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The Existence of a Stay Period in Bankruptcy That Begins with Postponement of Debt Payment Obligations (PKPU)

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A B S T R A C T

In reference to bankruptcy and PKPU, Article 290 of Law No. 37 of 2004 is in conflict with the existence of Supreme Court Circular Letter Number 5 of 2021. This study tackles the problem of putting the stay period in place for the execution of collateral in bankruptcy, which results from the refusal of peace in the form of deferring debt payments. It also looks at the stay period that surrounds collateral execution in bankruptcy and its implications for potential changes to the Bankruptcy Law in the future. The Contractarian Approach Theory serves as the Applied Theory, Bankruptcy Law Theory as the Middle Range Theory, and Legal Certainty Theory as the Grand Theory in this study. It employs a normative juridical research methodology with a statutory approach as its main focus. This method entails looking at and dissecting Law No. 37 of 2004's provisions regarding PKPU and bankruptcy. Secondary data, comprising primary, secondary, and tertiary legal materials, is the type of data utilized. Qualitative juridical analysis is used in the data analysis. According to Since there is no regulation regarding the suspension period for debtors declared bankrupt due to the Panel of Judges' rejection of a postponement of debt payment obligations, the theory of legal certainty has not been satisfied by the provisions regarding the suspension period (stay period) in Article 56, paragraph (1) of Law No. 37 of 2004 concerning Bankruptcy and PKPU

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INTRODUCTION

In theory, all of the debtor's property rights ensure payment of every creditor's receivable in the event of a failure or bankruptcy. The Civil Code's Article 1131, which states that all of the debtor's assets shall become liabilities for his future commitments, makes this clear. In a similar vein, Article 1132 of the Civil Code stresses that all parties owing the debtor money must use his property as collateral. The foundational ideas of bankruptcy in Indonesia are presented in these two articles. Herowati Poesoko claims that the Civil Code's Article 1131 provisions are either broad guarantees or legally established guarantees that offer security to all creditors in a comparable situation.

When a debtor faces financial difficulties and is unable to pay their bills by the due date, the Commercial Court will declare them bankrupt.. Historically, in 1934, bankruptcy could only be applied to traders. However, with changing times and developments in the economic field, bankruptcy now also applies to parties who have debts and are insolvent.

LITERATURE REVIEW

Two options for repaying debts are regulated by Law No. 37 of 2004 on Bankruptcy and PKPU. These options are available to debtors who have several creditors and are unable to pay one of their due and collectible obligations. The debt payback procedures outlined in Bankruptcy and PKPU Law No. 37 of 2004 are:

1. Submitting a request for postponement of debt payment obligations (PKPU)
2. Filing a petition for bankruptcy of the debtor.

In relation to the title of this research, the author would like to explain the period or stay period for separatist creditors. According to Djazuli Bachar, it is more clearly outlined that the parties affected by the obligation to suspend execution as specified in Article 55 Paragraph (1) of the Bankruptcy and PKPU Law are:

1) Holders of mortgage rights,
2) Lien holders,
3) Holders of mortgage rights,
4) Fiduciary holders.

Separatist creditors holding security rights based on the nature of their debt have a priority position under security law and bankruptcy law. Bankruptcy will not impact the status of creditors who own certain security interests. Nevertheless, as per Article 56, Paragraph (1) of the Bankruptcy and PKPU Law, there will be a 90-day suspension on the creditors' right of execution, as mentioned in Article 55, Paragraph (1), as well as third parties' right to reclaim their property that is under the bankrupt debtor's or curator's custody.

Regarding the explanation Article 56, Paragraph (1) of the Bankruptcy Law, as well as the rights specified in Article 21 of Law Number 4 of 1996, are contradicted by the suspension's goal, which is to maximize the bankruptcy estate.

According to this article, the grantor of a mortgage is entitled to use all of the rights that they have acquired as a result of Law Number 4 of 1996.

