



Legal Protection for Creditors Who Are Harmed by Debtors (Actio Pauliana Practice)

Mas Rara Tri Retno Herryani

Faculty of Law, Kadiri University, Kediri, East Java, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v10i7.4918>

Abstract

In essence, bankruptcy is an act by the curator in the form of a general confiscation of the entire debtor's assets that have been determined through a commercial court decision and the distribution of each creditor's receivables based on their level according to law in order to settle the debtor's debts. In bankruptcy practice, it is not uncommon for debtors to try to reduce bankruptcy assets by taking legal actions against their bankrupt assets, causing losses to creditors. To protect the rights of Creditors, actio pauliana is a means provided by law. The research that the authors use in this paper is normative legal research or so-called doctrinal legal research. In many cases, especially debtors in the form of banks, usually submit a process of delaying debt payment obligations to the debtor in order to achieve a settlement first, as PKPU aims itself. The Bankruptcy and PKPU regulations should contain what forms of legal protection will be obtained by creditors when they are harmed by the debtor himself. So when unwanted things happen, creditors can still be protected by these regulations, because if the debtor commits a legal action that is detrimental to the creditor, the creditor cannot do anything if there is no law to protect it.

Keywords: *Protection Creditors; Harmed Debtors*

Introduction

Often we hear the word bankruptcy or bankrupt. The word bankruptcy comes from French; failite which means jam in payment. However, in general bankruptcy is a condition or condition of a person, company or legal entity who is no longer able to pay his obligations in terms of his debts to the debtor. Bankruptcy and bankrupt are two different things because bankruptcy occurs due to experiencing enormous losses. . Bankruptcy tends to be unhealthy financial elements in a company and this condition will lead to continuous losses which will result in big losses for the company to go out of business.

Bankruptcy is actually a position in which a creditor is unable to pay off his debts. The debtor's negligence in fulfilling his obligations is called default (Kartini Muljadi at all,: 69). This non-current payment situation is caused by two factors carried out by the debtor, namely because the debtor has defaulted or indeed because the debtor is unable to pay off or pay, which is done intentionally to harm the

creditor. This form of non-performance can manifest in several forms, namely: the debtor does not carry out his obligations at all; the debtor does not carry out his obligations properly or performs his obligations but not as he should; the debtor does not carry out his obligations on time; and the debtor does something that is not allowed. In practice the enforcement of the Bankruptcy Law (UUK) and Suspension of Obligations for Payment of Debt. (PKPU) there are still various problems that cause the rights of creditors not to be fulfilled, namely debtors with bad intentions will try to hide their assets by transferring their assets to other parties. The debtor's assets that have become collateral are not only used to pay off his debts, but also become collateral for all other obligations arising from other engagements or obligations arising from law. This is regulated in Article 1131 of the Civil Code (KUHPer).

In essence, bankruptcy is an act by the curator in the form of a general confiscation of the entire debtor's assets that have been determined through a commercial court decision and the distribution of each creditor's receivables based on their level according to law in order to settle the debtor's debts. The provisions of Article 21 UUK expressly state that "Bankruptcy includes all of the debtor's assets at the time the bankruptcy decision was pronounced as well as everything that was obtained during the bankruptcy". Nonetheless, Article 22 of the UUK excludes some of the debtor's assets from bankruptcy assets. In addition, in Article 1131 of the Criminal Code it is stated that "All the debtor's assets, both movable and immovable, both those that already exist and those that will exist in the future, are the responsibility of the individual agreement". This really makes it clear that regarding the object of bankruptcy assets.

Actio pauliana refers to various techniques to provide protection to creditors when the debtor reduces his assets to avoid paying his debts. Actio pauliana is not a coherent judicial phenomenon. Many steps can be taken to overcome these problems. How to apply for bankruptcy Bankruptcy is a process in which a debtor who is experiencing financial difficulties to pay his debts is declared bankrupt by a court which in this case is a commercial court because the debtor can no longer pay his debts.' Article I paragraph (1) UUK and PKPU states that "bankruptcy is the general confiscation of all the assets of the Bankrupt Debtor whose management and settlement are carried out by the curator under the supervision of the Supervisory Judge as stipulated in this law". Furthermore, Article 2 paragraph (1) UUK and PKPU stipulate that: "A debtor who has two or more creditors and does not pay off at least one debt that is due and collectible is declared bankrupt by a court decision, either at his own request or at the request of one or several creditors"

