer system through the Bank.

4) Securities Transactions on the Stock Exchange need to be excluded to ensure the smooth running and legal certainty of Securities Transactions on the Stock Exchange. Securities Transactions on the Stock Exchange can be carried out by way of bookkeeping or other methods in accordance with the laws and regulations in the capital market sector.

Since the bankruptcy decision is pronounced, the management of the bankruptcy estate is carried out by the Curator under the supervision of the Supervisory Judge. According to Lilik Mulyadi, in practice not all of the Debtor's assets are under the management of the Curator and may remain under the control of the Bankrupt Debtor. The assets of the Debtor which can still be under the control of the Bankrupt Debtor are stipulated in Article 22 of the Bankruptcy Law and PDPO, namely:<sup>25</sup>

- a) Objects, including animals that are really needed by the debtor in connection with his work, equipment, medical equipment used for health, bedding and equipment used by the debtor and his family, and food for 30 days for the debtor and his family, in that place;
- b) Everything that is obtained by the debtor from his own work as a salary from a position or service, as wages, pensions, waiting fees or allowances, to the extent determined by the supervisory judge; or
- c) Money given to debtors to fulfill an obligation to provide a living according to law.
- d) The right to manage and settle the assets of the Debtor shall be transferred to the Curator under the supervision of the Supervisory Judge, although the decision on the petition for a declaration of Bankruptcy is filed with an appeal or PK. Although the debtor loses the right to manage and control his assets, the debtor does not lose the ability to carry out such legal

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<sup>25</sup> Lilik Mulyadi, *Op. Cit.*, p. 113.

actions as long as the legal action does not have legal consequences for his assets that have been controlled by the curator.

Article 25 of the Bankruptcy Law and PDPO confirms that if the debtor continues to carry out legal actions related to the bankruptcy estate, the act does not bind the bankruptcy estate unless the legal action brings benefits to the bankruptcy estate. As long as the debtor is not subject to forced money, it means that according to the explanation of Article 32 of the Bankruptcy Law and PDPO, it includes forced money that is imposed before the bankruptcy declaration decision is pronounced.

Another thing regarding the consequences of bankruptcy on the debtor's assets is that if the bankrupt debtor who at the time of bankruptcy is declared is already bound in a legal marriage and there is a union of assets, his bankruptcy can also have legal consequences for his partner (husband/wife).<sup>26</sup> In the event that a husband or wife is declared bankrupt, the wife or husband has the right to take back all movable and immovable objects which are the innate property of the wife or husband and the assets obtained by each as a gift or inheritance. If the property belongs to the wife or husband and the price has not been paid or the money from the sale has not been mixed in the bankruptcy estate, then the wife or husband has the right to take back the money from the sale.

## **E. Conclusion and Suggestions :**

### **a. Conclusion**

The existing regulations regarding bankruptcy are considered unreliable from the general regulations, namely the Civil Code to Law No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations. There are still many debtors who are trying to run away from responsibility for paying off their debts.

### **b. Suggestions**

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<sup>26</sup> Article 4 point (1) Law Number 37 of 2004 Concerning Bankruptcy and Postponement of Debt Payment Obligations.



There should be negotiations between the debtor and creditor to be able to restructure debt repayment, so that it can benefit both parties. If it must be resolved through the Commercial Court, the Judges of the Commercial Court should still pay attention to the applicable legal rules for resolving disputes.

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Sunarmi, *Hukum Kepailitan Edisi 2, (Jakarta: Softmedia), 2010, cet. Ke-1.*

### **Regulations:**

Indonesian Civil Code

Law Number 2 of 1992 Concerning Insurance

Law Number 8 of 1995 Concerning Capital Market

Law Number 10 of 1998 Concerning Banking

Law Number 37 of 2004 Concerning Bankruptcy and PDP