Legal protection for debtors in determining the application requirements for suspension of debt payment obligations

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ABSTRACT

The establishment of the Bankruptcy Law aims to overcome the difficulties of the business world in terms of debt and receivables in continuing their activities. However, in practice the PKPU and Bankruptcy institutions are used as a means of resolving ordinary civil disputes, this is due to Article 225 paragraph (3) and (5) in conjunction with Article 222 paragraph (1) and (2). The purpose of this study is to analyze the ratio legis for debtors in relation to the ratio legis Article 225 paragraph (3) and paragraph (5) associated with the purpose of establishing Bankruptcy and Suspension Of Debt Payment Obligations (UUK-PKPU). This research is a normative legal research with a statute approach, the case approach, historical approach, comparative approach, and the conceptual approach. The legal materials used are primary, secondary, and tertiary. The analysis technique uses legal logic, legal interpretation teleologically, hermeneutics, grammatically, and systematically. The results of the study indicate that the ratio legis regarding PKPU as regulated in Article 225 paragraph (3) and paragraph (5) has a vague norm when it comes to the purpose of establishing UUK-PKPU, that PKPU is a means for debtors so that debtors can restructure their debts. So that no rights are given to debtors who are not present at the PKPU session resulting in no legal protection for the debtor to defend himself by conveying the reasons for the debtor's absence.

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Introduction

The meaning of legal protection is interpreted by Paton as an interest which is the object of a right, not only because it is protected by law, but also because there is recognition of it. Rights not only contain elements of protection and interests, but also contain desire (Rahardjo, 2010). Regarding the function of law to provide protection, Lili Rasjidi and B. Arief Sidharta said that the law is grown and needed by humans, precisely based on the product of human judgment to create conditions that protect and advance human dignity and to enable humans to live in life according to their dignity (Rasjidi and Sidharta, 1994).

Satjipto Raharjo defines legal protection as providing protection to human rights that have been harmed by others and this protection is given to the community so that they can enjoy all the rights provided by law. Furthermore, Philipus M. Hadjon argued that legal protection is the protection of dignity, as well as recognition of human rights owned by legal subjects based on legal provisions of arbitrariness. To be more complete, Muktie, A. Fadjar defines legal protection as a narrowing of the meaning of protection, in this case only protection by law. Protection provided by law is also related to the existence of rights and obligations, in this case those owned by humans as legal subjects in their interactions with humans and their environment. As a legal subject, humans have the right and obligation to carry out a legal action. (Setiono, 2004)

At first the bankruptcy law in Indonesia was formed during the Dutch colonial occupation, which then since the late 1980s many Indonesian economic actors began to abandon the provisions of Indonesian civil law, especially bankruptcy in their efforts to modernize the law to suit the Indonesian economic situation at that time. However, in the field of bankruptcy law, only a few improvements have occurred and it was only when Indonesia was rocked by the 1998 economic recession and at the insistence of the

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IMF, Indonesia passed the Law Number 4 of 1998, which was subsequently refined with number 37 of 2004, which in fact the law is referred to Dutch bankruptcy law. (Linnan, 2006).

In bankruptcy, there is an institution for Requesting for Obligation for Payment of Debt which in article 225 paragraph (2) and paragraph (3) of the Bankruptcy Law Court within 3 (three) days if the application is filed by the debtor and 20 (twenty) days is submitted by the debtor must grant the request Temporary suspension of debt payment obligations. In relation to the requirement for the amount of debt as referred to in Article 222 paragraphs (1) and (2) where there is no minimum limit on the amount of debt, the PKPU can be used as an excuse to bankrupt another party in the event that there is a claim even though the amount of the claim is small and can be paid by the Respondent. The Respondent does not want to pay because there are still civil problems between the Petitioner and the Respondent. Article 228 paragraph (5) states: in the event that the Suspension of Obligation for Payment of Debt cannot be determined by the Court as referred to in paragraph (4), within the period as referred to in Article 225 paragraph (4), the Debtor is declared bankrupt.

Debt in bankruptcy is a basic requirement that must be met, not only in the context of filing an application for bankruptcy but also in submitting an application for obligation to pay debts. The terms of debt in bankruptcy do not have a minimum limit so as to encourage cases that should be filed in simple cases to be resolved in bankruptcy applications. The impact of bankruptcy petition in business affects the credibility of the Bankrupt Respondent.

The regulation of dispute resolution through bankruptcy has not been able to fulfill the purpose and objective of the establishment of the Law, namely to solve major difficulties in the business world in settling debts and continuing its activities. There was a conflict of norms between article 2 and article 222 of the Bankruptcy Law. The law functions to resolve disputes both preventively and repressively. The law should provide certainty and not make itself a means for the parties to resolve disputes that will actually result in injustice. In the absence of restrictions on the amount of debt in bankruptcy (Article 2 of Law No. 34 of 2004) and Applications for Suspension of Debt Payment Obligations (PKPU) (Article 222 of Law No. 34 of 2004) both submitted by the Debtor and Creditor must be granted by the Court can obscure the purpose of the establishment of the Law on Bankruptcy and PKPU, because judges are required to grant PKPU requests submitted by both Creditors and Debtors without providing an assessment of whether the problem submitted is a bankruptcy issue or can be filed in the realm of ordinary civil lawsuits.

