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Legal Protection For Creditors Who Are Late In Filing Their Bills In Bankruptcy Based On Indonesian Civil Procedure Law

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Abstract
The importance of understanding civil law and bankruptcy law protects creditors who are late in filing their bills so that they can act according to applicable law if the creditor is in that situation. This study aims to determine the legal protection of creditors who are late in filing their bills in bankruptcy based on Indonesian civil procedural law. This research uses a normative juridical approach. The normative juridical approach is an approach that refers to the applicable laws and regulations. The results showed that the protection of creditors is contained in Law Number 37 of 2004 and there are also other actions that are for the benefit or protection of creditors, namely the provisions on general confiscation, and actio pauliana. Efforts to settle debts of debtors against creditors through bankruptcy can be resolved in two ways, namely by means of peace (akkoord) and by means of bankruptcy property.

Keywords: Creditor, Civil Law, Bankruptcy

INTRODUCTION

Indonesia is a sovereign state, which is the highest power to make a law and implement it in a way that is available according to existing provisions. The Indonesian government has also built a National Law Agency to help the government regulate Indonesian society, so that it can live in peace and peace in accordance with the ideological goals of Pancasila in life. In Indonesia itself, the law has several types which are divided into; (1) Indonesian Civil Law, (2) Indonesian Criminal Law, (3) State Administration Law, (4) Administrative Law or State Administration, (5) Indonesian Civil Procedure Law, (6) Indonesian Criminal Procedure Law (Saskia ddk, 2021).

Civil law encompasses all of the major laws that govern individual interests. So, in civil law courts, peace is stressed because the law works to achieve justice and peace as well as punishment (Aryati et al, 2022). Bankruptcy is a civil law entity that embodies the two major concepts found in Civil Code Articles 1131 and 1132 (Sinaga & Sulisrudatin, 2016). According to the Bankruptcy Law, bankruptcy is defined as a comprehensive expropriation of the bankrupt debtor's assets, it is likewise done by the curator and is overseen by a supervisory judge, after going through the processes outlined in the Law. In addition, bankruptcy is a circumstance or scenario in when the debtor can continue to fulfill his creditors' bills (Handayani, 2021).

One of the initiatives in the Bankruptcy Law to protect creditors' rights is to avoid debtor fraud. For example, someone who makes bad faith to create as many debts as possible and then applies for a bankruptcy declaration so as not to pay his debts by first hiding his wealth (Anisah, 2009). According to Article 1 point 6 of Law No. 37 of 2004 regarding Bankruptcy and Suspension of Debt Payment Obligations (hereinafter abbreviated as Bankruptcy Law), what is indicated by debt is a responsibility stated in monetary terms, both in Indonesian and foreign currencies, that will occur both directly and indirectly in the future, arising from agreements or by law and which the debtor is obliged to fulfill and, if not fulfilled, Thus, debt is an obligation that the debtor must satisfy (Sularto, 2012).

According to Yudha (2017), the Mortgage Rights Law Number 4 of 1996 only protects holders of Mortgage Rights as preferred creditors when confronted with other creditors as private persons. Because the preferred creditor has obligations to the state, the distinctive nature of the mortgage holder creditor (droit de préférence) is overlooked. Resistance to court rulings and initiating a lawsuit against the debtor are legal remedies that can be used to seek certainty in restoring their

rights include paying off of all debt. Then, according to Kusumawati's research (2021), creditors can bring a case against the debtor to the Court under Article 2 paragraph (1) of Law Number 37 of 2004 about Bankruptcy and Suspension of Debt Payment Obligations.
Although there have been several similar studies regarding bankruptcy law and the legal protection of creditors, the novelty carried out in this study is regarding the legal protection of creditors who are late in submitting their bills, so as to renew the understanding of creditors' safeguards in law in that situation. Based on the above background, it is important to understand civil law and bankruptcy law to protect creditors who are late in filing their bills. Thus, the purpose of this study is to determine the legal protection afforded to creditors who are late in filing their bills in bankruptcy under Indonesian civil procedural law.

METHOD

A normative legal research approach is used in this study. Normative juridical study is a type of legal research that only looks at secondary or library information (Muchtar, 2015). The normative legal approach relates to the applicable laws and regulations (Benuf & Azhar, 2020). Thus, normative law is a type of legal investigation method that focuses its examination on current legislation and rules pertaining to the legal issues under consideration (Sonata, 2014). Normative legal research is a type of scientific inquiry that employs literature and conceptual elements (Rahmawati, 2020).

