

Efforts to Cancel Bankruptcy by the Securities Debtor on the Bankruptcy Decision Requested by the Creditors (Study of Decision Number 99 PK/Pdt.Sus-Pailit/2015)

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ABSTRACT

In connection with the bankruptcy issue, in this case PT. Inti Kapital Sekuritas, formerly known as PT. Andalan Artha Advisindo Sekuritas, for filing a bankruptcy application made by two creditors namely Ghazi Muhammad and Azmi Ghazi Harharah who are customers of PT. Inti Kapital Sekuritas. The court has handed down the previous decision number 08/Pdt.Sus/Pailit/2015/PN.Niaga.Jkt.Pst, because they have more than one debt that is due and can be collected in accordance with law number 37 of 2004 concerning bankruptcy and postponement debt payment obligations, article 2 paragraph (1) jo. Article 8 paragraph (4) which regulates the conditions for bankruptcy as follows, "A debtor who has two or more creditors and does not pay in full at least one debt that is due and can be collected, is declared bankrupt by a court decision, either on his own request or at the request of one or more creditors". Due to no further legal remedies by the securities debtor, the decision number 08/Pdt.Sus/Pailit/2015/ PN. Niaga.Jkt.Pst has permanent legal force (inkracht). Respondent or securities debtor then submits a request for reconsideration of the court decision which has permanent legal force, by taking external legal remedies, namely reconsideration. The research method used in this thesis research is descriptive analysis, with the type of normative legal research, namely to examine legal norms related to bankruptcy petition decisions through literature study, research in terms of statutory regulations and also their elaboration and explanation of procedures and bankruptcy provisions and postponement of debt payment obligations. The

conclusion of this research is that the judge granted the request for bankruptcy cancellation made by the securities debtor because there had been a significant error in the previous decision, namely case number 08/Pdt.Sus/Pailit/2015/ PN. Niaga.Jkt.Ps because the applicant is a creditor an individual who is not the Financial Services Authority (OJK) so that it does not comply with the provisions of article 2 paragraph (4) of the bankruptcy law and postponement of debt payment obligations as well as article 55 paragraph (1) of RI Law number 21 of 2011 concerning the Financial Services Authority (OJK) "function, duty and authority to regulate and supervise financial services activities in the capital market sector (BAPEPAM), or now also known as the Financial Services Authority (OJK). Therefore, the party entitled to apply for bankruptcy is the Financial Services Authority (OJK)".

Keywords: Bankruptcy, Debtor, Creditors, Financial Services Authority (OJK)

INTRODUCTION

Failures verordening (bankruptcy regulation), which was later amended by Perpu Number 1 of 1998 concerning amendment to the bankruptcy law, regulates bankruptcy in Indonesia. Furthermore, this Perpu was stipulated as the articles of association, namely law number 4 of 1998. In accordance with various decisions Famous Commercial Courts, such as the bankruptcy case of PT. Asuransi Jiwa Manulife Indonesia, PT. Asuransi Jiwa Prudential and others, was accompanied by

the reform of the bankruptcy law number 37 of 2004 (Sutedi, 2009).

In connection with the bankruptcy issue, in this case PT. Inti Kapital Sekuritas, formerly known as PT. Andalan Artha Advisindo Sekuritas, for filing a bankruptcy application made by two creditors, namely Khozi Muhammad and Azmi Khozi Harharah who are customers of PT. Inti Kapital Sekuritas Court has handed down the previous decision Number 08/Pdt.Sus/Pailit/2015/PN.Niaga.Jkt.Pst, because he has more than one debt that is due and can be collected in accordance with law number 37 of 2004 concerning bankruptcy and postponement of debt payment obligations, article 2 paragraph (1) jo. Article 8 paragraph (4) which regulates the conditions for bankruptcy as follows: "A debtor who has two or more creditors and does not pay off at least one debt which is due and can be collected, is declared bankrupt by a court decision, either at his own request or at the request of one or more creditors".

Because there are no more legal remedies by the Securities Debtor, the decision number 08/Pdt.Sus/Pailit/ 2015/PN.Niaga.Jkt.Pst has permanent legal force (inkracht). The respondent or Securities Debtor then applies for a reconsideration of the Court Decision which has permanent legal force, by making extraordinary legal remedies because in the bankruptcy law they do not know appeal legal remedy but are familiar with cassation legal efforts and extraordinary legal remedies, namely reconsideration.