In bankruptcy practice, it is not uncommon for debtors to try to reduce bankruptcy assets by taking legal actions against their bankrupt assets, causing losses to creditors. To protect the rights of Creditors, actio pauliana is a means provided by law. For example, in the case of Decision Number 1/Pdt. Sus - Actio Pauliana / 2018 / PN. Niaga.Mdn Jo Supreme Court Decision Number 89K/Pdt. Sus - Bankruptcy / 2019 / PN. Mdn where the Panel of Judges rejected the cassation request on the grounds that the evidence submitted could not prove that the bankrupt debtor knew or should have known that the sale and purchase would be detrimental to the creditor. However, as a result of buying and selling by debtors with third parties, bankruptcy assets are reduced to the detriment of creditors. Therefore, the purpose of the research was to find out and analyze the actio puliana can provide legal protection that is exercised by the curator against creditors, the boundaries between debtors with good intentions and debtors with bad intentions in transferring some of the bankruptcy assets and the application of the pauliana legal deed by the Panel of Judges. This study uses normative juridical research with statutory, case and legal doctrine approaches. The results of the study found that actio pauliana is a form of legal certainty over creditors' rights in bankruptcy. In the actio pauliana lawsuit, it is necessary to have criteria for a debtor with good intentions and a debtor with bad intentions.

To protect the interests of creditors who are harmed by legal actions taken by debtors, UUK and PKPU provide efforts for creditors to demand all their rights from debtors through Actio pauliana. Actio pauliana is a right that is owned by creditors in certain circumstances that can see as null and void the

actions that have been carried out by debtors that harm them (Sri Soedewi, 1975: 39). Many jurisdictions have some forms of such evasion measures in place, but these forms of action have been neglected in the literature on the control of related party transactions in insolvency, and, perhaps as a consequence, have not benefited from international initiatives to improve enforcement of domestic insolvency rules in cross-border cases. In the same country, the manner in which transactions are avoided in relation with bankruptcy proceedings the collective has benefited.

Research Methods

The research that the authors use in this writing is normative legal research or commonly called doctrinal legal research, namely research conducted by examining library materials or secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. All research related to law (legal research) is always normative (Peter Mahmud Marzuki, 2009: 35). In this study, law is often conceptualized as what is written in the statutory regulations (law in book) or law is conceptualized as a rule or norm which is a benchmark for people's behavior towards what is considered appropriate. However, actually law can also be conceptualized as what is in action (law in action). Norms here can also be in the form of positive law that applies as national statutory regulations (*ius constitutum*) or court decisions (judge made law).

Discussion

The issue of legal protection for creditors is one of the important points in bankruptcy. Legal protection for creditors is of course not only apart from fulfilling the rights owned by creditors from payment of receivables by the debtor, but certainty about the time of payment is also important in this case. In the case of accounts payable, there are several legal instruments that are commonly used by debtors in realizing their rights, namely in default lawsuits or requests for bankruptcy which have been regulated in Law no. 37 of 2004 concerning bankruptcy and PKPU. The difference between a lawsuit for default and a request for bankruptcy in cases of debt and credit is that the default decision only applies to the creditors listed in the decision, while in the case of a bankruptcy application, the decision applies to all creditors and debtors.

In many cases, especially debtors in the form of banks, usually submit a process of delaying debt payment obligations to the debtor in order to achieve a peace beforehand as the PKPU aims itself, but if there is a settlement that is not agreed upon by the creditor then the panel of judges is obliged to end PKPU and declare the debtor in a state of bankruptcy where all of the debtor's assets, both those that already exist and those that will exist in the future, will become collateral in fulfilling their debt obligations and of course in this case the debtor in managing his assets will be taken over by the curator so that the debtor does not commit bad faith by selling or transferring his assets to other people so as not to enter into bankrupt boendel.

In this case the theory of legal protection will be used as a tool to analyze how legal protection is for bankrupt creditors who have been harmed by debtors. This theory of legal protection is used because the law will protect the interests of a creditor who has clearly been harmed by the debtor himself by allocating that power to the law to act in the framework of his interests and that interest is the target of rights, in this case the interest is to provide legal protection for creditors who have been harmed.