The purpose of the establishment of the bankruptcy law is to overcome the difficulties of the business world in dealing with debt and receivables in continuing their activities. However, in practice the PKPU and Bankruptcy institutions are used as a means of resolving ordinary civil disputes, this is because Article 225 paragraph (3) and (5) in conjunction with Article 222 paragraph (1) and (2). To find out the background and purpose of the establishment of bankruptcy law, the author tries to understand it from the point of view of the ratio legis of the establishment of bankruptcy law, especially the bankruptcy law number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy Law and SPDO).

The type of research used in this study is normative legal research, which is a research in the form of an inventory of the applicable legislation, to seek the principles of the legislation, so this research seeks to make legal findings that are in accordance with a particular case (Nasution, 2008). The research approaches in this study include the statute approach, the case approach, historical approach, comparative approach, and the conceptual approach.

The legal materials used are Primary Legal Materials which include related laws and regulations, including the UUK-PKPU concerning Bankruptcy and the Obligation to Pay Debts. Secondary legal materials include books that discuss bankruptcy issues, seminar papers, newspaper clippings, scientific journals, collections of judges' decisions and other legal materials. Tertiary legal materials include law dictionaries and encyclopedias.

Legal research at the legal material collection stage begins with a literature study (library research) which is collecting, studying and reviewing legal materials that have relevance to. The analysis of the legal material is carried out prescriptive analytically, which aims to produce a prescriptive on what should be the essence of legal research as a legal scientist. The analysis of the legal material is carried out prescriptive analytically, which aims to produce a prescriptive on what should be the essence of legal research as a legal scientist who is a legal scientist. The analysis technique uses legal logic, legal interpretation teleologically, hermeneutics, grammatically, and systematically. The legal hermeneutic method is used to analyze, look for the truth which is essentially based on the principles (Aprilia et al., 2018) of Law Number 37 concerning Bankruptcy and Suspension of Debt Payment Obligations, especially based on the concept of ratio legis from Article 225 paragraph (3) and paragraph (5) UUK-PKPU.

Theoretical Background

The classic goal of bankruptcy is a fair distribution of debtor's wealth for the benefit of all creditors and "fresh start" for debtors. The word fresh start actually has it (Wijaya, et l. 2019). If there is a fresh start, it indicates that the debtor has been in a stopped state. Usually, the termination of the debtor is not due to trivial things, but because of substantial reasons so that business activities become difficult to make business activities difficult. In a situation like this, the debtor is fair enough to be declared bankrupt (Irianto, 2015).

The formulation of article 225 ayat (3) and paragraph (5) has consequences that the judge can grant pkpu without considering in advance whether the matter is civil or unlawful or is a bankruptcy issue that has qualified for debt, two creditors and can be proven simply (Damlah, 2004). The researcher argues that PKPU is an effort given to debtors by law in order to restructure debts to creditors.

If the right to apply for a PKPU is also granted to a creditor, what happens is that the debtor may repeatedly receive a PKPU application from different creditors at different times, with a different registration number for the PKPU application.

There are several studies that discuss bankruptcy, including research conducted by Zulaeha (2016), his research discusses the concept of bankruptcy that provides legal protection for prospective corporate debtors. The similarity between this study and Zulaeha's research is that they both discuss legal protection for company debtors, while the difference is that this study emphasizes legal protection for debtors in the PKPU application.

Anisah (2008), his research examines the development of protection against the interests of creditors and debtors in bankruptcy law in Indonesia. The similarity of this research with Anisah's research is that they both discuss legal protection for creditors in bankruptcy law, while the difference is that this study emphasizes legal protection for debtors in the PKPU application related the 225 Bankruptcy Law.

Arbijoto (2005), his research discusses philosophical studies related to certainty, justice, and the benefits of the bankruptcy law which are associated with the requirements for bankruptcy petition. The similarity of this research with Arbijoto's research is that they both discuss bankruptcy, while the difference is that this study emphasizes legal protection for debtors in PKPU applications. Amrullah (2016), his research discusses philosophical studies related to the settlement of the Principles of Integration in Bankruptcy as a Legal Advisor to Resolve Debts and Receivables. The similarity of this research with Amrullah's research is that both discuss bankruptcy, while the difference is that this study emphasizes legal protection for debtors in PKPU applications.