In the realm of legal studies it is defined as a condition where the debtor (who owes) is unable to pay his debts as referred to in Article 1 Paragraph 1 of the Bankruptcy Regulation: "Accounts that are in a stop paying state, either on their own report or from the request of one or more people with the judge's decision is declared bankrupt".

The term stop paying normatively does not absolutely have to mean the debtor has stopped paying his debts altogether, but the debtor can be said to have stopped

paying. If at the time of filing the application for bankruptcy to the Court, the debtor is in a position unable to pay his debt. Bankruptcy requests against debtors through court proceedings (through examination phases), then everything related to the bankruptcy event is referred to as "bankruptcy".

According to law number 37 of 2004 concerning bankruptcy and postponement of debt payment obligations (hereinafter referred to as PKPU Law) article 1 paragraph (1) what is meant by Bankruptcy is general confiscation of all assets of the Bankrupt Debtor whose management and settlement is carried out by the curator under the supervision of the supervisory judge.

A debtor company condition that stops paying its debts is called "insolvable". In English speaking countries the meaning of Bankruptcy and Bankruptcy is used the terms "bankrupt" and "bankruptcy".

In 1998 there was a monetary crisis in Indonesia, which resulted in an economic crisis, in which several companies had so many debts that the Company was unable to pay these debts and eventually went bankrupt and bankruptcy.

The consequences of the crisis that occurred in Indonesia had an unfavorable impact on the national economy which resulted in great difficulties for the business world to continue its activities, including fulfilling obligations to creditors. Efforts were made to overcome one of the problems that required resolution, namely the company's debt and receivables. With the existence of bankruptcy and postponement of debt payment obligations, debtors and creditors can use it fairly, quickly, openly and effectively, which urgently needs to be realized.

The state of the economy has led to a decline in economic growth which was previously positive around 6-7% to minus 13-14%. Inflation rate has increased from below 10% to around 70%. Many companies have difficulty paying their debt

obligations to creditors and moreover, many companies go bankrupt (Asikin, 2013).

Bankruptcy laws have existed since roman times. The word bankrupt in English is called bankrupt which comes from an act in Italy called Banca Rupta. Medieval Europe there was a practice of bankruptcy where the benches of bankers or traders fled secretly with creditors' assets, such as the situation in Venetia (Italy) at that time where the banco (bench) of lenders were absent at that time. are no longer able to pay debts or fail in their business (Fuady, 2002).

In article 21 of law number 37 year 2004, it is stated that the legal consequences associated with the Bankruptcy Decision include all assets of the Debtor at the time the Declaration of Bankruptcy is pronounced as well as everything obtained during the Bankruptcy (Widjaja, 2004).

In connection with the bankruptcy issue, in this case PT. Inti Kapital Sekuritas, formerly known as PT. Andalan Artha Advisindo Sekuritas, for filing a bankruptcy application made by two creditors namely Ghozi Muhammad and Azmi Ghozi Harharah who are customers of PT. Inti Kapital Sekuritas. The court has handed down the previous decision number 08/Pdt.Sus/Pailit/2015/PN.Niaga.Jkt.Pst, because they have more than one debt that is due and can be collected in accordance with law number 37 of 2004 concerning bankruptcy and postponement debt payment obligations, article 2 paragraph (1) jo. Article 8 paragraph (4) which regulates the conditions for bankruptcy as follows, "A debtor who has two or more creditors and does not pay in full at least one debt that is due and can be collected, is declared bankrupt by a court decision, either on his own request or at the request of one or more creditors". Due to no further legal remedies by the securities debtor, the decision number 08/Pdt.Sus/Pailit/2015/PN.Niaga.Jkt.Pst has permanent legal force (inkracht). Respondent or securities debtor then submits a request for reconsideration of the court decision which has permanent legal

force, by taking external legal remedies, namely reconsideration.

RESEARCH METHODS

The research method used in this thesis research is descriptive analysis, with the type of normative legal research, namely to examine legal norms related to bankruptcy petition decisions through literature study, research in terms of statutory regulations and also their elaboration and explanation of procedures and bankruptcy provisions and postponement of debt payment obligations.

