

JURIDICAL REVIEW OF BANKRUPTCY CONDITIONS AND DELAY OF DEBT REPAYMENT OBLIGATIONS

Anwar Hidayat^{1,*}, Muhamad Abas², Dalih Purwana³

^{1,2,3}Faculty/ of Law, Buana Perjuangan Karawang University, Karawang, Indonesia
anwar.hidayat@ubpkarawang.ac.id^{1,*}, Muhamad.abas@ubpkarawang.ac.id²
hk19.dalihpurwana@mhs.ubpkarawang.ac.id³

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Abstract

Bankruptcy results in a general confiscation of all assets of the bankrupt debtor (budel bankrilit). An important phase in the bankruptcy process is the insolvency stage. Based on the explanation of Article 57 paragraph 1 of the Bankruptcy Law and PKPU, what is meant by insolvency is the state of inability to pay, this is in line with the Central Jakarta Commercial Court Decision Number: 44 / PDT. SUS. PAILIT/20 20/PN. TRADE. JKT. PST. That PT. Pazia Retailindo was declared bankrupt. Application for bankruptcy filed by PT. Dana Kaya through its Directors, namely Sri Dewi Endang Mumpuni and Ambar Bawono on October 20, 2020, was represented by the appointed legal representative, namely PARLIN SIHOMBING, S.E., S.IP., S.H. Advocate at the Law Firm BELASSANDRO TORUAN & PARTNERS. The problem raised in this study is the condition of Insolvency of PT. Pazia Retailindo before the bankruptcy decision, and what underlies the judge's consideration in the bankruptcy decision Number: 44 / Pdt.Sus.Pailit / 20 20 / Pn.Niaga.Jkt.Pst which refers to Law Number 37 of 2004. This research uses a Normative Juridical approach. The result of this study is that the legal considerations used by the panel of judges in deciding the bankruptcy case of PT. Pazia Retailindo complies with Law Number 37 of 2004 concerning Bankruptcy and PKPU, namely the fulfillment of all elements contained in Article 2 Paragraph 1 and Article 8 Paragraph 4 of the Bankruptcy Law and PKPU.

Keywords: Bankruptcy, Insolvency, Obligations

INTRODUCTION

Articles are In terms of business, bankruptcy or bankruptcy is a deterioration in the financial condition of a company, which can result in poor performance for a certain period of time, which further causes the company to lose its resources and funds.

One important phase of the bankruptcy process is the insolvency phase, which is when the debtor is no longer able to pay his debts. This insolvency phase is important because in this phase the fate of the bankrupt debtor is determined, whether the debtor's assets will be divided entirely to pay his debts, or can be resolved through a peace plan / debt restructuring plan. If the debtor has been declared bankrupt, the debtor is actually bankrupt and his property will be quickly distributed. But that does not mean that the bankrupt company's business cannot continue. According to the Bankruptcy Law, a debtor can be declared bankrupt if it is in an Insolvent condition, this is because the debtor is experiencing a financial crisis so that it cannot pay all its debts to creditors. As explained in Article 57 (1) of the Bankruptcy Law and PKPU, the definition of Insolvency is:

"That what is meant by 'insolvency' refers to the state of being unable to pay."

A debtor or someone who cannot pay debts to all his creditors, not just to one creditor and is unable to pay in full, then the debtor is already in a state of insolvency. From the explanation of debtors who are in an insolvent state, legal entities or individuals who can be declared bankrupt or insolvent are:

1. Insolvency occurs only if the debtor cannot pay off all his debts;
2. Insolvency is a condition where debtors who have the amount of debt that exceeds the entire amount of their assets.

In the Insolvency phase is an important stage because in that phase determines the fate of the bankrupt debtor. Whether the Debtor's assets will be liquidated to cover his debts, or the Debtor can still continue his business with a solution to the acceptance of a peace plan or debt restructuring. If the debtor is insolvent, then the debtor is effectively in bankruptcy and his assets will be liquidated, although this does not mean that the activities of the bankrupt company cannot be continued.

A Limited Liability Company is a legal entity that has a central role in economic traffic. As a central actor, a limited liability company has a very important role for the development of the economic sector. If a limited liability company bears problems, then related to its role will affect a country's economy. These problems prevent the company from continuing to operate. The inability of a business to continue operating will have far-reaching consequences, such as the ability to repay business debts, the ability to generate profits (which is the cornerstone of sustainable business activities), and the ability to support the viability of the company.