Ratio Legis

Ratio legis is defined as the background that drives the birth of law or as Satjipto Rahardjo states that the principle of law is the ratio legis of legal regulations or as a reason for the birth of legal regulations. (Rahardjo, 2000). The Bankruptcy Law and SDPO are a phase of change from the bankruptcy provisions and suspension of debt payment obligations existed in Indonesia. Previously, the bankruptcy provisions were only intended for the trading environment based on book III (Third) of the Code of Commercial Law (*wetboek van koophandel*) which was later replaced by the Bankruptcy Regulation *Faillissements-verordening Staatsblad 1905 Number 217 juncto Staatsblad 1906 Number 348*.

Ricardo Simajuntak stated that bankruptcy is essentially a further implementation of the creditorium parity principle and the *pari passu* prorata parte principle in the property law regime (*vermogensrechts*). The principle of creditorium parity means that all the assets of the Debtor, whether in the form of movable or immovable property or assets that are currently owned by the Debtor and items in the future will be owned by the Debtor, are bound to the settlement of the Debtor's obligations. Meanwhile, the principle of *pari passu* prorata parte means that the assets are joint guarantees for creditors and the proceeds must be shared proportionally between them, unless there are creditors who according to the law must take precedence in receiving their bill payments. (Simajuntak, 2005).

For nearly 100 (one hundred) years of existence of *Faillissements-verordening*, changes were made in 1998 in line with the Indonesian financial crisis, where the Government issued a Government Regulation in Lieu of Law Number 1 of 1998 concerning Amendments of Law of the Republic of Indonesia Number 4 of 1998 concerning Amendments of Law on Bankruptcy becomes Law.

Economic and financial stability is one of the important prerequisites in building and moving the wheels of a nation's economy. Since 1999 several macro indicators have shown improvement, as reflected in the lowering of inflation and interest rates, as well as positive economic growth. However, several other indicators, such as currency exchange rates and stock price index, still show quite sharp fluctuations.

The burden of government debt and private debt originating from domestic debt in the case of financing bank recapitalization has created problems in the health of the State Budget (fiscal sustainability). In the meantime, progress has been made in the restructuring of the financial sector, which is still felt to be very slow. The banking intermediary function has not fully recovered. One of the reasons is the slow completion of the company's debt restructuring (Rumadan, 2017).

The provisions of the Bankruptcy Law and SDPO, which were implemented in Indonesia for nearly 14 (fourteen) years of their implementation, have experienced several problems related to the provisions within them which are considered vulnerable to abuse that can harm Debtors and Creditors in connection with bankruptcy settlement, so that bankruptcy becomes a scourge in business settlement due to the very easy mechanism for bankruptcy based only on simple evidence with a mechanism that is not relevant to the legal principle of freedom of judges in general to judge cases, as a result many healthy companies become bankrupt and actually harm creditors in general and debtors who run their companies have solvency that is well, in fact, they have suffered losses due to the bankruptcy system in the Bankruptcy Law and SDPO, which still have weaknesses in the legal system and institutions implementing bankruptcy.

Settlement of debts with a bankruptcy institution results in the Debtor's assets being confiscated by the Court and then it becomes the authority of the Receiver to manage these assets until the bankruptcy process ends, including settlement of his debts. Therefore, in practice bankruptcy is often perceived not as a way out but more often with negative connotations. This has an impact on reducing public confidence in the ability of a director or commissioner of a company to manage a company, so that the law that regulates limited liability companies becomes a requirement for directors and boards of commissioners (see article 93 and article 110 of the

Limited Liability Company Law). In line with the development of society towards bankruptcy settlement, the World Bank determined resolving insolvency as an indicator of ease of doing business, highlighting some of which are related to relatively low costs and recovery assets.

If we examine more deeply the *Faillessements-verordening* (old bankruptcy regulations), there are several main provisions that are not in harmony with the property law system with the civil law regime. The author has stated at the top that the bankruptcy principle is the implementation of the creditorium parity principle and the *pari passu* prorata parte principle. However, Article 1 paragraph (1) *Faillessements-verordening* in no way requires the existence of two or more creditors, this was then corrected by the promulgation of the bankruptcy law Number 4 of 1998 which contained the creditorium parity principle and the *pari passu* prorata parte principle.

The dynamics of bankruptcy regulations in Indonesia continue to occur, Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations more explicitly formulates bankruptcy requirements, namely "the condition of non-payment in full" meaning that this law is no longer based on bankruptcy statements on the insolvency test doctrine but based on the presumption of law.

According to the Bankruptcy Law and SDPO, the objective of Indonesian bankruptcy law is to liquidate the assets or assets of the debtor, we can see this from the norms or articles compiled in the law, which in the end are liquidation or settlement of bankruptcy, rather than reorganizing the company debtor despite the fact that the debtor company is still solvent. In this article, the author will highlight some of the provisions of the new bankruptcy law which according to the author, have not maximally protected the interests of the debtor, this is related to the title of the Dissertation the author was working on.