The provision of Article 56 Paragraph (1) of the Bankruptcy Law arbitrarily sets aside the rights of the creditors of the holder of the mortgage rights guaranteed by Law Number 4 of 1996. In addition, from the explanation of Article 56 Paragraph (1), it turns out that the Bankruptcy Law is inconsistent (not obedient to principles) because on the one hand the provisions of Article 55 Paragraph (1) seem to recognize the separatist rights of preferred creditors, but on the other hand the provisions of Article 56 Paragraph (3) actually undermine the separatist rights. This is because it determines that goods encumbered with security rights constitute bankruptcy assets. This means that the Bankruptcy Law does not separate objects encumbered with security rights as objects that do not constitute bankruptcy assets. Such an attitude of the law is a trait that undermines the joints of the law of security rights, so that it has further rendered meaningless the creation of the institution of security rights in civil law and made the concept and purpose of security rights vague. The existence of this vague concept creates uncertainty for the security right holder when the debtor becomes bankrupt.

In this study, the authors will use several theories to analyze the research problem. These theories are classified into three categories, which complement each other. The three categories are: Grand Theory, Middle-Range Theory, and Applied Theory. The Grand Theory used is the Theory of Legal Certainty, which asserts that the existence of laws and regulations, as well as their implementation, must create legal certainty. Gustav Radbruch suggested 4 (four) fundamental things related to the meaning of legal certainty, namely:

1) That the law is positive, meaning that positive law is legislation.
2) That the law is based on facts, meaning that it is based on reality.
3) That facts must be formulated in a clear way so as to avoid confusion in interpretation, in addition to being easy to implement.
4) That positive law should not be changed.

Gustav Radbruch's opinion is based on his view that legal certainty is certainty about the law itself. Legal certainty is a product of the law, or more specifically, legislation. According to Radbruch, positive laws that regulate human interests in social life should always be obeyed, even if those laws are less than fair. Legal certainty is essential for creditors who wish to obtain repayment of their debts, which are obligations of the debtor.

Law No.37 of 2004 concerning Bankruptcy and PKPU is the only regulation regarding the practice of bankruptcy and postponement of debt payment obligations, so it must provide legal certainty for creditors, especially separatist creditors in terms of obtaining their rights, namely in the form of repayment of all debts of the debtor. In this case, the separatist creditor cannot directly execute the collateral because of the provisions of the suspension period (stay period) to execute the collateral.

The Middle-Range Theory in this research is the Bankruptcy Law Theory. Etymologically, bankruptcy originates from the word "bankruptcy." The term "bankruptcy" comes from the Dutch word "failliet," which has a double meaning,

both as a noun and an adjective. The term "failliet" itself comes from the French word "faillite," which means strike or payment jam. In Indonesian, bankruptcy is termed "kepailitan." Bankruptcy refers to a situation where a debtor fails to pay their debts that have become due and collectible. According to R. Subekti and R. Tjitrosudibio, bankruptcy is a condition where a debtor has stopped paying their debts, necessitating the intervention of a Panel of Judges to ensure the common interests of creditors.

The definition of bankruptcy, based on Article 1, number 1 of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (PKPU), is a general confiscation of all assets of the bankrupt debtor, whose management and/or settlement is carried out by a curator under the supervision of a supervisory judge. In this case, it must be explained regarding the rights of secured creditors who should be able to execute their collateral, but cannot be done immediately due to the provisions of the stay period in Law No. 37 of 2004 concerning Bankruptcy and PKPU.

The Applied Theory in this research is the Contractarian Approach Theory. Creditors whose payments are guaranteed in the debtor's bankruptcy are only those who have a contractual legal relationship with the debtor. For example, separatist creditors whose receivables are secured by the debtor's property, as well as preferred creditors whose claims are privileged and prioritized by law. The Contractarian Theory posits that bankruptcy law should also consider the interests of other creditors who do not have a contractual relationship with the bankrupt debtor, as they also bear the financial risk due to the debtor's bankruptcy. To address this, Donald R. Korobkin proposes that the business of the bankrupt debtor should be continued or sold as a going concern to increase the value of the bankruptcy assets.

