

Problematics of the Heirs' Position of Inherited Assets in Bankruptcy

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ABSTRACT

In particular, Article 40 of Law Number 37 of 2004 concerning Bankruptcy and PKPU regulates that the curator may not take an inheritance during bankruptcy that descends to the bankrupt debtor unless it benefits the bankrupt assets. This piece specifically warns the curator not to become a bankrupt banker by being cautious when collecting the debtor's assets. In reality, it is not unusual for the debtor's heirs to decline to provide security for the seizure of the deceased debtor's assets to be used as collateral for repayment of the debt by the creditor. This refusal increases the weight of losses on unresolved/unsettled receivables for creditors as a result of the debtor's passing. Naturally, this raises issues with the legal elements of warranties and contract law. There are rights and responsibilities that cannot be resolved, and it is still unclear how the heirs of a deceased debtor who still owes money to creditors will be treated. The emphasis of this study is on the distinction between the bankruptcy-related positions of the debtor who receives an inheritance (the debtor) and the debtor who inherits it. The mechanism for listing debtor's assets as bankruptcy assets is the second study's main focus.

Keywords: Line Balancing, Moodie Young, Line Efficiency, Balance Delay, Smooth Index

INTRODUCTION

Implementation of agreements between debtors and creditors does not always go according to the agreed schedule. In fact, there are always customers or debtors who for whatever reason cannot repay the loan to the creditor according to the agreement. This causes the loan agreement to fail or not

pay off, a situation like this is known as default or broken promise (Dewi & Nadriana, 2017). In the case of credit agreements or debt receivables, the creditor will typically ask the debtor for security in the form of the debtor's property in order to avoid losing money as a result of the debtor's default. Debtor guarantees are used as insurance against failure on the repayment of credit or debt receivables from debtors to creditors (Sutiarnoto, 2018). In the guarantee law, it has provided guarantees to individuals who have entered into legal relations between creditors and third parties as collateral by the debtor. Third parties as guarantors in fulfilling debtor obligations. Third parties are obliged to fulfil the debtor's obligations if the debtor breaks his promise (Hermansyah, 2014). The quickest and easiest method for the creditor to collect payment on the debtor's obligations is to file a bankruptcy petition with the Commercial Court in the city where the debtor's legal residence is. Which can also be done in a different way by the debtor if he or she believes that they are in a position where they are unable to pay their creditors' legitimate and due debts. Provisions relating to situations where the debtor is unable to pay his debts to two or more creditors who are due and collectible because at that point the debtor is declared bankrupt and as a result the debtor loses his right to control of all of his assets and transfers its management to the Curator under the supervision of the supervisory judge.

In circumstances which the guarantor has died, the debt status is given to the heirs, where this is regulated in Article 1826 *Burgerlijk Wetboek* (BW). In Law Number 37 of 2004 concerning Bankruptcy and PKPU namely in article 40 it regulates that inheritance during bankruptcy falls to the bankrupt debtor by the curator may not be accepted, except if it benefits the bankrupt assets.

This article expressly gives a special signal to the curator to be careful in collecting the debtor's assets to become a bankrupt banker. In a different article, namely the provisions of Article 207 of Law Number 37 of 2004 where there is a situation if the assets of a person who died must be declared in a state of bankruptcy, if a person or several creditors submit a request which outlines briefly and a statement that the deceased person is in a state of stopping paying his debts, or when he dies, his inheritance is not enough to pay his debts.

In practice, it is not unusual for the debtor's heirs to decline to provide security for the seizure of the deceased debtor's assets to be used as collateral for repayment of the debt by the creditor. This refusal increases the weight of losses on unresolved/unsettled receivables for creditors as a result of the debtor's passing. Naturally, this raises issues with the legal elements of warranties and contract law. There are rights and responsibilities that cannot be resolved, and it is still unclear how the heirs of a deceased debtor who still owes money to creditors will be treated.

When some workstations are idle while others are still staffed full-time, there is an imbalance in the production activity throughout the line. This results from the work station taking longer than the planned production line speed to accomplish a task. The capacity level, demand, and longest running period all influence speed (Fitri et al., 2022). The existing processes on the production floor are considered to be still not optimal due to an imbalance in the production process which results in a long time to complete a job. Similar to work

element 3, it has the largest and longest manufacturing process, which causes a build-up of raw materials and idle time for the following work element (Treggonowati & Febriana, 2019). Given the foregoing context, it is clear that the challenge is formulated as: What is the present level of production line efficiency at X Inc? In addition, this study also attempts to determine how effective the production line at X Inc. employing the Moodie Young approach.