Legal protection can be interpreted as an action or effort to protect society from arbitrary actions by the authorities who are not in accordance with the rule of law, to create order and peace so that it allows humans to enjoy their dignity as humans (Setiono, 2004). According to Philipus M. Hadjon, there are two kinds of means of legal protection, namely:

Means of Preventive Legal Protection

In this preventive legal protection, legal subjects are given the opportunity to submit objections or opinions before a government's decision. The goal is to prevent disputes. Preventive legal protection means a lot to government actions based on freedom of action because with preventive legal protection the government is motivated to be careful in making decisions based on discretion. In Indonesia, there is no specific regulation regarding preventive legal protection.

Means of Repressive Legal Protection

Repressive legal protection aims to resolve disputes. The handling of legal protection by the General Courts and Administrative Courts in Indonesia belongs to this category of legal protection. The principle of legal protection against government actions rests on and originates from the concept of recognition and protection of human rights because according to the history from the West, the birth of the concepts of recognition and protection of human rights is directed to the limitations and placement of the obligations of society. and government. The second principle that underlies legal protection of governmental acts is the principle of rule of law. In relation to the recognition and protection of human rights, recognition and protection of human rights has a primary place and can be linked to the objectives of the rule of law ". (Hadjon, 1994).

In connection with this research, preventive legal protection is needed to regulate legal protection for debtors in the SDPO application. In essence, protection in bankruptcy, especially in the SDPO application, must be able to protect all related parties, namely the society, creditors and in particular in this study can protect debtors.

Debt based on Bankruptcy Law-SDPO is defined as an obligation that is stated or can be stated in an amount of money both in Indonesian currency and foreign currency, either directly or that will arise in the future or contingent, arising from an agreement or law and which must be fulfilled. by the debtor and if it is not fulfilled it gives the creditor the right to get the fulfillment from the debtor's assets.

As a result of this principle, Bankruptcy Law-SDPO does not recognize the principle of Debt Forgiveness. Sutan Remi Sjahdeini stated that a good bankruptcy law must be based on the principle of providing equal protection for all parties involved with and having an interest in the bankruptcy of a person or a company. In connection with it, a good bankruptcy law should not only provide protection for creditors. The interests of the debtor and its stakeholders must also be given great attention.

Meanwhile, the philosophy of the forgiveness of debtors by Gross is expressed as follows:

"Forgiveness is an immensely powerful concept with a long religious and secular tradition, and it is link to debt dates back to the old testament, if not before. Forgiveness is appropriate, according wrong committed, the wrong must harm another, the wronged party resents what occurred, and the wrongdoer acknowledges the wrong done and takes step to rectify it. These conditions can be found in the bankruptcy situation. For debts, the wrong is the nonpayment of legitimate obligations. The nonpayment produces a panoply of injuries. Creditors who are not paid are damaged, economically and perhaps emotionally. And other who pay for the losses indirectly are also harmed. Many injured creditors are recently if the debtors failures because debtors have received a benefit for which payment has not been made. Creditors many also feel resentment because debtors overstated their abilities to succeed. Finally, debtors

admit to failure and take steps to redress their wrong by accessing the legal system. The system makes that wrong a matter of public record and requires the debtors to submit to judicial scrutiny.”

The principle of debt forgiveness is also reflected in the norms governing fresh starting. The concept of fresh starting provides 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 his old troubled debts. The concept of fresh starting is not the same as the concept of rehabilitation, although rehabilitation is also included in the implementation of the principle of debt forgiveness. In the rehabilitation, the debtor's debts have been settled according to the bankruptcy scheme that occurred. Rehabilitation is more focused on restoring civil rights, particularly the rights to the assets of the debtor and restoring the debtor's reputation in the business sector, so that the debtor can run his business as before. (Shubhan, 2008).

M. Isnaeni argues that basically the problem of "legal protection in terms of its source can be divided into two (2) types, namely "external" legal protection and "internal" legal protection. (Isnaeni, 2016). The essence of internal legal protection, basically the legal protection referred to is packaged by the parties themselves at the time of making the agreement, where at the time of packing the contract clauses, both parties want their interests to be accommodated on the basis of an agreement. Likewise, all kinds of risks can be endeavored to be prevented through filing through clauses which are packaged on the basis of agreement too, so that with this clause the parties will receive balanced legal protection with their mutual consent. Regarding internal legal protection as such can only be realized by the parties, when their legal position is relatively equal in the sense that the parties have relatively balanced bargaining power, so that on the basis of the principle of freedom of contract, each partner in the agreement has the freedom to state his will according to his interests. "This pattern is used as a basis when the parties assemble the agreement clauses they are working on, so that the legal protection of each party can be realized straightforwardly on their initiative."