Then, the theory of legal protection according to Mohammad Isnaeni is the theory of civil legal protection. Mochammad Isnaeni argues that based on the source, legal protection can be divided into two types, namely (Moch Isnaeni, 2016: 159):

1. Internal Legal Protection.

The form of internal legal protection for creditors who are harmed by the bankruptcy debtor is an agreement agreed by both parties, as follows:

- a. The obligation to pay compensation for the debtor to the creditor. The compensation must be in the form of money; this is done to avoid difficulties in assessing if it is replaced in another form.
- b. Cancellation of the agreement by both parties. In this case there is a condition for the annulment of a contract.

2. External Legal Protection

The form of external legal protection for creditors who are harmed by the bankruptcy debtor is as follows:

- a. Selling part of the debtor's assets during the process of delaying debt payment obligations (PKPU)

During the process of delaying debt payment obligations (PKPU), it would be nice to sell some of the debtor's assets that have been agreed upon by both parties, namely the debtor and creditor. The sale of these assets is of course a form of legal protection against bankruptcy creditors in terms of paying off their receivables, even though they do not cover all of the debtor's own debts. According to the author, the sale of the debtor's assets while the PKPU process was still in progress did not conflict with the law, both the bankruptcy laws contained in Law no. 37 of 2004 as well as the law on mortgage rights contained in Law no. 4 of 1996. Assets that are used as collateral with mortgage rights which incidentally apply to executorial titles which can be directly implemented without going through a court and are final and binding on the parties to carry out the decision which has been agreed upon for the object and the sale of the asset by both parties taking into account that selling the asset will not harm both parties because it is sold at the maximum price in order to reduce the debtor's own debt.

- b. The debtor was declared bankrupt as a result of a peace plan that was not agreed upon by the creditors.

Article 1 paragraph (1) of the Bankruptcy and Suspension of Obligations for Debt Payment Law (UUKPKPU) which states that: "Bankruptcy is a general confiscation of all the assets of a bankrupt debtor whose management and settlement is carried out by a curator under the supervision of a supervisory judge as stipulated in the law this law". From the affirmation of this article, it has been stated that when a bankruptcy occurs, all assets of the debtor, both existing and those that will be in the future, will become collateral in repayment of assets in order to realize the certainty of the creditors' rights to repay their debts.

He stated that the debtor's bankruptcy is a form of protection of creditor's rights because if the debtor is already in a state of bankruptcy, the right to control and manage his assets is revoked in order to prevent bad things that might happen, such as the debtor selling his assets, the debtor embezzling his assets by various modes such as diverting his wealth to other people so that it does not enter into a bankrupt boedel. If the debtor has been declared bankrupt, a curator will be appointed to manage and settle the bankruptcy assets as stipulated in Articles 69 to 79 of the Bankruptcy and Postponement of Obligations for Payment of Debt Laws (UUKPKPU).

The thing that becomes a big problem then is if in the bankruptcy it turns out that the debtor's assets are not sufficient to cover all debt bills owned by the debtor. From the creditor side, of course, this is something that can harm the creditor itself. The next problem is in terms of the time limit for settling the debts of debtors in the bankruptcy process because the Bankruptcy and PKPU laws do not regulate the maximum duration of the bankruptcy process, which is regulated only for

the maximum processing time for delaying debt payment obligations (PKPU), namely 270 days, so the law The bankruptcy law should also regulate the length of the bankruptcy process to realize time certainty for the bankruptcy process because if the bankruptcy process is not limited in length, this can certainly be detrimental to creditors.

c. The debtor is declared bankrupt so that the request for review submitted by the debtor is rejected.

The rejection of the review submitted by the debtor is a form of protection for the interests of the debtor's rights, because if the review is accepted, the debtor's bankruptcy status will be revoked and the process of delaying debt payment obligations (PKPU) will continue and this can take a long time. . The length of the legal process that must be taken by creditors to obtain fulfillment of their rights certainly has an impact on the creditor's business itself, especially if the creditor is in the form of a bank which only manages public funds, namely collecting and channeling money when the money is channeled in the form of a credit agreement which then the debtor is in arrears in paying debt, of course the circulation of money in the bank will be disrupted.