According to Marzuki (2005), legal research with the type of research used is normative legal research, using secondary data in the form of primary legal materials and secondary legal materials and tertiary legal materials (Soekanto, 1985).

In this study, describes the principles which are then analyzed to obtain answers to the main problems regarding the Debtor's Efforts, namely PT. Inti Kapital Sekuritas, formerly known as PT. Andalan Artha Advisindo to cancel the Bankruptcy Application submitted by creditors, namely Ghozi Muhammad and Azmi Ghozi in Decision Number 99 PK/Pdt.Sus-Pailit/2015.

This research has a starting point from the understanding that research essentially includes data collection, data processing, data analysis, and data construction activities which are all carried out systematically and consistently (Soekanto and Mamudji, 1979).

RESULT

Judge

Canceling the Decision of the Commercial Court at the Central Jakarta District Court Number 08/Pdt.Sus/Pailit/2015/PN.Niaga.Jkt.Pst, June 29, 2015

Judge granted the request for bankruptcy cancellation made by the securities debtor because there had been a significant error in the previous decision, namely case number 08/Pdt.Sus/Pailit/2015/PN.Niaga.Jkt.Ps because the applicant is a

creditor an individual who is not the Financial Services Authority (OJK) so that it does not comply with the provisions of article 2 paragraph (4) of the bankruptcy law and postponement of debt payment obligations as well as article 55 paragraph (1) of RI Law number 21 of 2011 concerning the Financial Services Authority (OJK) "function, duty and authority to regulate and supervise financial services activities in the capital market sector (BAPEPAM), or now also known as the Financial Services Authority (OJK). Therefore, the party entitled to apply for bankruptcy is the Financial Services Authority (OJK)".

After the Commercial Court Decision at the Central Jakarta District Court Number 08/Pdt.Sus/Pailit/2015/PN. Niaga.Jkt.Pst which was legally binding on 29 June 2015, was notified to the bankrupt respondent on July 2, 2015 later by PT. Inti Kapital Sekuritas which was previously renamed PT. Andalan Arta Advisindo Sekuritas filed a request for judicial review Number 08/Pdt.Sus/Pailit/2015/ PN. Niaga. Jkt.Pst, the request is accompanied by a memorandum of reconsideration received at the Registrar's Office of the Central Jakarta District/ Commercial Court on the same day with the request for reconsideration, the opposing party has been carefully informed of the application, which was submitted within the grace period and in the manner stipulated in Article 295,296 of Law Number 37 Year 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, then the respondent for Reconsideration does not submitted an answer to the reasons for reconsideration application for reconsideration submitted by applicant for reconsideration of PT. Andalan Artha Advisindo Sekuritas represented by Director Lulu Eleonara Soekardi, and in this case authorizes Joelbaner Hendrik Toendan, S.H., M.H., And friends Advocate.

Article 5 of Law Number 4 of 1998 concerning Stipulation of Government Regulations in lieu of Law Number 1 of 1998 concerning amendments to the Law on

Bankruptcy into Law which stipulates that applications for reconsideration must be submitted by legal advisors who have a license to practice.

Because of the application for judicial review submitted by the applicant for reconsideration of PT. Inti Kapital Sekuritas or previously known as PT. Andalan Artha Advisindo Sekuritas was again granted and canceled the Decision of the Commercial Court at the Central Jakarta District Court, Number 08/Pdt.Sus/Pailit/2015/PN. Niaga. Jkt.Pst, then the defendants for judicial review must be sentenced to pay the case fees for all at the Judicial level and in the review examination, it was decided in the Consultative Meeting of the Panel of Judges at the Supreme Court on November 26, 2015 in a session open to the public

The reason the applicant for reconsideration filed an application for reconsideration was due to a clear error by the Panel of Judges at the Commercial Court at the Central Jakarta District Court which examined and decided in Case Number 08/Pdt.Sus/Pailit/2015/PN. Niaga. Jkt.Pst.