If the rights of contract creditors have been secured by the sale of bankruptcy assets used as collateral for debt repayment, then payments to non-contract creditors can only be made if the bankrupt debtor's business is continued to increase the value of the bankruptcy assets. In this context, a separatist creditor is a creditor who has a special guarantee for repaying the debtor's debt, where this special guarantee is part of the contract or credit agreement between the creditor and the debtor. Therefore, the Contractarian Approach Theory focuses on maximizing the value of bankruptcy assets to ensure that creditors receive proper debt repayment.

METHODOLOGY

This research uses a normative juridical approach, focusing on the statutory approach. This approach involves examining the contents of Law No. 37 of 2004 concerning Bankruptcy and PKPU, particularly regarding the rights of separatist creditors in executing collateral, especially when direct execution is prevented by the suspension period (stay period) in the bankruptcy process related to the rejection of peace in the postponement of debt payment obligations. The statutory approach involves reviewing all laws and regulations related to the legal issues being addressed. For practical research, this approach allows

researchers to assess whether there is consistency and compatibility between different laws and regulations.

RESULTS AND DISCUSSION

The implementation and regulation of the suspension period (stay period) in the bankruptcy process begin with the rejection of peace in postponing debt payment obligations. The enactment of Article 56 of the Bankruptcy Law affects creditors holding rights, resulting in the suspension or postponement of execution, known in bankruptcy law as a stay. This has consequences for security right holders, who were initially separate from other creditors with a priority position, now facing a loss of legal certainty and an equal standing with other creditors.

Arrangements concerning creditors' execution rights are regulated differently, notably affected by the bankruptcy decision with a 90-day suspension of execution or stay period, as well as Article 28, Paragraph (6) of the Bankruptcy Law, which stipulates that: "If the postponement of debt payment obligations as referred to in Paragraph (4) is approved, the postponement and its extension shall not exceed 270 days after the temporary postponement of debt payment obligations decision is pronounced."

The suspension of debt collateral execution (stay period) under Article 56, Paragraph (1) of the Bankruptcy Law lasts a maximum of 90 days, and up to 270 days under Article 228, Paragraph (6) of the Bankruptcy Law. This means that creditors holding security rights are no longer permitted to sell their security assets once the bankruptcy declaration is in effect, thereby losing their separate status. From the time of the bankruptcy declaration until the end of the stay period or within 2 months of insolvency, creditors holding security rights take precedence over other creditors. However, this suspension or postponement of execution rights for separatist creditors in bankruptcy law diverges from security law principles, particularly the principle of preference. The priority and separate position from other creditors during the stay also contradict the general principles of execution suspension in Civil Procedure Law.

As mentioned in Paragraph (1) of Article 59 of the Bankruptcy Law, the stay can be extended up to 270 days from the bankruptcy verdict date. The suspension period can also end prematurely, as noted by Martiman Prodjohamidjojo, when the bankruptcy is terminated early or initiated.

This illustrates that the stay period doesn't necessarily last 90 days or up to 270 days but can be terminated sooner if the peace offer is declined. During the stay period until insolvency ends, the curator replaces creditors in position and authority, as specified in Article 56, Paragraph (3) of the Bankruptcy Law, which grants the curator the right to utilize or sell bankruptcy assets in the context of ensuring the debtor's business continuity, provided creditor and third-party interests are reasonably protected as outlined in Paragraph (1). This regulation underscores that the bankruptcy court lacks jurisdiction over bankruptcy asset use and that creditors holding security rights in bankruptcy law don't inherently have preferential or separatist rights over other creditors. The curator is authorized to sell the entire bankruptcy estate during the stay period

solely to maintain the debtor's business continuity, without the secured creditors' consent.

