

## JURIDICAL REVIEW OF THE JUDGE'S CONSIDERATION OF NOT ACCEPTING THE BANKRUPTCY APPLICATION AGAINST

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### Abstract

Based on the problem of bankruptcy and the postponement of debt payment obligations where PT. Fuji Smba Indonesia filed a Bankruptcy Application against PT. Amanda Gumulung Sejahtera is due to her inability to pay her debts that have matured or the Suspension of Debt Payment Obligations (PKPU), in this case what is the legal basis for the judge's consideration of not accepting the bankruptcy application against Pt. Amanda Gumulung Sejahtera and the legal consequences for the debtor for the delay in debt payment obligations. The purpose of writing is to find out the legal basis for the judge's consideration of not accepting the bankruptcy application and the legal consequences for the debtor for the delay in debt payment obligations. This research uses a normative legal approach method or library legal research which is carried out by researching literature materials. Data sources consist of secondary data including primary, secondary and tertiary legal materials. The conclusion is that PT. Amanda Gumulung Sejahtera has met the bankruptcy requirements, namely having more than one creditor and the existence of due and collectible debts that have been regulated in Law Number 37 of 2004 concerning the Postponement of Debt Payment Obligations.

**Keywords:** Bankruptcy, Legal consequences, PKPU

## INTRODUCTION

In 1997-1998 there was a monetary crisis in Indonesia which affected the national economy, so that the business world experienced great difficulties in settling debts and receivables to continue its activities and harm the community. In mid-1998 the Indonesian currency touched Rp. 16,000.00 per US \$ (US dollar). At that time, Indonesia's economic growth conditions experienced a downturn which was initially positive around 6-7% to minus 13-14%, the inflation rate increased from below 10% to around 70%, and many companies in Indonesia had difficulty paying their debts to creditors, resulting in many companies experiencing bankruptcy (bankruptcy). (kepailitan s. h., 2004)

In that year, those who suffered by feeling the impact of the crisis that hit the business world such as companies that were involved in debts that should have been the debtor's obligation to fulfill or repay, but the debtor stopped paying their debts or in other words did not fulfill their obligations. The state of cessation of debt payment can occur because the debtor is unable to pay or does not want to pay. So one of the legal foundations that is a means for settling debts and receivables and has a relationship with the bankruptcy of the business world is the laws and regulations on bankruptcy. This law was created with the aim of providing a clear and definite path to the settlement of unpayable debts and aimed to protect creditors. (kepailitan k. k., 2017)

In this case, the Supreme Court which examined and adjudicated the bankruptcy case at the Cassation level that PT. Fuji Smbe Indonesia (the applicant) Bankruptcy is a company engaged in the Electrical Control and Distribution Equipment Industry, while PT. Amanda Gumulung Sejahtera (Respondent) Bankrupt is a Mechanical, Electrical and General Goods Contracting Company.

In 2018, PT. Fuji Smbe Indonesia (Applicant) and PT. Amanda Gumulung Sejahtera (Respondent) conducts a sale and purchase in which the Bankruptcy Applicant as the Seller, sells to the Bankruptcy Respondent as the Buyer of the goods required by the Bankruptcy Respondent to carry out its business activities as a mechanical, electrical contractor and procurement of general goods, with the price and terms and conditions of the sale and purchase that have been mutually agreed, that the sale and purchase between the Bankruptcy Applicant and the Bankruptcy Respondent is carried out based on the Order Buyer or Purchase Order and Agreement No: 001/FUJI-AGS/X/2018 between PT Amanda Gumulung Sejahtera and PT Fuji SMBE Indonesia dated November 2, 2018.

Based on the requirements of the sale and purchase agreement between the Bankruptcy Applicant and the Bankruptcy Respondent as referred to in the provisions of Article 1457 of the Civil Code, it is clear that it has been fulfilled, as has been explained in the form of evidence at trial where the Bankruptcy Respondent has ordered goods from the Bankruptcy Applicant Purchase Order and the Bankruptcy Applicant has carried out its obligation to provide and deliver the goods and has been received by the Bankruptcy Respondent in the form of a Letter of Passage Despatch Notes, with the obligation for the Bankruptcy Respondent to pay to the Bankruptcy Applicant in accordance with the purchase price agreed upon in the invoice Bill Memorandum and on the specified due date. In the details of the terms and conditions of the Goods Sale and Purchase Agreement between the Bankruptcy Applicant and the Bankruptcy Respondent which is the basis for the debt incurred by the Bankruptcy Respondent to the Bankruptcy Applicant.