External legal protection made by the authorities through regulations for the interests of the weak, "in accordance with the nature of the law that is not biased and partial, they must also be proportionally given balanced legal protection as early as possible to other parties (Isnaeni, 2016). Because it is possible that at the beginning of the agreement, there is a party that is relatively stronger than the partner, but in the implementation of the agreement the party who was originally strong, falls into being the persecuted party, for example when the debtor defaults, the creditor should also need legal protection.

The packaging of the laws and regulations as described above, illustrates how detailed and fair the ruler provides legal protection to the parties proportionally. Issuance of legal regulations with such a model, of course, is not an easy task for a government that always tries optimally to protect its people. Suspension of Debt Payment Obligation is specifically regulated in article 222 Bankruptcy Law-SDPO which reads:

Suspension of Debt Payment Obligation is submitted by Debtor who have more than 1 (one) Creditors or by Creditors.

Debtors who cannot or predict that they will be unable to pay their debts that are due and can be collected, can request suspension of debt payment obligation, with the purpose of submitting a peace plan/offer including an offer to pay part or all of debts to Creditors. Creditors who predict that the Debtors will be unable to pay their debts that are due and can be collected, can request so that the Debtors will be given suspension of debt payment obligation, to allow the Debtors to come up with a peace plan including an offer to pay part or all of the debts to its Creditors. In the case of Application of Suspension of Debt Payment Obligation whether it is submitted by the Debtors or Creditors in accordance with article 225 paragraph (2) and (3), the Court must grant the Application of Temporary Suspension of Debt Payment Obligation and must appoint the Supervisory Judge.

Article 225 paragraph (2), (3), (4) and (5) Bankruptcy Law-SDPO reads as follows:

In the event of the application is submitted by the Debtors, The court, within no later than 3 (three) days since the date of registration of application letter as referred to in Article 224 paragraph (1) must grant temporary suspension of debt payment obligation and must appoint a Supervisory Judge from the court judge as well as appoint 1 (one) or more administrators who together with the Debtor to administer the Debtor's assets.

In the event of the application is submitted by the Creditors, The court, within no later than 20 (twenty) days since the date of registration of application letter, must grant the application of temporary suspension of debt payment obligation and must appoint a Supervisory Judge from the court judge as well as appoint 1 (one) or more administrators who together with the Debtor to administer the Debtor's assets.

Soon after the resolution of temporary suspension of debt payment obligation is expressed, The court through administrator is obliged to call Debtors and Creditors known by registered mail or by courier, to appear before a hearing that will be held no later than the 45th day (forty five) since the resolution of temporary suspension of debt payment obligation is expressed.

In the event of Debtors are not present in a hearing as referred to in paragraph (4), temporary suspension of debt payment obligation is terminated and the Court is obliged to declare bankrupt for the Debtors in the same hearing.

The main problem in this research is what is the ratio legis article 225 paragraph (3) and paragraph (5) of the Bankruptcy Law-SDPO which is associated with the purpose of establishing the Bankruptcy Law itself which should provide equitable protection for debtors, especially in debt payment obligations.

Article 57 paragraph (1) Bankruptcy Law-SDPO states that insolvency is defined as a condition of inability to pay. However, this is not a condition for the decision to declare bankruptcy. The requirement to apply for bankruptcy as stated in Article 2 paragraph (1) Bankruptcy Law-SDPO is "not paying in full, which can be interpreted as "unwilling to pay" or "unable to pay". Thus, the debtors do not want to pay or are unable to pay, both of which can be declared bankrupt as long as the conditions for the bankruptcy application are fulfilled and can be simply proven.

Article 1 point 1 states that a debtor who has two or more creditors and does not pay at least one overdue debt can be declared bankrupt by a court decision either at the request of the debtor himself or at the request of one or more creditors. According to this provision, the conditions for being declared bankrupt are only formulated by the debtor in "a state of bankruptcy, only formulated by the debtor in a "non-payment condition" of a debt that is due and can be collected, no need to prove whether the debtor is in a solvent condition or is insolvent. the terms of the amount of the debt provided that the debtor has two or more creditors and one of them is due and can be billed, and by the Commercial Court he can be declared bankrupt, this provision opens the way for easier, more efficient and faster settlement of debts through bankruptcy law, however This provision also continues to be refined, not in terms of bankruptcy terms, but more to the definition of debt, which in Law Number 4 of 1998 is defined as debt in a narrow meaning, namely debt that arises only from a debt agreement.