Based on the decision of the Central Jakarta Commercial Court Number: 44 / Pdt.Sus-Pailit / 2020 / PN Niaga. Jkt.Pst. PT Pazia Retailindo Limited liability company legal entity engaged in trade, export and import of industrial machinery has been declared bankrupt. The bankruptcy application was filed by PT. Dana Kaya through its Directors, namely Sri Dewi Endang Mumpuni and Ambar Bawono on October 20, 2020, represented by the appointed legal representative, namely PARLIN SIHOMBING, S.E., S.IP., S.H. Advocate at the Law Office of BELASSANDRO TORUAN & PARTNERS. The reason for PT. Dana Kaya and Ambar Bawono in their bankruptcy petition is that PT Pazia Retailindo has a debt of Rp750,000,000.00 (seven hundred and fifty million rupiah) to PT. Rich Fund as stated in the Statement and Acknowledgement of Debt dated February 2, 2016. Where based on the Statement Letter and Acknowledgment of the Debt the due date of repayment must be made on April 2, 2016. And has a debt of Rp300,000,000.00 (three hundred million rupiah) to Ambar Bawono as stated in the Debt Statement Letter dated March 23, 2016. Where based on the Statement Letter and Acknowledgment of the Debt the due date of repayment must be made on June 24, 2016.

There are several things that make PT Pazia Retailindo's inability to pay off its debts to creditors are: The Bankruptcy Respondent has tried to carry out its business activities as well as possible but due to financial difficulties in its business, the Bankruptcy Respondent's business is no longer operating.

RESEARCH METHOD

This research uses a normative juridical approach, namely normative legal research, or research that analyzes both laws written in books and court decisions made by judges in trials. The author uses research related to laws and regulations, as well as court decisions. This method is used to find out how the application of bankruptcy laws and regulations and PKPU is implemented in Indonesia.

The research method used in this research is to conduct case studies on existing problems. Case studies or case approaches focus on the peculiarities of a case in an event involving individuals, cultural groups. In this study, the author also used a statute approach. The legislative approach is a study that prioritizes legal material in the form of laws and regulations as the main reference in

conducting research. Research with a statutory approach (statute approach) is carried out by looking at all laws and regulations related to problems (Legal Issues) that arise from a case.

The types of data used in this study are those sourced from primary legal materials, secondary legal materials and tertiary legal materials. To complete the data so that the testing of the results of this research is used, a data collection procedure consisting of secondary data, namely secondary data collection is carried out through conducting library research literature studies. Literature studies are used to obtain the direction of thought and research objectives carried out by reading, quoting, and studying research tools in the form of literature studies.

RESULTS AND DISCUSSION

The Insolvency State of PT Pazia Retailindo before the bankruptcy decision Number: 44 /Pdt.Sus.Pailit/2020/Pn . Trade. Jkt.Pst

The conditions for debtor bankruptcy stipulated in bankruptcy law are very important, but the conditions regulated by bankruptcy law are very general and not specifically regulated, so debtors who cannot pay their debts are likely to be declared bankrupt by the court. Too easily bankrupting debtors will affect the economic system and the business world in the future. Bankruptcy provisions according to the Indonesian Bankruptcy Law, namely Law Number 37 of 2004 concerning Bankruptcy and PKPU are regulated in Article 2 paragraph (1). Based on Article 2(1), UUK-PKPU:

"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 a decision of the competent court as referred to in Article 2, either on his own application, or on the application of one or more of his Creditors."

From the provisions of Article 2 paragraph (1) of the UUK-PKPU, an application for bankruptcy declaration against a Debtor can only be submitted if it meets the following conditions:

1. The Debtor against whom the application is filed must have at least two Creditors; or in other words must have more than one Creditor.
2. The Debtor does not pay in full at least one debt to one of its Creditors.
3. The unpaid debt must have fallen due and be collectible (due and payable).