In principle, Law No.37 Year 2004 on Bankruptcy and PKPU prioritizes the payment of debtors' debts by means of amicable payment by giving debtors a delay in their obligation to pay their debts, rather than using the bankruptcy route. Therefore, within a maximum period of 3 (three) days after the PKPU is registered, the Commercial Court must grant and issue a temporary PKPU determination requested by the Debtor. Meanwhile, if the PKPU application is filed by the Creditor, the Commercial Court is also obliged to grant the temporary PKPU within a maximum of 20 (twenty) days after the PKPU application is registered.

Unlike the bankruptcy application, the application for granting a postponement of debt payment obligations can be accompanied by submitting a peace proposal for debt payment from the debtor to its creditors. Law No.37 Year 2004 on Bankruptcy and PKPU does not regulate the content of the agreement offered in PKPU. In practice, the peace proposal contains an offer of debt payment by percentage or full payment within a certain period of time.

The peace plan proposal is discussed during a meeting of creditors chaired by a supervisory judge, which is attended by the debtor, creditors and administrators. The peace plan proposal can be rejected or accepted by the creditors, this is influenced by how the debtor can convince the creditors that the debtor is still worthy of being given a chance in the bankruptcy.

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peace plan proposal if they are not sure about the contents and offers submitted by the debtor.

Law Number 37 Year 2004 on Bankruptcy and PKPU also adheres to the principle of single peace. This single peace principle is reflected in Article 289 which states that the parties can only submit a peace plan once. If the peace plan is rejected, no second peace plan can be submitted. Therefore, after the peace plan is rejected, the supervisory judge must immediately notify the Commercial Court and the debtor is immediately declared bankrupt by the Commercial Court.

The principle of single peace is also reflected in the provisions of Article 292 of Law No. 37 Year 2004 on Bankruptcy and PKPU. The article stipulates that if peace has been rejected in the PKPU process and then the debtor is declared bankrupt, in the bankruptcy process the debtor may no longer submit a peace plan. As a legal consequence of the creditors rejecting the peace plan based on the provisions mentioned above, there is a change in the legal process, which was previously pursued by peaceful means based on the PKPU process to use the applicable process in the bankruptcy provisions. The elucidation of Article 292 of Law No. 37 of 2004 concerning Bankruptcy and PKPU, states that a bankruptcy declaration decision on the rejection of a peace plan results in the PKPU debtor not being able to propose peace again and therefore the debtor's bankruptcy estate is immediately in a state of insolvency.

Regarding this peace has also been regulated in Supreme Court Circular Letter Number 5 of 2021 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2021 as Guidelines for the Implementation of Duties for the Court, which is mentioned in Letter B regarding the Formulation of Legal Problems of Civil Chamber Number 2 concerning Special Civil, section (a), namely "Bankruptcy and Suspension of Debt Payment Obligations. Debtors who are declared bankrupt as a result of a peace plan rejected by creditors as referred to in Article 289 of the Bankruptcy and PKPU Law are not allowed to submit another peace plan."

The nature of the decision of the PKPU is faster and has definite legal force, where the decision is Final and Binding, meaning that the decision to reject the PKPU cannot be submitted to any legal remedies, be it appeal, cassation, or submission of a judicial review as stated in Article 235 paragraph (1) of the Bankruptcy and PKPU Law. The declaration of bankruptcy as a result of the refusal to validate the peace agreement also cannot be filed for cassation or judicial review as stated in Article 293 paragraph (1) of the Bankruptcy and PKPU Law.

The state of bankruptcy and its legal consequences (general confiscation of the bankrupt debtor's assets) are considered to have been effective since the date the bankruptcy declaration was pronounced. The Bankruptcy Decision as a general confiscation of the bankruptcy debtor's assets is still a security confiscation for payment to creditors. The bankruptcy verdict as a general confiscation does not yet have the title of an executorial confiscation until the bankruptcy estate is declared insolvent or unable to pay.

The indicator of insolvency is first determined by whether or not a peace proposal is submitted by the debtor before the debt matching is completed.