The dynamics of bankruptcy regulations in Indonesia continue to occur, Bankruptcy Law-SDPO more explicitly formulates bankruptcy requirements, namely "non-payment in full" meaning that this law no longer bases bankruptcy statements on the insolvency test doctrine but is based on the presumption of law. In making a statutory product such as Bankruptcy Law-SDPO must consider the impact of a bankruptcy declaration on the wider community. Bankruptcy Law-SDPO can be a social, political, and economic policy tool and not only as a simple tool to solve debt and credit problems between debtors and creditors and share bankruptcy assets with creditors. The various interests that exist in society, the interests of debtors and creditors in a bankruptcy case should be balanced through a fair justice system. In this case, the Court is allowed to consider various interests. (Anisah, 2007)

There is a tendency of using SDPO as an option by creditors can also be related to the principle of business continuity adhered to by Bankruptcy Law-SDPO, namely to promote SDPO which has a spirit of peace and bankruptcy is the ultimate remedium if peace efforts cannot be implemented. On the other hand, if SDPO is used in bad faith, SDPO can be an instrument to accelerate the bankruptcy of debtors. Therefore, SDPO is not yet fully an instrument for implementing corporate rescue as a concept in settling corporate debts. Meanwhile, the principle of business continuity is the same as corporate rescue and is different from SDPO, but this principle does not become a legal norm in the formulation of the articles of Bankruptcy Law-SDPO.

Article 229 paragraph (4) states that a SDPO application submitted after an application for bankruptcy has been filed towards the debtor so that it can be decided first as referred to in paragraph (3) must be submitted at the first hearing of the examination of the bankruptcy application. In Article 229 paragraph (3), if the application for bankruptcy and SDPO are examined at the same time, the judge's SDPO application is decided first. Thus the SDPO philosophy is also linked to the timing order of the Article 225 paragraph (2) and (3) in the event that the SDPO application is filed by the debtor, the court will grant the SDPO application at the latest within 3 (three) days and if the SDPO application is submitted by a creditor, then the court within a period of 20 days the judge grants the SDPO application, meaning that SDPO gets priority for its examination and will be decided before the bankruptcy case, while the examination of the bankruptcy case is 60 days so the words to be decided first in Article 229 paragraph (4) There is no need because the period for handling SDPO cases is shorter than bankruptcy cases, automatically SDPO cases will always be decided first from the bankruptcy case because the bankruptcy is terminated. Thus, under any circumstances, if there is a SDPO application filed simultaneously with or in a bankruptcy case, whether in the same panel of judges or in a different panel, the SDPO case the judge will be decided first so that therefore Article 229 paragraph (4) cannot be applied to creditors.

The researcher is of the opinion that the SDPO Application is an institution that should be given to debtors only and not to creditors. Article 222 paragraph (3) states:

"Creditors who predict that the debtor is unable to continue to pay their debts that are due and can be collected, can request that the debtor will be given a suspension of debt payment obligations, to allow the debtor to submit a peace plan that includes an offer to pay part or all of the debts to the creditors."

Meanwhile, Article 225 paragraph (3) states:

"In the event that the application is submitted by creditors, the Court, within 20 (twenty) days from the date of registration of the application letter, must grant the application for temporary suspension of debt payment obligations and must appoint a Supervisory Judge from the Court Judge and appoint 1 (one) or more administrators who together with the debtor administer the debtor's assets."

The current system in SDPO is creditors who submit applications, but the debtor who makes a peace plan and must reconcile with all creditors in a very limited time which in the first SDPO has been granted by the Commercial Court is for 45 (forty five) days, with consequences if the debtor unable to make peace then the debtor will go bankrupt. In addition, Indonesian bankruptcy does not recognize the principle of debt forgiveness.

Implementation of the principle of debt forgiveness in bankruptcy norms is the granting of a moratorium on debtors or known as SDPO for a specified period of time, excluding some debtor assets from bankruptcy (asset exemption), discharge of indebtedness (exemption of debtors or debtor assets to pay debt payment of debts that are completely unfulfilled), giving the debtor fresh-starting status so that it allows the debtor to start a new business without being burdened by old debts, rehabilitation of the debtor if he actually completes the bankruptcy scheme, and other legal protection fair to bankrupt debtors. (Subhan, 2008)

The Bankruptcy Law itself is an implementation of Articles 1131 and 1132 of the Civil Code. Article 1131 of the Civil Code states:

"All assets of the debtor, both movable and immovable, both existing and new in the future, become collateral for all debtor engagements."

Article 1132 of the Civil Code states:

"These assets become joint guarantees for all creditors who have these debts".

One of the functions of SDPO is as a debt moratorium from debtors and debtors who know whether these debts can be repaid or not restructured by the debtor, thus the researchers argue that Articles 222 and 225 concerning SDPO grants and the consequences are only given to debtors. Creditors and debtors can file for bankruptcy as in Article 2 Bankruptcy Law-SDPO. Article 225 paragraph (3) states:

"In the event that the application is submitted by creditors, the Court, within 20 (twenty) days from the date of registration of the application letter, must grant the application for temporary suspension of debt payment obligations and must refer the Supervisory Judge from the court judge and appoint 1 (one) or more administrators who together with the debtor administer the debtor's assets".

