
The Role of the Curator as a Mediator in the Settlement of a Bankruptcy Case

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Abstract

The purpose of this study is to look for the efforts that can be made by debtors to have their cases of bankruptcy resolved peacefully and to examine the procedures to be undertaken by Curator to achieve peace in the efforts of settling the case of so bankruptcy. This type of research is normative legal research done with a statute approach, conceptual approach, and case approach to legislation. The legal materials were collected by applying the method of library research. The results of data analysis show that in order to achieve peace in the settlement of the cases of bankruptcy, a debtor needs to immediately make a rational peace plan that is acceptable to the creditors. In achieving this, the curator takes a key role to convince the debtors to make a good decision in preparing a plan of peace. The implication is the prepared peace plan should be made sure capable of assuring the creditors to take. Thus, it is the curator's responsibility to also convince the creditor to accept the plan of peace made by the bankrupt creditors.

Keywords: Bankruptcy; Curator

I. INTRODUCTION

The monetary crisis that occurred in Indonesia has had an unfavorable impact on the national economy, causing great difficulties for the business community in resolving the case of debt to continue the state activities. As one of the facilities for the settlement of accounts payable, the Law on Bankruptcy (Klapper, 2005) (*Faillissements verordening, Staatsblad 1905: 217 juncto Staatsblad 1906: 348*) most of the material is no longer in line with the development and legal needs of the community and therefore it has been amended by the Government Regulation Substitution of Law Number 1 Year 1998 concerning Amendment to the Law on Bankruptcy, which was subsequently stipulated as the Law based on the Law Number 4 of 1998, subsequently amended by Law Number 37 of 2004 concerning Bankruptcy and Delay of Payment Obligations Debt (hereinafter referred to as the Bankruptcy Act) (Kilborn, 2005).

The resolution of bankruptcy disputes has ended more often with the settlement (Lomax, 1994). If bankruptcy ends with a settlement (Baird & Rasmussen, 2002), the Debtor will not be able to continue his business, and the company must be dissolved (Wood, 2007). However, if the bankruptcy can be settled in a peace oriented way (Nelson, 2016), the Debtor's business will be resumed, because the company is undissolved (Thompson, 2004).

Anggela (2014) in her research concluded that the role of the curator in being a mediator must be supervised by a judge, so that no illegal acts occur in the determination or recommendation made by the supervisory judge as stipulated in article 77 paragraph (1), (2),) and (4) (Anggela, 2014). Ginting (2004) concluded in bankruptcy that the Curator who handles bankrupt assets must be independent and not have a conflict of interest with the debtor or creditor supervised by the Supervisory Judge, while liquidating the handling of liquidation assets is carried out by the Liquidation Team without a Supervisory Judge

who oversees them prudent (Ginting, 2004). Sembiring, on the other hand, views from the point of view of bankruptcy law, the Curator is given the authority to settle Debtor property rights that have been confiscated. In the settlement, not only the Curator pay attention to the interests of creditors but must pay attention to the interests of the debtor bankruptcy. Therefore, related to the sale of bankrupt assets through an auction, the Curator needs to pay attention to the provisions concerning the auction as stipulated in Ministerial Regulation on Finance of the Republic of Indonesia Number 27/PMK.06/2016 about Auction Implementation Guidelines (PMK No. 27 of 2016) (Sembiring, 2017).

Based on the background this research aimed to know efforts that can be made by debtors so that the bankruptcy it faces can be resolved in a peace oriented way and procedures that can be taken by the Curator so that peace in bankruptcy can be achieved.

II. METHOD

This type of this research is normative legal research with a legal approach, conceptual approach, and case approach (Van Hoecke, 2011). The data were collected by applying library research (Denzin, 2008).

III. RESULTS AND DISCUSSION

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 (Wessels, Markell, & Kilborn, 2009). Bankruptcy faced by the Debtor generally ends with a settlement (Altman & Hotchkiss, 2010). The curator is given legal authority to sell and distribute the assets of the debtor. Businesses run by the Debtor must stop and the Debtor company is liquidated (Wood, 2007).

The curator has the authority to manage and settle all the assets of the Bankrupt Debtor under the supervision of the Supervisory Judge (Wessels et al., 2009). This means that besides making a settlement by selling and distributing all of the bankrupt debtors' assets to their creditors, the Curator also has the authority to take care of the bankrupt debtor's assets during the bankruptcy process (Pottow, 2005).