Meanwhile, the authority to decide whether the bankruptcy estate is insolvent lies with the concurrent creditors who have voting rights. If the concurrent creditors who want the bankruptcy estate to be disposed of immediately, they will reject the peace proposal submitted by the debtor. Alternatively, concurrent creditors choose to have their debts settled amicably, by agreeing to the peace proposal.

Article 178 paragraph (1) of Law No. 37 of 2004 concerning Bankruptcy and PKPU considers a debtor to be insolvent when the following 3 (three) events occur:

a) The debtor does not offer a peace proposal to pay debts;
b) A peace proposal is offered by the bankrupt debtor but rejected by all of its creditors;
c) The peace proposal is accepted by all creditors but the commercial court refuses to ratify the peace proposal and the verdict is legally binding.

1. Existence (stay period) related to the execution of collateral in bankruptcy that originated from the rejection of peace in the postponement of debt payment obligations in the future reform of the Bankruptcy Law.

The following are the author's opinion that are provisions that should be considered regarding Bankruptcy in Indonesia in the future, especially regarding the execution of bankruptcy property guarantees:

a. The Position of Separate Creditors in the Execution of Collateral of the Bankrupt Debtor's Assets

General bankruptcy confiscation does not only cover all immovable and movable objects that are visible to the eye, but includes all intangible objects that belong to the debtor at the time of bankruptcy, as well as property rights that arise after the debtor is declared bankrupt. From the point of view of the Legal Theory of Property Security, the binding of property security such as mortgages, mortgages, pledges and fiduciaries, does not constitute a transfer of rights to the secured object. Although in certain collateral agreements such as pledges, the pledged goods must be delivered under the control of the pledgee, the pledged goods still have the status of the pledgor's property.

The fact that the secured creditor doesn't own the debtor's collateral is underscored by provisions in Article 56(3) and Article 69(2)(b) of Law No. 37/2004 on Bankruptcy and PKPU. These provisions allow the Curator to sell bankruptcy assets during the stay period, even if the goods sold are collateral for the secured creditor's receivables. However, the Curator's sale of secured goods from secured creditors doesn't necessarily negate the principle of droit de suite. The creditor still holds priority for payment from the sale of secured goods, even after the debtor's bankruptcy declaration and the sale or confiscation of the secured goods by the Curator. The receiver creditor's claim maintains priority in payment and is prioritized in the Distribution List.

Legally, the bankrupt debtor's assets used as collateral remain categorized as bankruptcy assets. They are subject to general confiscation as per the bankruptcy decision from the Commercial Court, based on the provisions outlined in Law No. 37 of 2004 concerning Bankruptcy and PKPU:

1) Law No. 37/2004 on Bankruptcy and PKPU does indeed position secured creditors outside the scope of the debtor's bankruptcy. However, it does not exempt secured receivables of secured creditors from general confiscation. Specifically, Article 56 paragraph (1) of Law No. 37 of 2004 Concerning Bankruptcy and PKPU suspends the right of secured creditors to self-execute collateral until the bankruptcy estate is declared insolvent or for at least 90 days after the debtor's bankruptcy declaration.
2) The separatist creditor is required to deliver to the Curator the remaining proceeds from the sale of the collateral, deducting the debt amount, interest, and associated costs from the settlement of the separatist creditor's receivables.
3) At any time, the curator may release the collateral by paying the lesser amount between the market value of the collateral and the secured debt amount to the respective separatist creditor.
4) The right of parate execution by a secessionist creditor isn't nullified by the debtor's bankruptcy. However, bankruptcy places limitations on this right, making it not fully vested. The bankrupt debtor's insolvency allows for this right to be exercised for only two months from the time of insolvency. If, within this period, the secessionist creditor fails to sell the collateral to settle the debt, the right of parate execution lapses. The Curator, acting as the bankruptcy administrator, will then sell the collateral for the benefit of the secessionist creditors.