DISCUSSION

Legal protection to creditors if the court declares the debtor bankrupt (Slamet, 2016). Creditors are people who, based on an engagement, have subjective rights, namely the rights they themselves have to demand that the debtor fulfill certain obligations or achievements and the right to submit these bills against the debtor's assets (Prayoga, 2014). According to Article 1311 of the Civil Code, all of the debtor's assets, both moveable and fixed, both existing and future, become collateral for all debts. With the establishment of Article 1311 of the Civil Code, either by itself or by law, a debtor provides security to each of his creditors for all of the debtor's assets (Atmajaya, 2018).
The precautions granted to creditors and their stakeholders must not undermine the debtor's stakeholders' interests. According to Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, bankruptcy can be described as the broad expropriation of a bankrupt debtor's property, the management of which is carried out by a curator under the supervision of a Supervisory Judge. Law No. 37/2004 allows a single creditor to file an application for bankruptcy; but, in the interests of other creditors, Law No. 37/2004 should not allow a bankruptcy judgement to be issued without the permission of other creditors. It must decide that the court's judgement on a creditor's bankruptcy petition must be founded on the permission of other creditors acquired at a specially called creditors' meeting (Hartono, 2016).
Other measures are for the benefit or protection of creditors in the form of provisions on general confiscation and actio pauliana. The goal of modern bankruptcy law is to safeguard concurrent creditors in order for them to achieve their rights in accordance with the premise that guarantees creditors' rights to the debtor's assets, namely pari passu pro rata parte. Therefore, that is why general confiscation is carried out after the bankruptcy declaration decision against the debtor or also known as collective execution (Anisah, 2009). Another attempt is actio pauliana, which is a legal right owned by creditors to annul transactions carried out by debtors for the advantage of these debtors that can impair their creditors' interests. For example, the debtor sells his property so that the object can no longer be confiscated or used as debt collateral to the creditor for the return of receivables. The actio pauliana provision is meant to protect creditors injured by the debtor's legal activity. Generally, actio pauliana is intended in the case of an agreement (debt and credit) between the debtor and the creditor, but it does not limit it to other actions. Actio pauliana makes the debtor's actions over the control of his wealth limited when the debtor is entering into an agreement with the creditor, while the debtor's acts can affect the creditor in terms of repaying the debtor's debt (Tambunan et all, 2015).
The regulation of actio pauliana is contained in Article 41 through Article 49 of the Bankruptcy and PKPU Law, while the Civil Code is regulated in Article 1341. Although actio pauliana is one of the efforts made by creditors to acquire their rights, it has been discovered that in the practice of executing the Bankruptcy Law, for a variety of reasons, the terms of Actio Pauliana have failed to sufficiently protect the rights of creditors, namely the difference in meaning between Article

1341 of the Civil Code and Article 41 of the Bankruptcy and PKPU Law and several obstacles faced by the curator, namely competency constraints in examining actio pauliana claims, constraints on the process of proving the actio pauliana application, constraints on the subjects who can file actio pauliana claims and constraints on the settlement of actio pauliana applications. As a result, creditors' legal protection is not maximized (Swari et all, 2014). Efforts to settle debts of debtors against creditors through bankruptcy can be completed in two ways, namely by means of peace (akkoord) and by means of bankruptcy property.

1. Peace

An insolvent debtor may propose a settlement, i.e. a restructuring and partial discharge of its debts to its creditors (Article 134 UUK). If the settlement is approved by the majority of creditors and the Commercial Court approves it in the form of homologation, the bankruptcy is terminated (Article 156 UUK). However, if there is no agreement, the security seizure becomes an executorial seizure (Article 168 UUK). If this happens, the bankruptcy proceeding has progressed to the insolvent stage (the bankruptcy estate is unable to make payments). And at this stage, verification of bills and search for bankruptcy assets and payment of debts are carried out completely (Pangestu, 2019). Regarding the requirements for bankruptcy in UUK No. 4 of 1998 regulated in Article 1 and in UUK No. 37 of 2004 regulated in Article 1 paragraph (1), in principle both regulate the same thing, only different article placement. The birth of this article is actually in order to provide more legal protection to creditors or creditors compared to the old bankruptcy provisions (Article 1), where there is a legal loophole that is often exploited by unscrupulous debtors, because in Article 1 of the bankruptcy regulation (the old one) the condition is only that the debtor stops paying, without any further explanation, it is then misinterpreted, it should be reserved for debtors who are truly unable to pay, rather than debtors who refuse to pay and then request bankruptcy (Muljadi & Widjaja, 2003).

2. Administration of Bankruptcy Estate

The sale of bankruptcy assets by the curator is one of the steps in the management of bankruptcy assets, and if the bankruptcy assets have been sold by the curator by auction, in accordance with Article 188 of Law No. 37 of 2004, if the Supervisory Judge is of the opinion that there is sufficient cash, the curator is ordered to make distributions to creditors whose debts have been matched. The curator must create a distribution list for approval by the supervisory court within the framework of debt repayment. The distribution list must include receipts and expenditures, including the curator's fees, creditors' names, the amount matched for each receivable, and the percentage that must be delivered to creditors. Concurrent creditors must be paid the proportion established by the supervisory judge. This means that all the debtor's property will become collateral for his debts to all creditors of the debtor's assets, which include movable and immovable (fixed) objects.

CONCLUSION

According to the study's findings, it is found that the protection of creditors is contained in Law Number 37 of 2004 and there are also other actions for the benefit or protection of creditors, namely the provisions on general confiscation and actio pauliana. Efforts to settle debts of debtors against creditors through bankruptcy can be resolved in two ways, namely by means of peace (akkoord) and by means of bankruptcy property.

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