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DEBT FORGIVENESS PRINCIPLE IN BUSINESS LEGAL REPRESENTATIVES

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Abstract

The aims of this research is on the form of engagement between bankrupt debtors on the remaining debt that has not been paid to creditors based on PKPU UUK and the form of debt forgiveness principles as a form of business legal renewal, especially regarding the debtor's liability to the remaining debt to its creditors. The methods of this research is uses 3 (three) sources of legal material, namely primary legal materials, secondary legal materials, and tertiary legal materials. The primary legal material obtained from the field is first examined for completeness and clarity to be classified as well as systematic and consistent preparation to facilitate analysis. Secondary legal materials obtained from the literature are selected and collected systematically, so that they can be used as a reference in conducting analysis. From the results of the legal material of library research and the field, a descriptive analytical discussion was conducted. The result of research found Based on the bankruptcy settlement stipulated in the PKPU UUK, it can be seen that with the existence of a bankrupt decision against a debtor, in which the settlement still leaves the remainder of the debt, the agreement between the debtor and his creditors will not end or break before the debt is repaid and The existence of the debt forgiveness principle characterizes that in a business can not be separated from a risk and / or uncertainty and all things that have the potential to harm the business and can even bankrupt the legal subject business.

Keywords: Bankruptcy; debt remaining; forgiveness debt principle

1. INTRODUCTION

Today, so many changes occur in all aspects of human life. Development also occurs in human behavior, which this behavior will shift to human needs, one of which is the need for legal certainty. With this increasingly rapid development, many previous legal rules are no longer relevant or cannot meet human needs for law. This condition causes the need to renew the law, one of which is the law of engagement.

"Engagement (*verbintenis*) is a legal relationship between two parties in the field of wealth, where one party (creditor) has the right to an achievement, and the other party (debtor) is obliged to fulfill that

achievement. Therefore, in each engagement there are "rights" on the one hand and "obligations" on the other" (Setiawan, 2017).

"Engagement (*verbintenis*) is a legal relationship between two parties in the field of property, where one party (creditor) has the right to an achievement, and the other party (debtor) is obliged to fulfill that achievement. Therefore, in each engagement there are "rights" on the one hand and "obligations" on the other"

According to Subekti, the agreement is said to be a legal relationship between two people or two parties, based on which one party has the right to demand a matter from the other party and the other party is

obliged to fulfill that demand (Setiawan, 2017). Volmar stated that in terms of its contents, the engagement exists as long as the person (debtor) must make an achievement that might be forced on the creditor, if necessary with legal assistance (Setiawan, 2017). When looking at these definitions, the elements of an engagement can be formulated consisting of legal relationships, wealth, parties, and achievements. The importance of questioning the elements is to emphasize that the law attaches "rights" to one party and attach "obligations" to the other party in relationships that occur in the community. If there is one party that violates the relationship then the law can force the relationship to be carried out.

Where the person or party is bound to each other for the rights and obligations mentioned and at the same time as a source of engagement in Article 1233 of the Civil Code (KUHPdt). Which sounds the article determines, "each engagement is born either because of agreement both because of the law." Agreement or agreement is an event in which a person promises to do something. from this event arises the relationship between the two people called the engagement (Setiawan, 2017). In other words, the agreement issued an agreement between the two people who made it. Regarding the form of the agreement in the form of a series of words containing promises or abilities that are said or written down. One form of engagement born from this agreement is an agreement in the field of accounts payable. In the act of debt receivables this implies where a person who borrows money (debtor) to another person (creditor) has the right to receive a loan of money but on the other hand has an obligation to fulfill his performance in the form of returning debt in accordance.

There are several factors that can encourage a person to make a debt, namely as a start in capitalizing a business. Business activities are basically carried out with the aim of seeking profits, but in the course of the business it does

not always bring profit, losses can occur in running a business. This loss also has an impact on the non-payment of debt to creditors, which in the end the debtor can be filed bankrupt by his creditors. With the decision on bankruptcy of the debtor by the commercial court judge, the bankruptcy process will then be carried out.