To prevent embezzlement of bankruptcy assets through collusion between debtors and creditors, especially separatist creditors, it's crucial to register separatist creditors' receivables with the Curator. This registration establishes their status as bankruptcy debts in the Debt Register. This requirement ensures that assets used as collateral for their debts don't automatically transfer to separatist creditors upon the debtor's bankruptcy declaration. Instead, these assets remain part of the bankruptcy estate, subject to general confiscation, and will be used as collateral to settle debts owed to property rights guarantee recipients.

Future Indonesian Bankruptcy Law should delineate procedures for selling bankruptcy assets, including assets not under property rights guarantees like mortgages, fiduciaries, pawnings, or warehouse receipt guarantees, as well as assets with debt collateral status from debtors to their creditors.

b. Insolvency Test as a Requirement for Bankruptcy Declaration.

Future bankruptcy laws in Indonesia are likely to include an insolvency test for several reasons. Firstly, this test aims to prevent individuals with more assets than debts from being declared bankrupt by the Court. Solvency is defined as the ability to pay what is due and collectible or when assets do not exceed debts. In contrast, insolvent individuals cannot meet their due and collectible debts.

Secondly, the expansive definition of debt in Law No. 37/2004 on Bankruptcy and PKPU requires complex proof. Currently, the simplistic proof

required by this law is often used to reject bankruptcy applications, citing the need for more substantial evidence.

Moreover, complex legal provisions such as actio pauliana, evidence of fictitious creditors, lawsuits against negligent directors causing bankruptcy, and shareholder abuse of authority require intricate proof. Therefore, the insolvency test provides a suitable alternative to the straightforward proof in determining bankruptcy eligibility. Commercial Court judges would administer this test when assessing bankruptcy filings.

c. Reorganization to Increase the Value of Prospective Companies.

A robust Bankruptcy Law includes a corporate reorganization system, essential for distinguishing between unviable companies that should be terminated and prospective ones that should be preserved. It should also outline methods for distributing losses incurred by debtors, not solely focused on boosting creditors' returns. Therefore, the Bankruptcy Law must balance various competing objectives to form a comprehensive system. Donald R. Korobkin advocates for a "value-based account" within the Bankruptcy Code, which considers both economic and non-economic values associated with financial issues.

Bankruptcy law has a distinct role in addressing the myriad complex issues stemming from debtors' challenging financial circumstances. These issues encompass taxation, unpaid obligations to employees and suppliers, unresolved contracts, and the looming threat of creditors pursuing individual asset collection and seizure. Such a broad scope necessitates a thorough examination of rules beyond bankruptcy, particularly those designed to safeguard creditors' interests. Simultaneously, Bankruptcy Law should embrace a concept that optimizes debtors' chances for successful reorganization. This approach represents the most effective means of addressing associated social challenges.

d. Debt Relief for Individual Bankruptcy

The Indonesian Bankruptcy Law does not differentiate between bankruptcy for companies and individuals, although the objectives and advantages of regulating corporate and individual bankruptcy differ. Individual bankruptcy arrangements generally aim to equitably distribute the debtor's assets among creditors and offer the debtor a chance for a fresh start. In contrast, corporate insolvency arrangements focus on repairing or revitalizing a company to improve its trading position, enhance creditor returns, establish a fair system for addressing creditors' claims, and investigate and penalize management responsible for the company's insolvency.

e. Cancel the Provisions of SEMA No. 5 of 2021.

The Circular Letter from the Supreme Court addresses guidelines for court tasks based on outcomes from the Supreme Court Chamber's Plenary Meeting in 2021. This includes Letter B, which deals with the Formulation of Legal Issues in Civil Chamber Number 2 regarding Special Civil Procedures, specifically focusing on "Bankruptcy and Suspension of Debt Payment Obligations" in section (a). According to this letter, debtors declared bankrupt due to rejected peace plans by creditors, as outlined in Article 289 of the Bankruptcy and PKPU Law, are prohibited from submitting another peace plan.

