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RESEARCH ARTICLE

TO SEAL THE BUDEL IN BANKRUPTCYIN INDONESIA

^{*},¹Ni Wayan Umi Martina and ²I Made Arjaya

¹Participants in the Udayana University Law Sciences Doctoral Program, Indonesia

²Warmadewa University, Indonesia

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ABSTRACT

The purpose of this research is to get answers to two legal issues, namely first, why is it carried out sealing of bankrupt assets, second, what are the benefits of sealing bankrupt assets for Curators and for Creditors. Legal material collection techniques with structured interviews with parties related to existing legal issues. From the results of the research and discussion it was concluded that the bankrupt assets were sealed because the Debtor was not cooperative and if the bankrupt assets were not sealed, the curator would not be able to exercise the authority given to him to sell bankrupt assets and the debtor could harm the creditors because they still controlled and benefited from the bankrupt assets without carrying out its obligations to pay its debts to its creditors.

*Corresponding author: Ni Wayan Umi Martina

INTRODUCTION

Economic and trade developments as well as the influence of globalization that is sweeping the business world today, and remembering that the capital owned by entrepreneurs in general is mostly loans originating from various sources, both from banks, investment, bond issuance and other permissible methods, have raises many problems in settling debt accounts in the community.¹ For the benefit of the business world in resolving debt problems in a fair, fast, open and effective manner, it is very necessary for legal instruments to support them.² On April 22, 1998 based on Article 22 paragraph (1) of the 1945 Constitution, a Government Regulation in lieu of Law Number 1 Year 1998 concerning Amendment to the Law on Bankruptcy was issued, which was later stipulated as a Law with Number Law. 4 of 1998.³ Changes were made because the Law on Bankruptcy (*Faillissements-Verrordening, Staatsblad 1905: 217 juncto Staatsblad 1906: 348*) which is a statutory regulation inherited from the Dutch East Indies government, is no longer in line with the needs and development of community law to debt settlement. The changes to the Bankruptcy Law mentioned above are carried out by improving, adding to and eliminating provisions that are deemed no longer suitable with the needs and development of

law in the community, if viewed in terms of regulated material, there are still various shortcomings and weaknesses.⁴ Decision on bankruptcy statement changes the legal status of a person to be incapable of carrying out legal actions, mastering, and managing his assets since the decision on a bankruptcy statement is pronounced.⁵ Bankruptcy is the general seizure of all the assets of a Bankrupt Debtor whose management and settlement is carried out by the Curator under the supervision of the Supervisory Judge.⁶ Bankrupt debtors are debtors who have been declared bankrupt with a court decision.⁷ The curator is a Heritage Hall or individual who is appointed by the Court to administer and settle the assets of the Bankrupt Debtor under the supervision of the Supervisory Judge in accordance with this Law.⁸ Supervisory Judges are judges appointed by the Court in bankruptcy decisions or adjudication of debt repayment obligations. A court is a commercial court in the general court environment.⁹ Bankruptcy covers all the assets of the Debtor when the decision on bankruptcy is pronounced and everything obtained during bankruptcy.¹⁰ The

⁴Posner, R. A. (2014). *Economic analysis of law*. Wolters Kluwer Law & Business.

⁵Allen, W. T., & Kraakman, R. (2016). *Commentaries and cases on the law of business organization*. Wolters Kluwer law & business.

⁶Wessels, B., Markell, B. A., & Kilborn, J. J. (2009). *International cooperation in bankruptcy and insolvency matters*. Oxford University Press.

⁷Duffy, I. P. (2017). *Bankruptcy and insolvency in London during the industrial revolution*. Routledge.

⁸Mevorach, I. (2018). *The Future of Cross-border Insolvency: Overcoming Biases and Closing Gaps*. Oxford University Press.

⁹Rachlinski, J. J., Guthrie, C., & Wistrich, A. J. (2006). Inside the bankruptcy judge's mind. *BUL Rev.*, 86, 1227.

¹⁰Altman, E. I., & Hotchkiss, E. (2010). *Corporate financial distress and bankruptcy: Predict and avoid bankruptcy, analyze and invest in distressed debt* (Vol. 289). John Wiley & Sons.

¹Mander, J. (Ed.). (2014). *The case against the global economy: and for a turn towards localization*. Routledge.

²Bryson, J. M. (2018). *Strategic planning for public and nonprofit organizations: A guide to strengthening and sustaining organizational achievement*. John Wiley & Sons.