Bankruptcy is defined by Law Number 37 of 2004 concerning Bankruptcy and Delay of Obligation to Pay Debt (PKUK UUK), State Gazette of the Republic of Indonesia of 2004 Number 131, Supplement to the State Gazette of the Republic of Indonesia Number 4443 in Article 1 number 1 as general seizure of all debtor assets bankruptcy, the management and settlement of which is carried out by the curator under the supervision of the supervising judge as stipulated in this law. Bankruptcy is a further implementation of the principle *paritas creditorium* and the principle *pari passu prorata parte* in the legal regime of wealth (*vermogensrechts*). *Paritas creditorium* means that all the debtor's assets, whether in the form of movable or immovable property and assets which the debtor has now owned and goods will later be owned by the debtor, are related to the settlement of debtor's liabilities. While the principle *pari passu prorata parte* means that the property is a joint guarantee for the creditors and the results must be distributed proportionally between them, except if there are those creditors who according to the law must take precedence in receiving the payment of the bill (Shubhan, 2009).

The legal principle is the essence or heart of the law (Irianto, 2015). UUK PKPU not normalize the principle debt forgiveness which is one of the many principles adopted in bankruptcy. Debt forgiveness principle implies that bankruptcy is not identical only as an institution of defamation to the debtor or only as a suggestion of pressure (*pressie middel*), but it can mean the opposite, that is a legal institution that can be used as a

tool to alleviate the burden that must be borne by the debtor as a result of financial difficulties so that it is unable to pay its debts in accordance with the original agreement and even to forgive its debts so the debts were completely erased (Shubhan, 2009). This is not regulated in PKPU UUK which results in debts from debtors still following the debtor even though bankruptcy has been revoked because *boedel* (bankruptcy assets) insufficient bankruptcy. In UUK PKPU also unknown principle fresh-starting which is a manifestation of the principle debt forgiveness. The domain of bankruptcy law is also known as the principle of debt forgiveness which shows the other side of the meaning of bankruptcy as a repressive legal institution in addition to being a counterweight to the principle of debt collection (Pramudya, 2017). The concept of fresh-starting gives the bankruptcy status of the bankrupt debtor altogether from its debts, and can restart the business without being burdened with old debts.

In bankruptcy law in Indonesia, the bankrupt debtor's debt will continue to follow it and even allow it to be bankrupt more than once, in accordance with the general explanation in the PKPU UUK. However, further arrangements regarding the settlement of debtors whose debts have not been repaid are not regulated at all in the PKPU UUK. With these rules, the agreement between the bankrupt debtor and his creditors will not end without debt repayment (fulfillment of performance) by a debtor who has been declared bankrupt and unable to fulfill his performance. Based on this background, the focus of this research is on the form of engagement between bankrupt debtors on the remaining debt that has not been paid to creditors based on PKPU UUK and the form of debt forgiveness principles as a form of business legal renewal, especially regarding the debtor's liability to the remaining debt to its creditors.

2. METHOD

In each scientific study must use a particular research method. Where the method of scientific research is a procedure in obtaining knowledge called science (Sunggono, 2009). So the purpose of using research methods is so that the research can fulfill the requirements of a scientific work. Broadly speaking, legal research which is viewed from the point of view of its research is divided into 2 (two), namely normative legal research and sociological or empirical legal research (Soekanto, 1986). Writing this task uses a type of normative juridical law research, namely research conducted by examining existing library materials such as legislation, books relating to law, and dictionaries or encyclopedias (Soekanto & Mamudji, 2009).

In legal research in general there are several types of approaches, consisting of: statutory approach, case approach, historical approach, comparative approach, and conceptual approach. The approach is intended so that researchers are able to get information from various aspects of the issue being tried to find answers to (Marzuki, 2013). From several types of approaches as mentioned above, as for the types of approaches used in this study consist of: statute approach, which is an approach using legislation and regulation (Marzuki, 2013); and conceptual approach, which is an approach using the construction of legal concepts.

The writing of this study uses 3 (three) sources of legal material, namely primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal material consists of legal principles and rules whose manifestations can be in the form of Basic Regulations, Constitutional Conventions, Legislation, unwritten law, court decisions, State Administrative Decisions. While the secondary legal material consists of legal books, legal journals, legal papers or the views of legal experts contained in mass media, dictionaries and legal encyclopedias (Magister Kenotariatan Universitas Udayana, 2015). The collection of legal

materials begins with an inventory activity, by collecting and organizing legal materials into an information system, making it easier to re-trace the legal materials. The legal materials were collected by documentation study, namely by recording the sources of primary legal materials and secondary legal materials, then conducting an inventory of legal materials relevant to the way of recording or quoting using a card system. Furthermore, it will be traced through the literature relating to the settlement of bankruptcy assets of debtors who have assets abroad. In this study, secondary legal material will be examined. Thus there are two main activities carried out in carrying out this research, namely library research, which is obtained through literature, by reviewing, analyzing and processing literature, legislation, and articles or writings relating to problems that will be examined.