The phrase "must" in Article 225 paragraph (3) does not necessarily mean that the SDPO application is granted by the Commercial Court but goes through a process of examining the bankruptcy requirements. This is different if the SDPO application is submitted by the debtor as referred to in Article 225 paragraph (2) which reads:

"In the event that the application is filed by a debtor, the Court, within 3 (three) days from the date of registration of the application letter as referred to in Article 224 paragraph (1), must grant the temporary suspension of debts payment obligations and must appoint a Supervisory Judge from the Court Judge. Also, appoint 1 (one) or more administrators who together with the debtor administer the debtor's assets."

If the bankruptcy application is submitted by creditors and in the process of examining the application for bankruptcy, the debtor submits a SDPO application, the SDPO application is examined first by the Panel of Judges. So that according to researchers SDPO is a facility provided to debtors. Creditors can file for bankruptcy and if the debtor feels that he can restructure his debt, the debtor in the process of applying for bankruptcy can apply for SDPO.

In the SDPO case Number: 35/Pdt.Sus-Pailit/2020/PN.Niaga.Jkt.Pst which was filed towards PT. Sentul City Tbk as the debtor submitted by Ang Andi Bintaro et al is revoked according to the Decision dated August 19, 2020, PT. Sentul City Tbk was submitted by SDPO again in the case of 253/Pdt.Sus-Pailit/2020/PN.Niaga.Jkt.Pst. by Hendra as a creditor but revoked according to the Decision of the Central Jakarta Commercial Court dated September 7, 2020, PT. Sentul City Tbk was again filed as a SDPO Respondent by Alvian Tito Suryansyah as a creditor on November 13, 2020 and revoked on December 8, 2020 with Stipulation 387/Pdt.Sus-Pailit/2020/PN.Niaga.Jkt.Pst, on December 10, 2020 PT. Sentul City Tbk submitted a SDPO application by Lucy Santosa and revoked again on January 7, 2021 with Stipulation Number 24/Pdt.Sus-Pailit /2021/PN.Niaga.Jkt.Pst, the last time PT. Sentul City Tbk was submitted by SDPO again by the creditors of PT. PrakasaGuna Cipta Pratama and until the writing of this dissertation is still in the process of being investigated at the Central Jakarta Commercial Court,

Thus, the existence of creditors as SDPO applicants is not in accordance with the purpose of establishing the SDPO institution. The elimination of the provisions regarding SDPO provisions was filed by creditors (Article 222 paragraph in conjunction with Article 225 paragraph (3)). This provision is not in accordance with international bankruptcy standards, the condition of creditors being able to submit a SDPO application is unfair it does not protect the interests of debtors who are very aware of their ability to pay their debts as the Researcher has stated above.

In the minutes of the meeting on the formation of Bankruptcy Law-SDPO on September 21, 2004, the PDI Perjuangan Fraction stated that "the PDI Perjuangan fraction is of the opinion that bankruptcy and suspension of debt payment obligations are intended to meet the settlement of debts in various societies which in the end the settlement does not have a negative impact on economic development and does not disturb the business activities of these economic actors.

On the same date, the Bulan Bintang Fraction stated that "the court process in the examination of bankruptcy and SDPO must be a transparent process that ensures justice and legal certainty between creditors and debtors". According to the Bankruptcy Law-SDPO, the purpose of Indonesian bankruptcy law is to liquidate the assets or assets of the debtor, we can see this from the norms or articles compiled in the law, which in the end are liquidation or settlement of bankruptcy, rather than reorganizing the debtor company despite the fact that the debtor company is still solvent. (Research Report Center for Law and Justice at the Supreme Court, Application of the Principle of Solvency in Bankruptcy Case Settlement.

The other problem is as referred to in Article 225 paragraph (5) that does not give the opportunity for Debtor to against the bankruptcy resolution that decided due to the debtors are not present in verdict hearing of temporary suspension of debt payment obligations. In the bankruptcy application, The judge will first check whether the application requirements are fulfilled by a debtor namely a debtor who has two creditors, whose debts of one of the creditors have been due date and can be collected later which the Judge will check the debts with a simple way. Article 8 paragraph (4) mentions "The application for the statement of bankruptcy must be granted if there are facts or circumstances that have been simply proven that the requirements to be declared bankrupt as referred to in article 2 paragraph (1) is fulfilled."

Bankruptcy Law-SDPO does not provide explanation of what is meant by simple evidence and this can cause different interpretation among the Judges who handle the bankruptcy case, which the exact example can be researched in different judges' consideration concerning definition of debt. The creditors can also misuse the meaning of this simple evidence when the creditors themselves file a bankruptcy application and this will be more detrimental for debtors when the creditors file SDPO towards debtors in accordance with the article 225 paragraph (3) which oblige the Court to grant the temporary SDPO.