METHODS

This research was conducted to:

1. The first study focuses on differences in the position of heirs (debtors) of inherited assets in bankruptcy and the position of the debtor as the person who leaves the inheritance in bankruptcy.
2. The focus of the second study is what is the mechanism for submitting debtor's assets as bankruptcy assets?

RESULT

The position of the debtor as the heir of the inheritance in bankruptcy and the position of the debtor as the person who leaves the inheritance in bankruptcy. Inheritance, namely the distribution of inheritance to people who have the closest blood relationship with the heir determined by law (inheritance due to death = ab-intestate). There are several classifications of inheritance including blood family, family inheritance, inheritance due to marital relations (Oemarsalim, 1987). Inheritance can be said as a transfer of all the rights and obligations of someone who dies to his heirs (Effendi, 2003). According to the Civil Code, the inheritance law system recognizes two types of heirs, namely heirs due to their own position (in Dutch *uit eigen hoofde*), and heirs due to a change of place (in Dutch *bij plaatsvervulling*) (Munir, 2015). Based on Article 833 *Burgerlijk Wetboek* the principle applies, that if a person dies then at that moment all his rights and obligations are transferred to his heirs. The provisions of

Article 833 *Burgerlijk Wetboek*, have given a position to the heir to replace the position of the heir in the field of wealth law (*Saisine*) (Milayani, 2017).

As a result, it can be said that the heir's obligations to a third party and their place in the guarantee/credit agreement are closely related. The individual guarantor's position in the guarantee agreement during his lifetime and the attitude of the individual guarantor's heirs toward the inheritance that is left open after the guarantor (heir) dies decide the position of the individual guarantor's heirs.

Based on the provisions of Article 1826 of the Civil Code, it contains a provision that "the obligations of the guarantor are transferred to their heirs." The provisions of Article 1826 of the Civil Code have given legal consequences for the Guarantee agreement where the guarantor is an individual guarantor, so if the individual guarantor dies during the underwriting period, his heirs will replace the position of the individual guarantor for all his rights and obligations in guarantee agreement made during life. According to the terms of PKPU and Article 207 of the Bankruptcy Law, in the event that the debtor passes away, the assets of the deceased debtor must be deemed bankrupt in the event that two or more creditors file for bankruptcy. This shows that either the debt of the debtor who passed away during his lifetime was not fully paid off or that his estate was insufficient to cover his obligations at the time of his passing. As a result, the creditor may file a bankruptcy petition with the Commercial Court, which has authority over the deceased debtor's last residence, regarding the assets of the deceased debtor.

While inheritance that occurs during bankruptcy belongs to the bankrupt debtor, the curator may not accept it unless it benefits the bankrupt assets, unlike inheritance that can be declared bankrupt as stated in Article 40 Paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and PKPU. In this situation, the curator's position and role are crucial, and they must

exercise caution when documenting or listing inheritance as bankruptcy assets because, on the one hand, the debtor will receive his rights in the form of assets and, on the other, the debtor will also inherit the inheritor's debts because, as an heir, in addition to receiving inheritance, he will also receive and bear the heir's debts, so if the curator is not careful, the outcome will not be an advantageous one. The curator must obtain approval from the supervising judge in order to avoid receiving an inheritance, according to Article 40 paragraph (2), which further regulates these provisions.

The existence of tangible legal debt guarantees for debtor clients serves as a safeguard for creditors against defaults and broken promises by client debt. If a debtor fails to meet their duties under the terms of the credit agreement, becomes bankrupt, or passes away, the existence of collateral in the credit can protect the credit. As a result, guarantees from deceased debtors may still be used to replace their outstanding obligations to creditors. Legally speaking, the heir's party cannot retain the inheritance since it has been turned into collateral to be sold at auction in return for the debtor's payment of the guarantee. Therefore, the supervisory judge must approve of all actions taken by the curator with respect to bankruptcy assets, and the curator is required to be extremely selective when gathering information on inherited assets acquired by the debtor during bankruptcy.

Mechanism for Filing Bankruptcy on Debtor's Inheritance. As a result of the heirs of the heirs of individual guarantee holders being declared bankrupt, it places a burden on the heirs to pay off all of their debts. Different arrangements regarding the responsibilities of heirs, specifically for those who are subject to inheritance law, can be viewed from three different perspectives (Nadriana, 2017). Islamic succession law, common law, and western law (BW) all govern inheritance. According to the provisions of Article 1826 BW of the

Indonesian Civil Code, the presence of the obligation of the heirs of the heirs of specific collateral holders has been controlled. According to the provisions of Article 1826 BW, if an individual guarantee holder passes away, his rights and duties are legally transferred to the heirs.