Refusal to reconsider is the right thing to do because long before the bankruptcy decision is handed down to the debtor, the debtor has definitely gone through a series of processes for delaying debt payment obligations (PKPU), both temporary and permanent, which can take a long time. In the PKPU process, of course, it is only used to propose a reconciliation plan by the debtor, which time should be used to the fullest extent possible, and the debtor should have submitted a reconciliation plan that presumably can be approved by most of the creditors. It is appropriate for the debtor to know that if the peace plan is not successful then the panel of judges will definitely end the process of suspending debt payment obligations (PKPU) and the debtor must also be declared bankrupt.

d. Revoking the debtor's bankruptcy status so that the appeal filed by the debtor is rejected.

After the bankruptcy status was declared by the Judge of the Commercial Court against the debtor with the consideration that based on the report of the curator and the supervisory judge who had conducted a search of assets on behalf of the debtor it was found that it was not possible to pay the debt so that the Judge of the Commercial Court had to revoke the debtor's bankruptcy status. Revoking the bankruptcy status of the debtor is the right choice because if it is true that the debtor's assets are not sufficient to pay off his debts, the commercial court must revoke the bankruptcy statement against the debtor, this is regulated in Law no. 37 of 2004 Article 19 paragraph (1):

"In the event that the bankrupt assets are not sufficient to pay bankruptcy costs, the court on the recommendation of the supervisory judge after hearing the temporary creditor committee if any, and after summoning the debtor or the debtor, may decide to revoke the bankruptcy statement decision."

Conclusion

Legal protection for creditors who are harmed by debtors has 2 types, namely internal legal protection and external legal protection. There are two forms of internal legal protection for creditors who are harmed by debtors:

1. The obligation to pay compensation for the debtor to the creditor. The compensation must be in the form of money, this is done to avoid difficulties in assessing if it is replaced with another form,
2. Cancellation of the agreement by both parties. In this case there is a condition for the cancellation of an agreement.

There are 4 forms of external legal protection for creditors who are harmed by debtors:

1. Selling part of the debtor's assets at PKPU,
2. It was declared that the debtor was bankrupt as a result of a peace plan that was not agreed upon by the creditors,
3. The debtor is declared bankrupt so that the request for review submitted by the debtor is rejected and,
4. Revoking the debtor's bankruptcy status so that the appeal filed by the creditor is rejected.

The Bankruptcy and PKPU regulations should contain what forms of legal protection will be obtained by creditors when they are harmed by the debtor himself. So when unwanted things happen, creditors can still be protected by these regulations, because if the debtor commits a legal action that is detrimental to the creditor, the creditor cannot do anything if there is no law to protect it.

References

Books

Kartini Muljadi. (2001), *Penyelesaian Utang Piutang Melalui Pailit dan Penundaan Kewajiban Pembayaran Utang*. Bandung.

M. Hadi Shubhan, (2008), *Hukum Kepailitan: Prinsip, Norma dan Praktik Peradilan*, Kencana, Jakarta.

Peter Mahmud Marzuki. (2014). *Penelitian Hukum (Edisi Revisi)*. Jakarta: Prenada.

Media Group.

Sri Soedewi Sofwan,. (1975). *Hukum Perdata : Hukum Perundangan*. Liberty.

Yuhelson. (2019). *Hukum Kepailitan di Indonesia*. Gorontalo: Ideas Publishing.

Journal

Levinthal, Louis Edward. "The Early of Bankruptcy Law. University Of Pennsylvania Law and American Law Register". No. 5/6 Vol 66.

Linna Tuula. "Actio Pauliana-"Actio Europensis" Some Cross-Border Insolvency Issues". No. 1 Vol. 10 (2015).

Mantili, Rai. "Actio Pauliana sebagai upaya perlindungan bagi kreditor menurut kitab undang-undang hukum perdata dan undang-undang kepailitan dan penundaan kewajiban pembayaran utang (PKPU)". *Jurnal Hukum Acara Perdata*. No. 2 Vol 6 (2020).

Constitution

Kitab Undang-Undang Hukum Perdata.

Undang-Undang No. 37 Tahun (2004) Tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal. This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).