A debtor is declared Insolvent only if the total value of his liabilities (his debts) exceeds the value of his assets (his assets). This situation is the balance sheet insolvency. Balance sheet insolvency combined with cash flow insolvency results in the debtor's financial position not having sufficient liquidity to pay its debts on time because the debtor's cash inflows are smaller than cash outflows, even though the value of his assets is still higher than the value of his debt (not balance sheet insolvency). If the debtor is unable to pay his debt due to cash flow insolvency, the case should not be heard in commercial court but in ordinary civil court. The case of non-payment of debts of Debtors who do not experience balance sheet insolvency to their Creditors is a case of default not bankruptcy.

With regard to the insolvency requirements for Debtors who can be declared bankrupt, it is possible to grant Suspension of Debt Payment Obligations (PKPU) specified in Article 222 of the UUK-PKPU. Article 222 paragraph (2) and paragraph (3) of the UUK-PKPU determines:

1. Debtors who cannot or foresee not being able to continue paying their overdue and collectible debts, may request a postponement of debt repayment obligations, with a view to submitting a peace plan that includes an offer of partial or full payment of the debt to the Creditor.
2. Creditors who expect that the Debtor is unable to continue paying its overdue and collectible debts, may request that the Debtor be granted a delay in debt repayment obligations, to enable the Debtor to submit a peace plan that includes an offer of partial or full payment of the debt to its Creditors.

The debtor is in a state of insolvency if the value of all his debts exceeds the sum of all his assets. However, if the value of all assets of the Debtor still exceeds the amount of all debts, thus all assets of the Debtor if liquidated have not exceeded the amount of all debts, then the Debtor is still in a state of solvency so that therefore it cannot be declared bankrupt by the court. In Bankruptcy Law No. 37 of 2004, the requirement of insolvency is not a mandatory condition for debtors' bankruptcy. In this case, PT Pazia Retailindo has tried to carry out its business activities as well as possible but due to financial difficulties in its business, its business is no longer operating as in its answer dated November 4, 2020. PT Pazia Retailindo has a debt of Rp. 750,000,000.00 (seven hundred and fifty five million rupiah) to PT. Kaya Fund as contained based on Statement and Acknowledgement of Debt dated February 2, 2016 maturing on April 2, 2016. and to Ambar Bawono in the amount of Rp. 300,000,000.00 (three hundred million rupiah) as stated in the Statement of Debt dated March 23, 2016 due on June 24, 2016 the Respondent then requested to Accept the Bankruptcy Statement Application filed by the Bankruptcy Petitioners against the Bankruptcy Respondent.

Because PT Pazia Retailindo's business is no longer operating, the Debtor has been in a state of Insolvency, that is, the amount of the value of its obligations (debt) has been greater than the value

of its assets (assets), balance sheet, insolvency. caused by the Debtor who does not have sufficient liquidity to pay his debt when it is due because the Debtor's cash inflow is smaller than his cash outflow.

That the judges' consideration in the decision Number: 44/PDT. SUS. PAILIT/2020/PN. TRADE. JKT. PST is PT Pazia Retailindo has two or more creditors, debtors do not pay at least one debt that has fallen due and can be collected, and submitted on its own application or at the request of one or more of its creditors. As in article 2 paragraph 1 of Law Number 37 of 2004 concerning Bankruptcy and PKPU. So that the judges' consideration is correct to state that the elements of article 2 paragraph 1 of Law Number 37 of 2004 concerning Bankruptcy and PKPU are fulfilled.

Legal Considerations in bankruptcy decision number: 44/PDT. SUS. PAILIT/2020/PN. TRADE. JKT. PST based on Law Number 37 of 2004 concerning Bankruptcy and PKPU

Bankruptcy is a condition in which a debtor is unable to pay the debts of his creditors. Circumstances of inability to pay caused by financial distress). Bankruptcy is a way out of the problem of accounts receivable for debtors who are financially difficult and debtors can no longer pay these debts to their creditors.

The bankruptcy requirements themselves are regulated in Article 2 Paragraph 1 of the Bankruptcy Law and PKPU which reads as follows :

"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 decision of the Court, either on his own application or on the application of one or more of his creditors".

From the article above, it is clear that there are at least two conditions for bankruptcy, namely:

1. There are two or more Creditors; and
2. There is one debt that is due or due and collectable (due and payable) that is not paid in full by the Debtor.