The primary legal material obtained from the field is first examined for completeness and clarity to be classified as well as systematic and consistent preparation to facilitate analysis. Secondary legal materials obtained from the literature are selected and collected systematically, so that they can be used as a reference in conducting analysis. From the results of the legal material of library research and the field, a descriptive analytical discussion was conducted.

3. RESULT AND DISCUSSION

Form of Engagement Between Bankrupt Debt Over Debt Remaining Unpaid To Its Creditors Based on Law Number 37 Year 2004 concerning Bankruptcy and Delaying Obligation to Pay Debt

Article 21 PKPU UUK states that bankruptcy covers the entire wealth of the debtor at the time the verdict of bankruptcy is pronounced and all that is obtained during bankruptcy. So in the event that an individual as a debtor is bankrupt, then the entire personal wealth that is available or obtained during bankruptcy is borne by his debts except:

Objects that are really needed by the debtor in connection with his work, equipment, medical devices used for health, beds and equipment used by the debtor and his family, and food for 30 (thirty) days for the debtor and his family (Article 22 letters a PKPU UUK).

Money given to debtors to fulfill an obligation to provide according to the law (Article 22 letter c UUKPKPU).

If the debtor has been married to an alliance of assets, then the fellowship will also be borne by his debts. Therefore Article 4 ayt (1) PKPU UUK states that, "In the event that a bankrupt statement is filed by a debtor who is still bound by a legal marriage, the application can only be submitted with the consent of the husband or wife". From this explanation, I can draw the conclusion that in the event that the responsibility given by PKPU UUK to individual debtors in bankruptcy cases does not yet cover the settlement of accounts payable that have not been repaid, even when such bankruptcy cases are over due to the inability of the bankrupt debtor to settle the entire debt.

Postponement of debt repayment obligations in PKPU UUK is not explicitly defined, but Munir Fuadi explained that PKPU is meant to be a period given by law through the decision of a commercial judge in which the creditor and debtor are given the opportunity to discuss ways payment of debts, including the need to restructure the debt. If you see Munir Fuadi PKPU's statement is a kind of moratorium, in this case the legal moratorium. PKPU itself does not aim to settle debtors' assets, but here the debtor is required to pay off his debts to creditors while still being given the opportunity to carry out their business activities accompanied by the management. Or in other words PKPU is a suggestion to avoid bankruptcy, at least for a certain amount of time.

The result of PKUP is:

The debtor cannot take stewardship actions or facilitate rights to any part of his

property, if the debtor violates oengurus has the right to do everything to ensure that the debtor's assets are not impaired because of the debtor's actions.

The debtor cannot be forced to pay his debts and all the acts of execution that have been initiated in order to get debt repayments must be suspended

The debtor has the right to pay debts to all credit together according to the contribution of each credit.

All confiscations that have been installed ended.

The implementation of the settlement in the PKU Law in bankruptcy was an attempt to revenge debtors who were unable to pay their debts to creditors. Whereas the moratorium provided by the UUK in the form of PKPU is still half-hearted, where the time given in the PKPU framework is quite short, namely 45 days for PKPU temporarily and 270 days for PKPU remain, even though in the previous Bankruptcy Regulations 18 months and can be extended for 18 months. PKPU can lead to bankruptcy, if PKPU is not homologized by judges, and even PKPU can be used as a basis for bankruptcy if the agreed peace scheme is not implemented as it should for any reason (Shubhan, 2009). With this situation, it can be seen that with the existence of a bankrupt decision on a debtor, in which the settlement still leaves the remainder of the debt, the agreement between the debtor and his creditors will not end or end before the debt is repaid.

The Form of Forgiveness Debt Principle as a Form of Business to Renew Bankruptcy Law Specifically Regarding the Liability of the Bankrupt Debtor Against Debt Remains to Its Creditors

The debt forgiveness principle implies that bankruptcy is not identical only as a stewardship to the debtor or only as a means of pressure (pressie middel), but can mean the opposite, namely a legal institution that can be used as a tool to reduce the burden borne by debtors

because as a result of financial difficulties, it was unable to pay its debts in accordance with the original agreement and even arrived at the forgiveness of its debts so that the debts were completely removed (Shubhan, 2009). The principle of the Forgiveness Debt governs the fresh starting (giving forgiveness of debtors' debts) the expectation that the debtor will start a business without being burdened by the old debt problematic (Ginting, Firdaus, & Fitriani, 2015).

