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RECONSTRUCTION OF BANKRUPTCY REGULATIONS AND SUSPENSION OF DEBT PAYMENT OBLIGATIONS BASED ON ISLAMIC LEGAL VALUES

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ABSTRACT

The background of this research is that as it happens in the business world, the need for funds is a basic need that must be met by business actors, to overcome the problem of funding needs, capital loans are the solution. The problem that arises is if within the specified time the debtor is unable to pay it. The purpose of this study is to malign and find that bankruptcy regulations and PKPU have not been based on Islamic justice values, analyze and find weaknesses in current bankruptcy regulations and PKPU, and analyze and find reconstructions of bankruptcy regulations and PKPU based on Islamic justice values. In this study, the constructivism paradigm was used. namely the paradigm that is the antithesis of the understanding that lays observation and objectivity in finding a reality or science, This type of research is descriptive analysis, the approach that the author uses is a Sociological Juridical approach, This research is categorized into doctrinal hukun research (both normative and philosophical juridical), The data analysis method used in this study is qualitative data analysis to obtain descriptive data. This research uses Islamic legal theory as an applied theory, namely the Mashlahah Theory According to Imam Al-Ghazali which is a concept that is used as the main consideration in solving Islamic legal problems because the principle contained in maslahah is the maintenance of the objective purpose of law (*maqasid al-shari'ah)* that is, the maintenance of religion, soul, reason, heredity, and property. Based on the results of this study, it was found that the first Bankruptcy Regulation and Suspension of Debt Payment Obligations have not been based on Islamic justice values, especially in article 2 paragraph (1), article 17 paragraph 2 and article 225 paragraph 4, Second, weaknesses were found in the current bankruptcy and PKPU regulations, including bankruptcy requirements of at least 2 creditors, the temporary decision of PKPU was only given 45 days, and the fee for curator is too great. For this reason, it is necessary to reconstruct the Bankruptcy Regulation and PKPU, including increasing the bankruptcy requirements for more than 2 creditors, extending the temporary bankruptcy of PKPU for more than 45 days or 1 year, changing the Curator fee calculation system based on agreements with debtors and creditors.

Keywords: *Reconstruction, Regulation, Bankruptcy, PKPU*

INTRODUCTION

The entry of the Covid-19 virus into Indonesia affects Indonesia's economic activity so that it makes the Indonesian economy grow below the target set by the government, even to the point of touching below zero percent (Ziro percen) this can be seen from the number of companies terminating employment and the number of companies that are unable to make debt payments (Rawls, 2006). In the business world, the need for funds is a basic need that must be met by business actors to maintain and support the continuity of their business activities, to overcome the problem of fund needs, capital loans in the form of receivables are the solution. which is often adopted by business actors. In the case of receivable debts, there are two parties, namely being actors, namely debtors as borrowers of funds or money and creditors as parties who provide debts or funds (Satrio, 2007). Debtors as parties who need funds will make loans in the form of debts to creditors, often debtors borrow money or funds to more than one creditor to meet their needs (Djamil, 1999). The problem that arises at that time is if within a

predetermined time or at maturity the debtor does not have the ability or willingness to repay the loan in the form of debt along with interest to one or several creditors, this will obviously harm the creditor who has given the debt to the debtor (Hoff, 2000).

The problem of debt disputes between creditors and debtors has increased since the monetary crisis in Indonesia in 1998. At that time it was owned by many entrepreneurs who had debts or loans to several creditors, on the contrary, the debt of entrepreneurs in the dollar exchange rate soared due to depreciation, the high value or price of the dollar against the rupiah at that time made the situation in the business world worse in Indonesia because many business actors who became debtors did not have the ability to perform their obligations to several creditors who gave them loans of funds or money (Wiwoho & Mashdurohatun, 2017). This then became an impetus for the government to make legal products related to bankruptcy, although actually more because of pressure from the IMF (International Monetary Fund) to the Government of Indonesia to immediately make legal products governing debt settlement due to bankruptcy. Until then the government followed up by issuing Government Regulation in Lieu of Law (Perpu) Number 1 of 1998 concerning Amendments to the Bankruptcy Law, then this Perpu. which is regulated in Law Number 4 of 1998 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 1998 concerning Amendments to the Bankruptcy Law into Law, which was later revised by Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU). Law Number 37 of 2004 has also provided the definition of debt which was previously discussed by many parties because there is no understanding of debt which is one of the requirements for filing for bankruptcy (Sutan Remy Sjahdeini, 2016).