³Lee, S. H., Peng, M. W., & Barney, J. B. (2007). Bankruptcy law and entrepreneurship development: A real options perspective. *Academy of Management Review*, 32(1), 257-272.

debtor legally loses its right to control and manage its assets which are included in bankrupt assets, from the date the verdict of bankruptcy is pronounced.¹¹ On Tuesday, July 18, 2017, the Panel of Judges of the Commercial Court at the Surabaya District Court has decided Decision Number 4 / Pdt.Sus-PKPU / 2017 / PN Niaga Sby to declare the Respondent I PKPU / PT. Rendamas Realty is a limited liability company based in Bali, Arjuna street number 1 Legian village, Kuta sub-district, Badung Regency, Bali and Respondent II PKPU / Jane Christina Tjandra having its address at Pasir Putih street V / 19, RT. 008 / RW 010, Ancol village, Pademangan Sub-district, North Jakarta Bankruptcy with all its legal consequences, and on Friday, December 21, 2018 has determined Determination Number: 04 / Pdt.Sus-PKPU / 2017 / PN.Niaga.Sby who gave permission to the Curator to do the ceiling on bankrupt assets as a list of bankrupt assets of PT. Rendamas Realty and Jane Christina Tjandra (bankrupt) on July 27, 2017 and a list of additional bankrupt assets of PT. Rendamas Realty and Jane Christina Tjandra (bankrupt) on August 31, 2017. There are two legal issues to be examined in this study, first, why is sealing the bankrupt assets carried out? second, what are the benefits of sealing bankrupt assets for Curators and for Creditors?

MATERIALS AND METHODS

This type of research is normative research using a statute approach, conceptual approach, and case approach. The legal material used is primary legal material consisting of legislation and decisions and court decisions relating to bankruptcy law and civil and commercial law. Secondary legal material in the form of literature books that discuss bankruptcy law, civil and commercial procedural law. Techniques for collecting legal materials using a card system, library studies, case studies and interviews.

RESULTS AND DISCUSSION

Sealing of Bankruptcy Assets: Article 99 paragraph (1) of Law Number 37 Year 2004 stipulates that the Curator can request the sealing of bankrupt assets to the Court, based on the reasons for securing bankrupt assets, through the Supervisory Judge. Furthermore, Article 99 paragraph (2) determines the Sealing as referred to in paragraph (1) to be carried out by the bailiff at the place of the treasure, which was attended by 2 (two) witnesses, one of whom was a representative from the Local Government. Bankruptcy is the general seizure of all the assets of a Bankrupt Debtor whose management and settlement is carried out by the Curator under the supervision of the Supervisory Judge. If a company or someone is declared bankrupt by a Court Decision, the company or someone who is in bankruptcy loses his right to control and manage his property.¹² Furthermore, those who carry out the management and settlement of the bankrupt assets are the Curators and are supervised by the Supervisory Judge.¹³ The curator with the permission of the Judge Supervisor can continue the business owned by the Bankrupt

Debtor.¹⁴ The curator will continue the business of the Bankrupt Debtor if the business is profitable. But if the business is not profitable, the Curator will not continue the business. Sometimes because the Curator did not continue the bankrupt Debtor business, the Bankrupt Debtor himself continued his own business, even the results were not reported to the Curator. In order to avoid bankruptcy debtor actions that might harm bankrupt assets or if the bankrupt debtor prevents the curator from carrying out his duties and authority to manage and settle bankrupt assets, the curator may submit a request to the court to carry out sealing of bankrupt assets. The curator appointed and appointed based on Decision Number 4 / Pdt.Sus-PKPU / 2017 / PN Niaga Sby, has submitted an application for sealing bankrupt assets to the Commercial Court at the Surabaya District Court. The application for bankruptcy property is submitted to the Court because the debtor is bankrupt is not cooperative, continues his own business without the permission of the Supervisory Judge, even through his attorney the bankrupt Debtor prohibits the Curator from evaluating the bankrupt assets in the management and settlement of the bankrupt assets. Has been granted by the Court.

Benefits of Sealing Bankruptcy Assets

To help implement the Curator's Authority: The task of the Curator is to manage and / or deposit bankrupt assets.¹⁵ The curator has the authority to carry out the task of arranging and / or depositing bankrupt assets from the date the bankruptcy decision is pronounced even though the decision is submitted to an appeal or a review. In the event that a decision on a bankruptcy statement is canceled as a result of an appeal or review, all actions that have been carried out by the Curator before or on the date of the Curator receive notification of the cancellation decision being valid and binding on the Debtor. Since the Bankruptcy Decision was pronounced, the Debtor lost its right to control and manage bankrupt assets. The curator is given the authority by the Court to administer and settle bankrupt assets since the pronouncement of the bankruptcy decision supervised by the Supervisory Judge.¹⁶ The curator must immediately secure the bankrupt assets as stipulated in Article 98 of Law Number 37 Year 2004 determining that from the start of his appointment, the Curator must carry out all efforts to secure bankruptcy assets and keep all letters, documents, money, jewelry, securities and other securities by providing receipt. Furthermore, the Curator must make the recording of bankrupt assets as stipulated in Article 100 paragraph (1) Law Number 37 Year 2004 stipulates that the Curator must make a recording of bankrupt assets no later than 2 (two) days after receiving the letter of decision on his appointment as a Curator. Furthermore, in Article 100 paragraph (2) determining the Recording of bankrupt assets can be carried out under the hands of the Curator with the approval of the Supervisory Judge. After recording the bankrupt assets, the Curator immediately registers the Creditors as stipulated in Article 102 of Law Number 37 Year 2004 which determines that immediately after the bankruptcy