The provisions of SEMA No. 5 of 2021 can disadvantage creditors. When a peace plan rejected during the postponement of debt payment obligations cannot be resubmitted in the bankruptcy process, it leads to the bankruptcy estate becoming insolvent. Insolvency results in an immediate bankruptcy declaration for the debtor, eliminating any stay period meant to boost the debtor's assets for creditors to maximize debt recovery. Therefore, the author argues for the cancellation of SEMA No. 5 of 2021.

f. Opportunities for Settlement to be Expanded for the Benefit of Creditors and Debtors.

The Indonesian Bankruptcy Law was established with the philosophy of safeguarding the interests of solvent debtors facing financial challenges in maintaining their business operations. Therefore, there is a need to establish an insolvency test. This test is crucial because simple proof under the Bankruptcy Law cannot address bankruptcy petitions that encompass debts in a broader context. Currently, Indonesian bankruptcy law does not incorporate the insolvency test as a prerequisite for bankruptcy petitions against debtors.

While the primary aim of bankruptcy is to safeguard debtors who act in good faith toward their creditors, the ease with which creditors can initiate debtor bankruptcy under the Bankruptcy Law poses significant risks for debtors with sound financial standing or those still solvent. This situation turns bankruptcy institutions, intended as a last resort, into an initial recourse for creditors seeking to recover their debts. Implementing the insolvency test as a condition for bankruptcy applications offers several benefits for both debtors and creditors. It prevents creditors from exploiting bankruptcy solely for their own benefit without considering the debtor's or other creditors' circumstances. It also safeguards debtors with healthy financial standing and positive prospects from unnecessary bankruptcy filings and avoids assuming that a debtor is incapable of payment during temporary financial challenges.

In general, there are three types of financial tests in determining whether a debtor is still solvent or has entered a state of insolvency, including:

1) Cash Flow Test Method. This test aims to determine the ability of the debtor itself to pay its debts, both those that will be due now and those that will be due in the future, by examining the books owned by the debtor.
2) Balance Sheet Test. This test method aims to test whether the total assets owned by the debtor exceed or are smaller than the total liabilities owned by the debtor, so it does not only see whether the debtor is unable to pay its debts in the short term, but pays attention to the overall state of the debtor's assets as a determinant of whether the debtor has entered an insolvent state or is still in a solvent state. There are several stages to determine whether the debtor still has prospects in the future, namely by calculating the fair amount of the debtor's assets by means of HBU (Highest and best use), then analyzing the fair value of the debtor's assets with the total debt it has.
3) Capital Adequacy Test. This test method is carried out to see the value of shares for the debtor in the future to determine whether the debtor still

has sufficient capital to survive due to transaction disruptions experienced by the debtor.

Based on the description above, Indonesia can adopt the Balance Sheet Test method as a criterion for bankruptcy applications from debtors. This method is more suitable for Indonesian bankruptcy law as it considers not just the debtor's cash flow but also their total assets compared to their overall debt. This aligns with Sutan Remy Sjahdeni's view that only debtors experiencing Balance Sheet Insolvency, not Cash Flow Insolvency, should file for bankruptcy.

Implementing this financial test requires an independent financial auditor from an officially registered public accounting firm to assess the debtor's financial health. The Balance Sheet Test method has already been integrated by the Government of Indonesia in the Investment Management sector. Article 72 of Government Regulation No. 74 of 2020 concerning Investment Management Institutions specifies that for an Investment Management Institution to be declared bankrupt, it must prove insolvency by demonstrating that its total assets cannot cover all its debts.

Therefore, adopting the Balance Sheet Test as one of the criteria for insolvency in bankruptcy applications can draw guidance from the approach taken in the Investment Management sector.

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

A. Based on the Theory of Legal Certainty, the provisions in Law No. 37 of 2004 concerning Bankruptcy and PKPU regarding the suspension period (stay period) have not provided legal certainty for debtors declared bankrupt through a postponement of debt payment obligations that is rejected by the Panel of Judges. According to bankruptcy law theory, once the bankruptcy estate is declared insolvent, the debtor can no longer submit a peace plan. At this point, the curator can immediately begin administering the bankruptcy estate.