The implementation of the debt forgiveness principle in bankruptcy law norms is the issuance of a moratorium on debtors, known as the debt repayment obligation for a specified period of time, excluded several debtor assets from boedel bankruptcy, the release of debtors or debtors' assets for payment of correct debt really not fulfilled, given the status of fresh-starting for the debtor so that it allows the debtor to start a new business without being burdened with old debts, rehabilitation of the debtor if he has truly completed the bankruptcy scheme, and other reasonable legal protections against the bankrupt debtor (Shubhan, 2009).

Karen Gross expressly states that granting forgiveness to debtors who actually experience bankruptcy is a counterweight to the bankruptcy system itself. Gross stated that forgiveness itself is a form of solution to debtors' debts that are not paid off. As with Sutan Remy Sjahdeini, stating that a good bankruptcy law must be based on the principle of providing balanced protection for all parties concerned and concerned with the bankruptcy of a person or a company. In connection with that, a good bankruptcy law should not only provide protection for creditors. The interests of the debtor and its stakeholders must also be considered (Shubhan, 2009).

The principle of debt forgiveness is also reflected in the fresh starting concept. This concept gives forgiveness to the debtor for his debts that cannot be repaid in the hope that the debtor will start a new business without being burdened by the

old debts that are in trouble. Unlike the concept of rehabilitation, although the concept of rehabilitation also includes the implementation of the principle of debt forgiveness. In rehabilitation, debts from debtors have been settled in accordance with the bankruptcy scheme that occurred. Rehabilitation leads to the restoration of civil rights, especially the right to debtor property and the restoration of the debtor's reputation in the business field, so that the debtor can carry out his business again as before (Shubhan, 2009).

The regulation regarding PKPU does not touch the aspect of forgiveness against bankrupt debtors at all. The Law does not comprehensively implement the principle of debt forgiveness in its norms. The implementation of this principle is only limited to the granting of a debt moratorium in the form of the PKPU. UUK does not recognize the fresh starting concept that allows debtors to go bankrupt to start a business without being burdened with the remaining unpaid old debt from bankrupt assets. When viewed from this statement, UUK places more emphasis on debt collection principles in the bankruptcy system.

The existence of debt forgiveness principle characterizes that in a business can not be separated from a risk and / or uncertainty and all things that have the potential to harm the business and can even bankrupt the legal subject business. The principle of debt forgiveness is a principle that can alleviate the burden of the debtor, which can be in the form of the ability to pay off debts held by the debtor so that the debts are removed altogether. If the business has been managed with good governance but in the future it must deal with these risks and / or uncertainties so as to cause its business to experience a financial difficulty and even cause the business actor to be insolvent, the bankruptcy institution becomes out of these conditions. When bankruptcy is used to resolve the condition of an insolvent business actor, the company's assets are insufficient to pay off

the debt, then it is fair when the risk burden is borne jointly between the debtor himself and the creditor. The debtor carries these risks with all of his wealth until his assets are exhausted and the creditor carries the risk of not paying the remaining debt that is not repaid by the debtor. This risk balancing form is born the debt forgiveness principle. The rest of the debtor's debt that is not repaid is forgiven and the debtor can start another business without being burdened with old debts that are not repaid and this is a form of justice in bankruptcy (Shubhan, 2009).

4. CONCLUSION

Based on the bankruptcy settlement stipulated in the PKPU UUK, it can be seen that with the existence of a bankrupt decision against a debtor, in which the settlement still leaves the remainder of the debt, the agreement between the debtor and his creditors will not end or break before the debt is repaid. Because in the general explanation, PKPU Law has been stated that the debt will continue to follow the debtor.

The existence of the debt forgiveness principle characterizes that in a business can not be separated from a risk and / or uncertainty and all things that have the potential to harm the business and can even bankrupt the legal subject business. When bankruptcy is used to resolve the condition of an insolvent business actor, the company's assets are insufficient to pay off the debt, then it is fair when the risk burden is borne jointly between the debtor himself and the creditor. The debtor carries these risks with all of his wealth until his assets are exhausted and the creditor carries the risk of not paying the remaining debt that is not repaid by the debtor. The risk balancing form is adopted in the debt forgiveness principle. The rest of the debtor's debt that is not repaid is forgiven and the debtor can start another business without being burdened with old debts that are not repaid and this is a form of justice in bankruptcy.

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