According to the bankruptcy Applicant's confession, the debt owed by the bankruptcy respondent based on the bankruptcy applicant's bill to the tailgate respondent for the purchase of goods from the Bankruptcy Applicant that must be paid and has passed the due date is Rp. 52,996,354,910,- (fifty-two billion nine hundred ninety six million three hundred fifty four thousand nine hundred and ten rupiah). That then from July 31, 2019 until the date this Bankruptcy Statement Application Letter was made, the Bankruptcy Respondent did not carry out its payment obligation to the Bankruptcy Applicant to make payment for the purchase of goods that had been made by the Bankruptcy Respondent to the Bankruptcy Applicant based on the Goods Purchase and Sale Agreement. (kepailitan k. k., 2017)

That based on the above, the Bankruptcy Applicant is a Debtor in accordance with the meaning of Article 1 number 3 of the Bankruptcy Law and PKPU, namely:

*"A debtor is a person who has a debt because of an agreement or law whose repayment can be collected in court".*

In fact, based on the Financial Balance of the Bankruptcy Respondent for the financial year ended December 31, 2021, it can be known that the Bankruptcy Respondent also has debts to other creditors, as follows:

1. PT. Bank Rakyat Indonesia (Persero) Tbk., with a total debt of Rp. 4,768,516,067 (four billion seven hundred and sixty-eight million five hundred and sixteen thousand sixty-seven rupiah);
2. PT. Bank Mandiri (Persero) Tbk., with a total debt of Rp. 5,808,074,517,- (five billion eight hundred eight million seventy-four thousand five hundred and seventeen rupiah);

3. PT. Intekom Indonesia, with a total debt of Rp. 1,797,910,644 (one billion seven hundred and ninety seven million nine hundred ten thousand six hundred and forty four rupiah);

That based on Article 2 paragraph (1) of the Law on Bankruptcy and Postponement of Debt Payment Obligations (PKPU) which states:

*"A debtor who has two or more creditors and does not pay in full at least one debt that has fallen due and can be collected, is declared bankrupt by the Court's decision, either on his own application or on the application of one or more of his creditors".*

## RESEARCH METHOD

In this study, the author uses a normative juridical approach method. The reason the author uses this method is because the main data used is secondary data, namely in the form of data obtained based on literature studies and supporting data is peripheral data. The data that has been obtained is then analyzed qualitatively using a systematic interpretation method, namely interpreting laws and regulations by relating them to other legal regulations or other laws with the entire legal system so that they must not deviate from the provisions. To obtain the necessary data, the author conducts literature research to obtain secondary data by collecting data obtained from journals, internet media, and books.

## RESULTS AND DISCUSSION

### Legal Consequences for Debtors of Postponement of Debt Payment Obligations Based on Law No. 37 of 2004 concerning Bankruptcy.

Based on Article 1 number 1 of the Law on Corruption and PKPU, bankruptcy is the general confiscation of all debtors' assets whose management and disposal are carried out by curators under the supervision of supervisory judges. The formulation of this article can be concluded that bankruptcy is a general confiscation of all the assets of the bankrupt debtor. The conditions for filing a bankruptcy application are stipulated in article 2 paragraph (1) of the Bankruptcy Law and the Suspension of Debt Payment Obligations that submit that a bankruptcy application can be filed if the debtor has two or more creditors and does not pay any of his debts to creditors and is due to be collectible. A bankruptcy application can be filed with the commercial court by parties with authority such as creditors, debtors, bank indonesia, the minister of finance, the capital market supervisory agency, and prosecutors in the public interest. (Mantili R, 2020)

#### a) Consequences of bankruptcy decisions

A bankruptcy decision can have legal consequences for the bankrupt debtor, one of which is that the debtor's authority over the assets is limited. Bankrupt debtors can only do acts that provide benefits in increasing wealth which is then used as bankruptcy bodeble. However, if the bankruptcy debtor's actions have the potential to cause losses to the bankruptcy debtor's assets, the debtor can cancel the legal act that has been committed by the bankruptcy debtor. The cancellation is relatively similar to that regulated by article 41 of the bankruptcy law and PKPU. It was not only done by the curator to ask for the cancellation called actio paulina. This cancellation aims to prevent bankruptcy assets from decreasing and protect the interests of debtors, so that they are not harmed.

#### b) Boedel bankruptcy

According to boedel, bankruptcy is the property of an individual or body that has been declared bankrupt or bankrupt. Boedel bankruptcy was carried out after the commercial court decided on bankruptcy against the debtor. Furthermore, the management of assets belonging to bankrupt debtors will be handed over to the bankrupt estate as the curator as stipulated in article 100 of Law No. 37 of 2004.

If the debtor is unable to pay anymore to fulfill his obligation to pay his debts, the debtor's assets must first be determined by the court as a bankruptcy boedel. Furthermore, curators are required to record bankruptcy bonds a maximum of 2 days after the issuance of their letter of appointment as curator. Meanwhile, the supervising judge will supervise the curator in taking care of the settlement of bankruptcy assets.