The SDPO's decision that was rejected, it was simply caused by satisfied or not of the reasons which causing bankruptcy as referred to article 2 paragraph (1) Bankruptcy Law. As an example of the case Number 153/Pdt.Sus-SDPO/2019 /PN.NiagaJkt.Pst, at the level of review, the Respondent of SPDO has conveyed the reasons for the Judges at the review level to reject the Application with the reason that "the Respondent is able to make payment, but the applicant has previously compromised the cooperation agreement and the memorandum of understanding 2018 (exceptio non adimpleti contractus).

In Case Number 153/Pdt.Sus-SDPO /2019/PN.NiagaJkt.Pst, Panel of Judges rejected SDPO, but it was not a reason for consideration as to the reasons that were disclosed by the Respondent (Debtors), but with the reason that remains to refer to requirements in filing Bankruptcy Application. So there is a possibility that the debtor can in fact be able to pay debts but the debtor does not pay debts not because of his/her inability but because there are other reasons that must be settled through ordinary civil suit. This situation is of course unfavorable for the Indonesian economic climate and makes it difficult for the debtor to continue his business if the SDPO application is granted as a result of the debtor's bankruptcy.

In relation to the concept of internal and external legal protection, a regulation on SDPO is needed which includes the special rights granted to the debtor, in this case the SDPO application which is only given to debtors, there is a separation between individual/natural bankruptcy and agency. law and the most important thing is that it is formed in jurisprudence so that Judges at the District/ Commercial Court level in order to have guidelines in determining the meaning of debt and simple terms as referred to in Article 2 paragraph 1 Bankruptcy Law-SDPO. These three points are the main problems in this research.

Bankruptcy is a condition of a company that experiences a deterioration in the company's adaptation to its environment, which results in low performance for a certain period of time sustainably, which in turn causes the company to lose its resources and funds as a result of the company's failure to make a healthy exchange between output generated with the new input that must be obtained. Meanwhile, the word turnaround describes a situation where a company experiences disruption due to a cash flow crisis or a profit crisis. However, the definition of turnaround referred to here has a broad meaning, that is, companies often show signs or symptoms of failure long before the crisis occurs, similar to a sick person initially showing signs of illness.

Conclusion

From the description above, there are several conclusions that the author wants to convey, namely that there are at least three points that concern the author in relation to Debtor protection in the new Bankruptcy Law, especially in the Suspension of Debt Payment Obligations, namely:

- i. There is no principle of debt forgiveness in the new bankruptcy law, which of course is detrimental to the interests of the Debtor because it turns out that the settlement through this bankruptcy institution is not a complete settlement, it means when the Debtor does not have assets to pay off these debts. The creditor can continue to collect, and if one day the Debtor has assets even though the asset comes from another Debtor's business/ efforts, the creditor can collect it to pay off the debtor's debts to the creditors. In the author's opinion, the absence of the principle of debt forgiveness is more detrimental to individual debtors than debtors who are legal entities, because in practice, after the receiver submits a report on the end of bankruptcy, the debtor in the form of a legal entity may submit a request for liquidation or dissolution through the Court. Meanwhile, individual debtors will of course continue to be collected by creditors even though the assets obtained by the individual debtors are another effort or business.
- ii. The ratio legis of Article 225 paragraph (3) and paragraph (5) of Law Number 37 of 2004 concerning Bankruptcy and SDPO are linked to the objectives of the Bankruptcy Law in essence that SDPO is a means provided to debtors so that not only debtors can pay debts to creditors, but what is also important is that debtors can continue their business after going through the debt restructuring process in SDPO; Researchers argue that SDPO is for debtors and the ratio legis of Article 225 paragraph (3) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. SDPO is a means for debt settlement and also as an effort for debtors to continue their business.

- iii. According to Article 222 paragraph (3) of Law Number 37 of 2004 concerning Bankruptcy and SDPO, it is stated that if a creditor who estimates that the debtor is unable to continue to pay his debts that are due can be collected is a condition for creditors to apply for suspension of debt payment obligations. Article 222 paragraph (2) and paragraph (3) of Law Number 37 of 2004 concerning Bankruptcy and SDPO have different requirements to apply for SDPO by both creditors and debtors. For debtors to be able to apply for SDPO not only after they cannot continue paying their debts but also if the debtor estimates that they cannot continue their debts when one day the debts are due and can be collected. For creditors Article 222 paragraph (3) of Law Number 37 of 2004 concerning Bankruptcy and SDPO can only apply for SDPO if the debtor is no longer able to pay debts that are due and can be collected. For researchers, article 222 (3) is redundant, because after the creditor has evidence that the creditor cannot pay his debts that are due and can be collected and has two creditors, besides the creditor himself, the creditor can file for bankruptcy and does not eliminate the debtor's right to submits SDPO when the debtor feels that the debtor can plan for reconciliation for the creditor as explained in Article 224 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations which states "in the event that the debtor is a bankrupt respondent, the debtor can file SDPO." The right given to debtors to apply for SDPO implies legal protection as ratio legis 225 paragraph (3) and paragraph (5) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.

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