There is a possibility that the Bankrupt Debtor's business can be saved by the Curator in the process of managing the bankrupt debtor's assets, if peace is achieved (Mooney Jr, 2014). As stipulated in Article 145 paragraph (1) of the Bankruptcy Law stipulates: If the Bankrupt Debtor submits a peace plan and no later than 8 (eight) days before the debt matching meeting provides it in the Court Registrar's Office so that it can be seen free of charge by everyone concerned, the peace plan must be discussed and a decision taken immediately after the completion of the accounts receivable matching.

Then in Article 150 the Bankruptcy Law is regulated: The Bankrupt Debtor has the right to provide information about the peace plan and defend it and has the right to change the peace plan during the negotiations.

When making a peace plan, the Bankrupt Debtor can consult with the Curator, so that the peace plan made by the Bankrupt Debtor can be accepted by the Creditors (Joseph, 2014). Curators in managing bankruptcy debtors' assets were given the authority to hold creditors' meetings, verification meetings, and meetings to discuss peace plans submitted by bankrupt debtors with creditors (Suwardi & Boediningsih, 2018).

As a mediator, the Curator can ask what the Creditors want so that bankruptcy can be resolved with peace (Jackson & Scott, 2015). The curator can also ask the Debtor's ability to fulfill the Creditors' wishes so that peace can be achieved (Vriesendorp, 2008). In the end the Debtor and Creditors were able to convey their wishes in the meeting to discuss the peace plan held by the Curator (Kamlani, 2008).

If peace can be achieved during a meeting on the peace plan discussion, bankruptcy ends with peace (Habibie, 2017). But if peace is not achieved, then the assets of the bankrupt debtor must be immediately cleared by the Curator by conducting an auction and distributing the proceeds of the sale of the bankrupt debtor's assets to the creditors (Rajak, 2011).

Besides Peace, Bankruptcy can be stopped because bankrupt assets are not enough to finance bankruptcy (Altman & Hotchkiss, 2010), as stipulated in Article 18 paragraph (1) of the Bankruptcy Law, which determines:

In the event that insolvent assets are insufficient to pay bankruptcy fees (Lopucki & Doherty, 2004),

the Court, upon the recommendation of the Supervisory Judge and after hearing the committee of temporary creditors, if available, and after calling or hearing the Debtor, may decide to revoke the decision on bankruptcy statement (Porter, 2010).

Problems often occur if the Debtor does not want to fulfill the creditors' wishes, let alone state that they do not want to make peace, then the bankrupt debtor will be declared insolvency and all the assets of the bankrupt debtor must be auctioned and the auction proceeds used to pay the creditors' bills (Buccola & Keller, 2010).

The role of the Curator in bankruptcy is to strive for peace between the Bankrupt Debtor and the Creditors (Van Kesteren, Adriaanse, & Van der Rest, 2017). The curator must be able to convince the debtor to go bankrupt to prepare a peace plan (Blum, 2006). The peace plan prepared by bankrupt debtors must be accepted by creditors (Herman & Guzman, 2016). The curator must also be able to convince creditors that the peace plan offered by the bankrupt debtor can be accepted by the creditors with changes if needed but still possible to implement, so that peace is achieved in bankruptcy (Martin, 2005).

So the Curator acts as a mediator who mediates the desires of creditors and the capabilities possessed by bankrupt debtors, so that bankruptcy can be resolved with peace and the bankrupt debtor's business can be resumed (Oprea, 2017).

Furthermore Article 156 paragraph (1) of the Bankruptcy Law determines:

In the event that a peace plan is received before the meeting closes, the Supervisory Judge shall determine the day of the court hearing which will decide whether or not the peace plan is approved.

Peace that has been agreed between the Debtor and the Creditors is likely not authorized by the Assembly Judge. The rejection of the ratification of peace is regulated in Article 159 paragraph (2) of the Bankruptcy Law which determines:

Courts must refuse the ratification of peace if:

- a) Debtor property, including objects for which the right to hold an object is carried out, far greater than the amount agreed to in peace;
- b) The implementation of peace is not guaranteed; and/or
- c) Peace is achieved because of fraud, or conspiracy with one or more creditors, or because of the use of other dishonest efforts and regardless of whether the debtor or other parties cooperate to achieve this.

IV. CONCLUSION

The effort that can be made by a Debtor so that the bankruptcy it faces can be resolved in a peace oriented way is to immediately make a rational peace plan that is acceptable to creditors.

The steps that can be taken by the Curator so that peace in bankruptcy can be achieved is to convince the Debtor to be bankrupt to prepare a peace plan. The peace plan prepared by bankrupt debtors must be accepted by creditors. Curators must also be able to convince creditors that the peace plan offered by bankrupt debtors can be accepted by creditors with changes if needed but is still possible to implement, so that peace is achieved in bankruptcy.

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