The assets of bankruptcy debtors that can be used as bankruptcy debtors must meet several requirements, namely:

1. The debtor must be able to prove that the assets used as bankruptcy boedel belong to him and are legally valid. If this condition cannot be met, the property cannot be used as a bankruptcy bodele. (Article 1131 of the Criminal Code).
2. The debtor's property is not obtained by committing an unlawful act. If the debtor is caught committing the act, the debtor is obliged to provide compensation to the victim. One form of compensation is in the form of bankruptcy boedel (Article 1365 of the Criminal Code).

3. The existence of a sale and purchase deed will be null and void if it does not meet the objective elements and does not meet the requirements for halal reasons. If this agreement is null and void to commit another legal act, the act becomes defective and must be null and void (1320 of the Criminal Code).

c) Bankruptcy of Boedel

In the context of the settlement and settlement of bankruptcy boedels, the curator has the authority to carry out the settlement, even though later the court decision will be submitted for cassation or review. The curator can also determine what assets can be sold or stored temporarily.

Bankruptcy assets are sold at the highest price, thus curators must be creative in selling them. The proceeds of the sale can be in addition to the obligations collected and submitted to each creditor. Meanwhile, the decision to keep the bankruptcy boedel property, if its value will increase in the future.

The order of priority for the distribution of the proceeds of the sale of bankruptcy boedel to each creditor is as follows:

1. Creditors are preferred because they have privileges and have a higher position.
2. Concurrent creditors because they have unpaid liens, fiduciary guarantees, liens, and mortgages.

With the issuance of the decision by the Central Jakarta Commercial District Court, the first decision of the Commercial Court in the Decision of the Panel of Judges that the debtor loses its right to postpone the obligation to pay debts, In the provisions of Article 24 paragraph (1) of Law No. 37 of 2004 Bankruptcy which regulates:

*"The debtor for the sake of the law loses his right to control and manage his assets which are included in the bankruptcy assets".*

Therefore, the legal consequences for bankrupt debtors for individuals are for the sake of the law of losing their right to control and manage their assets. In the case of the bankruptcy declaration decision, a general seizure of bankruptcy occurs. All personal assets declared bankrupt will be managed and settled by the curator under the supervision of the supervising judge, used as a joint guarantee for creditors.

### **The legal basis for the Supreme Court Judge's Consideration of not accepting the bankruptcy application against PT. Amanda Gumulung Sejahtera**

The purpose of the bankruptcy law that creditors use to obtain their rights is to guarantee the equal distribution of the debtor's assets among creditors and prevent debtor actions that are considered detrimental to creditors, on the other hand, the advantage for debtors is to provide protection for debtors in good faith by way of debt forgiveness. As one of the means for a creditor to be able to recover his receivables from the debtor, the bankruptcy process uses several efforts, one of which is the use of coercive efforts by the body in the settlement of bankruptcy decisions issued by the Commercial Court is one of the efforts that the curator can do in his duties. The Curator has the duty to manage and/or settle bankruptcy assets, as stipulated in Article 69 paragraph (1) of the Bankruptcy Law. The application of coercive efforts is carried out on a bankrupt debtor who does not have good faith in order to pay off his debt to creditors so that the interests of creditors are disturbed. The following are the requirements for a curator to apply for a compulsory agency, including:

- 1) There must be at least two creditors (Concursus Creditorium). In general, there are 3 (three) types of creditors known in civil law, which are as follows:
  - a. Concurrent creditors, concurrent creditors are regulated in Article 1132 of the Civil Code which has the right to *pari passu* and *pro rata*. Which means that the creditors jointly obtain repayment (without any precedence) which is calculated based on the amount of receivables of each creditor to the debtor as a whole.
  - b. Preferred creditors are creditors who have privileges, namely a right given by law to a debtor so that the level is higher than that of other debtors, solely based on the nature of the receivables (Article 1134 of the Civil Code).
  - c. Separatist creditors, namely creditors who hold material security rights, which in the Civil Code are called pawns and mortgages.
- 2) There must be debt. The definition of debt refers to the bankruptcy law and PKPU Article 1 paragraph (6).
- 3) The debt terms must be due and collectible. Article 2 paragraph (1) of the Bankruptcy Law and PKPU do not differentiate, but unite the terms of a debt that has matured and a debt that can be collected.
- 4) The debtor must be in an insolvent state, that is, not paying more than 50% of its debts. The debtor must have stopped paying to his creditors, not just not paying to one or two people.

In the case of PT Amanda Gumulung Sejahtera, there are facts that clearly explain that PT Amanda Gumulung and PT Fuji Smbe are business partners. Where pt fuji smbe is a company engaged in the electricity distribution control equipment industry, while Pt. amanda gumulung sejahtera is an electrical contractor company for the procurement of general goods.