   Insolvency ends the stay period for secured creditors, allowing them to execute their property security rights as if there were no bankruptcy. According to the Contractarian Approach Theory, the execution of collateral must be carried out immediately by the separatist creditor, as stipulated from the beginning of the agreement or contract made between the creditor and the debtor. Separatist creditors have the authority to execute the debtor's collateral, especially after the bankruptcy estate is declared insolvent. Law No. 37 of 2004 concerning Bankruptcy and PKPU provides only two months for the separatist creditor to sell the collateral and repay their debt once the bankruptcy estate is in an insolvent state.

B. Law No. 37/2004 on Bankruptcy and PKPU should provide legal certainty regarding the provisions of the stay period related to the execution of collateral in bankruptcy originating from the rejection of peace in the postponement of debt payment obligations. Currently, Article 56, Paragraph (1) of Law No. 37/2004 on Bankruptcy and PKPU only applies to debtors declared bankrupt through bankruptcy proceedings.

The controversy surrounding SEMA No. 5 of 2001 indicates that the provisions of Law No. 37 of 2004 concerning Bankruptcy and PKPU do not provide legal certainty for creating peace between debtors and creditors. According to Bankruptcy Law Theory, bankruptcy involves the general confiscation of all assets of the bankrupt debtor, managed by the curator under the supervision of the supervisory judge, as regulated by this law. Therefore, the execution of the bankrupt debtor's assets should adhere to the provisions of Law No. 37 of 2004 concerning Bankruptcy and PKPU. Furthermore, based on the Contractarian Approach Theory, every creditor holding a pawn, fiduciary guarantee, mortgage, or other collateral rights can execute their rights as if there were no bankruptcy. This is also referred to in the provisions of Article 55, Paragraph (1) of Law No. 37 of 2004 concerning Bankruptcy and PKPU.

Recommendations

A. For the Legislative Body: Consider adding provisions not only for the stay period related to the execution of collateral for bankrupt debtors declared through bankruptcy but also for establishing regulations concerning the stay period for bankrupt debtors declared through the rejection of postponement of debt payment obligations by the Panel of Judges.
B. For the Judiciary: Request the Supreme Court to revoke SEMA No. 5 of 2021 within the Commercial Court system in Indonesia. The provisions of SEMA No. 5 of 2021 conflict with Article 290 of Law No. 37 of 2004 concerning Bankruptcy and PKPU, which stipulates, "If the Court has declared the Debtor Bankrupt, then the bankruptcy provisions as referred to in Chapter II shall apply to the decision on the bankruptcy statement, except Article 11, Article 12, Article 13, and Article 14." The Bankruptcy Law in Indonesia should broaden opportunities for reconciliation for the benefit of both creditors and debtors. This includes allowing debtors to continue their businesses and enabling separatist creditors to receive optimal settlement values by offering debtors the chance to reconcile. This approach aligns with the purpose of the stay period in Indonesian Bankruptcy Law. Additionally, the Commercial Court should establish a mechanism for deferring debt payment obligations, providing ample opportunities for honest debtors to enhance their company's performance. Debtors often require significant time to improve their businesses effectively.
C. For Executive Institutions: The Government, specifically the Financial Services Authority, should enhance its performance in supervising and managing financial institutions such as banks, insurance companies, and capital markets. This heightened oversight is crucial, particularly when these financial institutions are debtors, especially those who may face bankruptcy or have obligations to postpone debt payments.
D. For Debtors, especially those whose collateral will be executed to repay their debts to creditors, it's essential to ensure they can continue their business operations. This also benefits separatist creditors by maximizing the settlement value through the opportunity for debtors to reconcile. This

approach aligns with the purpose of the suspension period (stay period) in Indonesian Bankruptcy Law.

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