Due to Bankruptcy Cancellation Law

In Indonesia, basically has regulated bankruptcy that occurs in the business world, this can be seen by the issuance of law number 37 of 2004 concerning bankruptcy and postponement of commitment to pay debt. Bankruptcy itself can be interpreted as general confiscation by the supervisory judge of all assets. bankrupt debtor, which is administered and resolved by the curator.

Financial difficulties of a company are one of the causes for the debtor to be declared bankrupt in corporate finance theory, which is commonly known in financial management, which distinguishes corporate financial difficulties into:

1. Economic failure, which means that the company's revenue cannot cover total costs, including the cost of capital. A business that experiences economic failure can continue its operations as

long as the creditor wishes to provide additional capital and the owner can receive a rate of return below the market interest rate.

2. Business failure, this term is used by dun and brad street who are the main compilers of the failure statistic, to define a business that stops its operations with a loss for creditors, thus, a business can be classified as failing even though it did not go through bankruptcy normally, as well as a business. can stop / close the business but not considered a failure.
3. Technical insolvency, a company can be considered bankrupt if it does not fulfill its obligations that are due. This may indicate a temporary lack of Liquidity where at one time the Company can raise money to fulfill its obligations and stay alive.
4. Insolvency in bankruptcy, when the book value of the total liabilities exceeds the market value of the company's assets. This is a situation that is more serious when compared to technical insolvency, because in general this is a sign of an economic failure leading to liquidation of a business.
5. This bankruptcy legal bankruptcy is a bankruptcy decision passed by the Court in accordance with the Law due to experiencing the stages of financial difficulties mentioned above.

From the explanation of the verdict due to the law, it can be analyzed that there is legal confusion where the judge is wrong in implementing the law, in the Commercial Court Judgment Number 08/Pdt.Sus/Pailit/2015/PN.Niaga.Jkt.Pst, Bankruptcy applications filed by both individual creditors was granted by the Judge while in the Supreme Court Decision Number 99 PK/Pdt.Sus-Pailit/2015 the Judge cancelled the decision, so that there was no legal certainty, according to Jimly Ashiddiqie that in law there must be justice and legal certainty, so that people are not confused, however justice and legal certainty are two sides of one coin. legal certainty means

legal security, which means protection for the parties against the judge's arbitrariness.

Legal certainty is not only in the form of articles in the law, but also the consistency in the judges' decisions between one judge's decisions and other judges' decisions for similar cases that have been decided.

CONCLUSION AND SUGGESTION

Conclusion

The conclusion of this research is that the judge granted the request for bankruptcy cancellation made by the securities debtor because there had been a significant error in the previous decision, namely case number 08/Pdt.Sus/Pailit/2015/PN.Niaga.Jkt.Ps because the applicant is a creditor an individual who is not the Financial Services Authority (OJK) so that it does not comply with the provisions of article 2 paragraph (4) of the bankruptcy law and postponement of debt payment obligations as well as article 55 paragraph (1) of RI Law number 21 of 2011 concerning the Financial Services Authority (OJK) "function, duty and authority to regulate and supervise financial services activities in the capital market sector (BAPEPAM), or now also known as the Financial Services Authority (OJK). Therefore, the party entitled to apply for bankruptcy is the Financial Services Authority (OJK)".

Suggestion

The suggestions that can be given in relation to the conclusions described above are as follows:

1. There is no common understanding of the submission of an application for a bankruptcy statement by a creditor to a debtor of a securities company, if the creditor or the Capital Market Supervisory Agency, which is now known as the Financial Services Authority, is the one who has the right to submit a bankruptcy statement. Declaration of Bankruptcy whose Debtor is a Securities Company, which

is entitled to apply is a Financial Services Authority, not a Creditor, so that a deeper understanding of the basics of Bankruptcy is necessary. Such as the parties authorized to apply for Bankruptcy in accordance with the Debtor so as to create legal certainty

2. The Clerk of the Commercial Court should understand the procedure for Bankruptcy Procedure based on Article 6 Paragraph 3 of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations so that there are no errors regarding the Procedural Law Procedures in the Commercial Court.
3. There should be a more accurate overall understanding by the Panel of Judges regarding the Legislative Regulations relating to Bankruptcy, it should be more thorough in examining Cases submitted to the Commercial Court so that in the future there will be no mistake in deciding a Case.

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