In 2018 Pt.fuji smbe and Pt.amanda gumulung sejahtera entered into a sale and purchase agreement that had been agreed upon where pt fuji smbe as a seller of electrical goods and pt.amanda gumulung as a buyer. On October 28, 2018, pt. Amanda Gumulung ordered the product to PT Fuji SMBE immediately sent the product with PO with no: 01/FUJI-AGS/2018 dated November 2, 2018. And as time went by, reports circulated from the applicant that pt. amanda gumulung was due and had not paid its debt until the date specified in the contents of the collective agreement.

According to the acknowledgment of the bankruptcy application filed based on the buyer's order and Agreement no: 01/FUJI-AGS/X/2018 between PT Amanda Gumulung Sejahtera and PT. Fuji Smbe Indonesia dated November 2, 2018 Sale and Purchase Agreement 01/2018, while the Respondent's Debt Instrument attached includes 3 (three) products that have matured in the contents of PO No: 01 / FUJI-AGS / X / 2018 between PT Amanda Gumulung Sejahtera and PT Fuji SMBE Indonesia dated November 2, 2018 has entered into an agreement on the sale and purchase of a mutual agreement between the two parties at that time. The Sale and Purchase Agreement 001/2018 is an agreement for the work on the Luwuk and Toili Projects while the Luwuk Project has been completed and the Toili Project is still in the process until now it has not been completed. That way, it can be concluded that the debt of the bankruptcy respondent has not been collectible and mature. Based on the Bankruptcy Petitioner, PT. Amanda Gumulung Sejahtera was declared bankrupt because the Bankruptcy Respondent had not paid off the remaining payment obligations that had been due to the Bankruptcy Applicant in the amount of Rp. 52,996,354,910,- (fifty-two billion nine hundred and ninety-six million three hundred and fifty-four thousand nine hundred and ten rupiah).

Based on the requirements of the bankruptcy law, it has not been sufficiently proven, because based on the evidence submitted by the Applicant, it turns out that the existence of Other Creditors is only based on the Financial Balance of the Bankruptcy Respondent for the financial year ending December 31, 2021. based on the Confirmation Letter or Verification of P-15, P-16 evidence products and also intangible the Applicant received a Power of Attorney from another Creditor, namely PT. Bank Mandiri (Pesero) Tbk, PT Bank Rakyat Indonesia (Pesero) Tbk, and PT. Intekom Indonesia to file a bill against the Respondent in the trial of this case.

That for these reasons, according to the Tribunal, the existence of the Respondent's Debt to the Applicant and the existence of Other Creditors against the Respondent cannot be proven simply. that because the condition of the existence of the Respondent's Debt to the Applicant and the existence of Other Creditors against the Respondent cannot be proven simply as required by Article 8 paragraph (4) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, so that the Bankruptcy application submitted by the Bankruptcy Applicant has no legal grounds and must be rejected.

## CONCLUSION

Legal Consequences for Debtors to Postpone Debt Payment Obligations Based on Law Number 37 of 2004 that the legal arrangement of the commercial court gives a decision to debtors and creditors to deliberate on their debts and receivables with the technical payment of debts through a court determination that provides legal certainty is final and binding, meaning that upon the decision of the commercial court, bankruptcy and PKPU can be submitted for applicable legal remedies. The legal basis for the postponement of debt payment obligations is regulated in Law No. 37 of 2004 concerning Bankruptcy and PKPU. The legal consequences of the bankruptcy status granted by the court are that the debtor loses the right to control and manage the bankruptcy property and transfers to the curator or the heritage office.

Based on the legal basis of the Supreme Court Judge's Consideration for this reason, the existence of Other Creditors according to the Tribunal has not been sufficiently proven, because based on the evidence submitted by the Applicant, it turns out that the existence of Other Creditors is only based on the Financial Balance of the Bankruptcy Respondent for the financial year ending December 31, 2021 or based on the Confirmation Letter or Verification of P-15 evidence products, P-16 and also not real, the Applicant received a Power of Attorney from another Creditor, namely PT. Bank Mandiri (Pesero) Tbk, PT Bank Rakyat Indonesia (Pesero) Tbk, and PT. Intekom Indonesia to file a bill against the Respondent in the trial of this case. The Plaintiff stated that there was a Debtor to the Applicant that was due and there were Other Creditors against the Respondent. That the panel of judges decided that due to the absence of bankruptcy conditions, the existence of the Respondent's Debt to the Applicant

and the existence of Other Creditors against the Respondent could not be proven simply. As required by Article 8 paragraph (4) of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, so that the bankruptcy application submitted by the Bankruptcy Applicant has no legal grounds so it must be rejected.

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