Bankruptcy applicant in the decision of the Central Jakarta Commercial Court Number: 44 / PDT. SUS. PAILIT/2020/PN. TRADE. JKT. The PST of the bankruptcy applicant is PT. Dana Kaya through its Directors, namely Sri Dewi Endang Mumpuni and Ambar Bawono on October 20, 2020, represented by its legal representatives, namely PARLIN SIHOMBING, S.E., S.IP., S.H. Advocate at the law firm BELASSANDRO TORUAN & PARTNERS. Based on court decision Number: 44/PDT. SUS. PAILIT/2020/PN. TRADE. JKT. PST in short as follows:

Maximum statutory sanctions Declared bankrupt with all legal consequences Bankruptcy Applicant Claims:

1. Accept and grant this Bankruptcy Declaration Application in its entirety;
2. Declaring the respondent bankrupt in a state of bankruptcy with all its legal consequences;
3. Appoint Supervising Judges
4. Appointed Curator Nasrul Sudarmono Nadeak, S.H
5. Punish the insolvent respondent to pay the costs of the case.

Legal Basis of Prosecution Article 2 paragraph (1) and Article 8 paragraph (1) to (4) of Law No. 37 of 2004 concerning KPKPU Commercial Court Decision Amar Verdict

1. Grant the application for bankruptcy declaration in its entirety;
2. Declaring the respondent bankrupt PT Pazia Retailindo in bankruptcy with all legal consequences;
3. Appointed supervisory judge Muhammad Sainal, S.H.,M.Hum
4. Appointed Curator Nasrul Sudarmono Nadeak, S.H
5. Determine the curator's fee after the curator has completed his duties;
6. Sentencing the respondent to pay the costs of the case in the amount of Rp. 2,411,000,-

Verdict Sanctions Bankruptcy of bankruptcy to the bankruptcy respondent PT Pazia Retailindo Judge's Considerations:

1. The applicant is bankrupt, legal and has legal standing (Legal Standing)
2. The applicant can prove the debtor is in bankruptcy
3. The respondent as a debtor has two or more creditors
4. The respondent did not pay at least one debt that was due and collectible.

In this case, the author agrees with the legal considerations of the panel of judges because if you look at the entire content of the decision Number: 44 / PDT. SUS. PAILIT/2020/PN. TRADE. JKT. PST, the bankruptcy application filed by PT Dana Karya and Ambar Bawono is the ultimatum remedy. Because as a way out of the problem of debt receivables that squeeze a Debtor, where the Debtor no longer has the ability to pay these debts to his Creditors. This can be seen in PT Pazia Retailindo's answer which states that PT Pazia Retailindo has tried to run its business activities as well as possible but due to financial difficulties in its business caused the company to no longer operate. So that PT Pazia Retailindo is unable to pay overdue debts to its creditors.

CONCLUSION

The debtor is in a state of Insolvency only when the total value of his debt has been greater than the value of his assets. Balance sheet insolvency is the financial condition of the Debtor who does not have sufficient liquidity to pay his debt when it is due because the Debtor's cash inflow is lower than his cash outflow even though the value of his assets is still greater than the value of his liabilities. In Bankruptcy Law No. 37 of 2004, the insolvency requirement is not a mandatory requirement for bankrupt debtors. In this case, PT Pazia Retailindo has tried to carry out its business activities as well as possible, but due to financial difficulties in its business, its business is no longer operating as in its answer dated November 4, 2020. PT Pazia Retailindo has a debt of Rp. 750,000,000.00 (seven hundred and fifty five million rupiah) to PT. Kaya Fund as contained based on Statement and Acknowledgement of Debt dated February 2, 2016 maturing on April 2, 2016. and to Ambar Bawono in the amount of Rp. 300,000,000.00 (three hundred million rupiah) as stated in the Statement of Debt dated March 23, 2016 due on June 24, 2016 the Respondent then requested to Accept the Bankruptcy Statement Application filed by the Bankruptcy Petitioners against the Bankruptcy Respondent. Because PT Pazia Retailindo's business is no longer operating, the debtor is in a state of insolvency, namely the total value of its liabilities (debt) exceeds the value of its assets (assets) or balance sheet insolvency. Because the debtor's cash inflow is smaller than the cash outflow, the debtor does not have enough liquidity to pay off its debt on time.