Islamic succession law and international civil law have different standards. Because the inheritance must be issued or there is a requirement for the heir to settle the debts of the heir who has passed away before the inheritance is provided to the heir, the heirs do not always receive the inheritance under Islamic inheritance law. Therefore, the heirs must complete paying off the heir's obligation before the assets are distributed. According to Article 175 paragraph (2) of the Compilation of Islamic Law (KHI), which addresses the responsibility of the heir, the heir's liability for debt or obligations is, in theory, restricted to the quantity or value of the inheritance (Nadriana & Suparman, 2017).

The bankruptcy process for the debtor's inheritance is not different from filing a bankruptcy application in general, but in a bankruptcy application for the debtor's inheritance it is regulated in article 207 of Law Number 37 of 2004, namely:

1. An application for the inheritance of the debtor is submitted to the court whose jurisdiction covers the last place of residence of the deceased debtor (Article 208 Paragraph (1)). This application for a declaration of bankruptcy is filed no later than 90 (ninety) days after the debtor dies.
2. The heirs must be summoned to be heard regarding the application with a letter from the bailiff (Article 208 paragraph (2)).
3. The summons as referred to in Article 208 Paragraph (2) must be delivered at the last place of residence of the deceased debtor without having to state the names of each heir, unless their names are known.

The aforementioned process demonstrates that there is no distinction between a debtor who has been declared bankrupt and a debtor who has passed away and left an inheritance that can be used to pay the debtor's creditors for the debts he owed during his lifetime in the bankruptcy application process submitted to the Commercial Court. Just that the peace process as in articles 144 to 177 does not apply to bankruptcy of inheritance unless the inheritance has been received by the heirs in a pure way in accordance with the provisions of article 211. In other words, the debtor's assets can still be used as collateral for repayment of the debtor's debts to creditors, even though since the debtor died, all the assets left by the debtor fall into the hands of his heirs. In principle, every debt must be paid by the debtor from the debtor's assets.

Normatively, a debtor who is deemed bankrupt will typically have all of his assets, including any inheritance that will be received, declared bankrupt. Because the goal of bankruptcy is to fulfil debtor debt payments to creditors so that creditors do not fight over debtor assets after the debtor is declared bankrupt, inheritance arrangements are not explicitly and thoroughly regulated by the Bankruptcy Law (Lumbanraja et al., 2021).

In practice, there are no clear regulations governing the responsibilities of heirs who hold personal guarantees, which has led to unfair conditions for heirs, particularly during the insolvency settlement process. Although the bankruptcy of inherited assets is covered by Article 209 of the Bankruptcy Law, which says that a bankruptcy decision separates the heirs' assets from the heirs. Legal confusion has been brought about by judicial discord and inconsistent business judgments. Legal uncertainty is also brought on by the shoddy legal protection for heirs of heirs who possess personal guarantees (personal guarantees).

CONCLUSION

Inheritance can be declared bankrupt under article 40 of the Bankruptcy Law and PKPU if the inheritance can benefit the bankruptcy estate. Legal arrangements regarding inheritance in Law Number 37 of 2004 concerning Bankruptcy and PKPU are only limited to inheritance-related legal arrangements to assets that can be received by debtors who can benefit the bankrupt debtor because if the debtor inherits, the debtor also inherits the heir's debts. As a result, the curator must be extremely selective and accurate when gathering information on the debtor's assets, including inheritance, to determine whether the inheritance will increase or benefit the debtor.

If the inheritance the debtor received turns out to be completely controlled by other heirs besides the debtor, additional challenges will also surface and the bankruptcy asset settlement will take longer. Additionally, the inheritance that served as security for the deceased debtor's debt is now the property of the heirs, who are also liable for that debt. Thus, the debtor's obligation to pay off his debts extends not only to those who are still living but also to those who have passed away and left behind inheritance (inheritance), which may be subject to bankruptcy proceedings in order to pay off creditors.

Normatively, the debtor who is deemed bankrupt will also have all of his assets, including any inheritance received during the bankruptcy, declared bankrupt. Arrangements regarding inheritance are not explicitly and thoroughly regulated by the Bankruptcy Law because the aim of bankruptcy is to fulfil debtor debt payments from the debtor's assets to creditors so that creditors do not fight over debtor assets after the debtor is declared bankrupt. Thus, it is suggested to legislators to rearrange Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations

for Payment of Debt, especially regarding inheritance as a bankruptcy lawsuit.

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