¹⁴Brouwer, M. (2006). Reorganization in US and European bankruptcy law. *European Journal of Law and Economics*, 22(1), 5-20.

¹⁵Singadimeja, H., Mantili, R., & Rahmawati, E. (2018). The Implementation of Legal Certainty Principles in the Reporting Process of Debtor Bankruptcy Settlement by Curator to Supervisory Judge in Bankruptcy Practice. *Padjadjaran Journal of Law*, 5(3), 506-526.

¹⁶Sonhaji, S. (2018). The Position Of The Workers'or Laborers'severance Pay And Other Rights In The Bankruptcy Of A Company. *Diponegoro Law Review*, 3(2), 165-181.

¹¹Iacobucci, E. M., & Winter, R. A. (2005). Asset securitization and asymmetric information. *The Journal of Legal Studies*, 34(1), 161-206.

¹²Trevino, L. K., & Nelson, K. A. (2016). *Managing business ethics: Straight talk about how to do it right*. John Wiley & Sons.

¹³Xiao, J. (2016). Bankruptcy Administrator: Status, Powers and Duties. In *China's New Enterprise Bankruptcy Law* (pp. 103-126). Routledge.

assets are recorded, the Curator must make a list stating the nature, amount of bankrupt assets, names and the creditor's residence and the amount of the receivables of each creditor. Based on the list of existing creditors whose bills have been verified, the listed bankruptcy assets are cleared by conducting an auction, then the auction results are distributed to the creditors.¹⁷ In general, a Bankrupt Debtor will not voluntarily surrender and release bankrupt assets, a bankrupt debtor will make every possible effort, such as making a cassation and reconsideration effort, filing an auction cancellation claim, a criminal report to the police station, to prohibiting or expelling the Curator from the asset bankruptcy. If the Debtor is uncooperative and prevents the elimination of bankrupt assets, the Curator can submit a request for sealing bankruptcy assets to the court as stipulated in Article 99 paragraph (1) of Law No. 37 of 2004 stipulating that the Curator may request sealing of bankrupt assets to the Court, based on reasons to secure bankruptcy assets, through Supervisory Judges.

To avoid the loss of creditors: Article 104 paragraph (1) of Law Number 37 Year 2004 determines that based on the agreement of the temporary creditor committee, the Curator may continue the Debtor business that is declared bankrupt even if the decision on the bankruptcy statement is filed with an appeal or a review. Furthermore, Article 104 paragraph (2) determines if in the bankruptcy the committee of creditors is not appointed, the Curator requires the permission of the Supervisory Judge to continue the business as referred to in paragraph (1). If the Curator does not continue the Debtor business declared bankrupt with the consideration that it will harm the bankrupt assets, the business of the debtor declared bankrupt is continued by the debtor or the management appointed by the Debtor who has been declared bankrupt without approval or without the permission of the Supervisory and Curatorial Judge, the bankrupt debtor is not cooperative.¹⁸ Moreover, the Bankrupt Debtor forbids the Curator from mastering or entering bankrupt assets and does not feel or does not feel himself bankrupt because he is still carrying out cassation and reconsideration efforts, the Curator can seize the bankrupt assets as stipulated in Article 99 paragraph (1) Law Number 37 In 2004, the Curator could request the sealing of bankrupt assets to the Court, based on the reasons for securing bankrupt assets, through the Supervisory Judge. The bankrupt asset sealing petitioned by the Curator to this Court is in an effort to secure bankruptcy assets so as not to reduce their value so as not to harm the Creditors.

Conclusion

Sealing is actually not needed if the Bankrupt Debtor is cooperative and is willing to help the Curator to carry out his authority, namely managing and clearing bankrupt assets. But if the Bankrupt Debtor is not cooperative, then to secure bankruptcy assets and protect the implementation of the Curator's authority and so that the Creditors are not harmed Bankrupt asset sealing is very necessary.

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