Bankruptcy is a condition in which the Debtor is unable to make payments on the debts of its Creditors. The situation of not being able to pay is usually caused by financial distress. If you look at the entire content of the decision Number: 44/PDT. SUS. PAILIT/2020/PN. TRADE. JKT. PST, the bankruptcy application filed by PT Dana Karya and Ambar Bawono is the ultimum remedium. Because as a way out of the problem of debt receivables that squeeze a Debtor, where the Debtor no longer has the ability to pay these debts to his Creditors. This can be seen in PT Pazia Retailindo's answer which states that PT Pazia Retailindo has tried to run its business activities as well as possible but due to financial difficulties in its business caused the company to no longer operate. So that the judges' consideration in the bankruptcy decision against PT Pazia Retailindo is appropriate based on Law Number 37 of 2004 concerning Bankruptcy and PKPU.

REFERENCES

- Asikin, Zainal. *Insolvency and Delayed Payment Law in Indonesia*. Jakarta: Grafindo Persada, 2012.
- Central Jakarta Commercial Court Decision Number: 44/PDT. SUS. PAILIT/2020/PN. TRADE. JKT. PST Regarding PT Pazia Retailindo's Bankruptcy Application, November 10, 2020.
- Constitution of the Republic of Indonesia Year 1945
- Deny Guntara, Farhan Ashhadi, Izni Nur Izzati. "Juridical Analysis of the Insolvency of PT Mandala Airlines Insolvency of Insolvent Debtors based on Law Number 37 of 2004 concerning Bankruptcy and PKPU (Study of Decision Number: 48 / PDT. SUS. PAILIT/2014/PN. TRADE. JKT. PST)." *Law Student Journal* 56 (2021): 1-10.
- Fuady, Munir. *Insolvency law in theory and practice*. Bandung: Citra Aditya Bakti, 2010.
- Hervana Wahyu Prihatmaka, Sunarmi, Rahmad Hendra. "Insolvency in Insolvency Law in Indonesia (Study of Decision No.48/Bankruptcy/2012/Pn.Niaga.Jkt.Pst Between PT. Cellular Telecommunications VS PT. Primajaya Informatics)." *Fiat Justisia Journal of Legal Science*. Vol. 8 No. 2 (April 2014), pp. 1-16.
- Ibrahim, Jonaedi Efendi and Johnny. *Normative and Empirical Legal Research Methods*. Depok: Prenamedia Group, 2016.
- Indonesian Civil Code
- Kapoyos, Nelson. "The concept of proof is simple in bankruptcy cases (Review of Decision Number 125/PK/PDT. SUS-PAILIT/2015)." *Judicial Journal*. Vol. 10 No.3 (December 2017), pp. 331-346.
- Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (LN No. 131 of 2004, TLN No. 4443).
- Law No. 40 of 2007 concerning Limited Liability Companies (LN No. 106, TLN No. 4756).
- Mahmud, Marzuki Peter. *Legal Research*. Jakarta: Kencana, 2007.
- Masitho, Afifatul. "Legal considerations in Decision No.16/Pdt.Sus- Bankruptcy/2020/PN. Niaga.Jkt.Pst on Limited Liability Company Bankruptcy Cases from the Perspective of Islamic Law and Law No.37 of 2004." *Journal Of Islamic Business Law*. Vol. 6 No. 3 (December 2022), p. 1-13.
- Muljadi, Gunawan Widjaja and Kartini. *Guidelines for Handling Bankruptcy Cases*. Jakarta: PT. Raja Grafindo Persada, 2012.

- Nugroho, Susanti Adi. Bankruptcy Law in Indonesia in theory and practice as well as the application of its law. Jakarta: Prenadamedia Group, 2018.
- Rachmadsyah, Shanti. <https://www.hukumonline.com/klinik/a/syarat-kepailitan-cl1266/>. June 14, 2023.
- Saliman, Abdul R. Business Law for Corporate Theory and Case Examples 4th Cet. Jakarta: Kencana, 2014.
- Shubhan, Hadi. Bankruptcy Law: Principles, Norms, and Practices in the Judiciary. Jakarta: Kencana, 2008.
- Sjahdeini, Sutan Remy. History, Principles and Theories of Bankruptcy Law Understanding Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. Jakarta: Prenadamedia Group, 2016.
- Widjaja, Gunawan. Insolvency Business Law Series. Jakarta: PT Grafindo Persada, 2014.