Often in bankruptcy there are problems that must be faced by creditors, especially concurrent creditors or unsecured creditors in this case often occur because there are things that are not good done by debtors who have been declared bankrupt, usually because there is already a form of bad faith that is clear carried out or planned by the debtor to transfer his assets owned by some bankrupt debtors, therefore to prevent the management process and to acquire assets from bankrupt debtors carried out by the curator or because there are problems that may be faced are the inability or poor judgment of the curator and supervisor in managing and acquiring bankruptcy assets, especially other problems that arise because the assets of the bankrupt debtor are insufficient to pay all of their debts to their creditors, especially if the creditor concerned is faced with this situation because bankruptcy decisions that often occur in Indonesia are bankrupt companies that are still solvable viable (Prospective) running or still able to continue its business but for the commercial court it is immediately declared a bankrupt company, such as; The bankruptcy of PT. Manulife Life Insurance Indonesia. the bankruptcy of PT. Prudential Life, and the bankruptcy of PT. Indonesian Educational Television, as well as the bankruptcy of PT. TELKOM Indonesia, the bankruptcy decision issued by this commercial court by legal practitioners is considered a strange decision, because the company that is declared bankrupt is a company that is still eligible to continue its operations, the bankruptcy decision made by the commercial court is considered strange and legal entities are not criticized by other countries (Suyudi, 2004).

After investigation and analysis by legal practitioners, it was found that the root of the problem behind the bankruptcy of these companies is the concept in Law No. 37 of 2004 which applies the concept of liquidation, namely company settlement actions carried out by

liquidators, in the form of selling company assets, debt collection, debt repayment, and settling the remaining assets of company owners is very detrimental to the dibitor even the concept can It is clearly seen that the purpose of this decree is to dissolve to fix the legal entity. From a shifting of paradigm perspective, this is an old concept that is no longer used in corporate bankruptcies in many other countries today (Satrio, 1997). In bankruptcy of companies in some foreign countries already have a concept in their bankruptcy law, namely a concept of company rescue or the concept of corporate rescue which is a concept in bankruptcy law by some countries because it is still a way for creditors to collect debts from insolvent companies by avoiding liquidation and providing second chances, or giving debtors the opportunity to continue their business for the benefit of Creditors, debtors and other interests, the use of corporate rescue in corporate bankruptcy can be justified based on two groups of theories, namely utility theory in corporate debt settlement and legal theory of social dimension where bankruptcy law must be viewed from the perspective of social interests (Nating, 2004).

The bankruptcy of these companies is related to the concept of liquidation in private debt settlement due to the 1998 economic crisis. Therefore, the Supreme Court has a different attitude from the commercial court, where the Supreme Court overturns the company's bankruptcy decision. The company is because these companies do not deserve to be bankrupt. In addition, there are also new developments where creditors prefer PKPU rather than filing for bankruptcy against companies that do not pay off their debts.

But long before, there was an interesting fact in the bankruptcy decision of PT. Citra Jimbaran Indah Hotel vs Sangyong Engineering &; Constmction Co., Ltd. , the Supreme Court in decision No. 024 PK/N/1990 has overturned the cassation decision in the commercial court that bankrupted PT. Jimbaran Hotel Indah by making a legal breakthrough overturned the bankruptcy decision because PT. Jimbaran Hotel Indah is still solvent and viable (prospective) and can continue its business based on the principle of business continuity which is also adopted by Law No. 4 of 1998. To reconstruct Law No. 37 of 2004, the Bankruptcy Law must separate corporate bankruptcy from individual bankruptcy by applying corporate rescue as one of the legal methods in corporate bankruptcy law. Thus, while it is expected that judges in commercial courts will no longer apply law No. 37 of 2004 in corporate bankruptcy, from several facts that have occurred and experienced by corporations, a good hypothesis can be put forward that Commercial Court judges should apply the principle of business continuity (corporate rescue) in corporate bankruptcy, by abandoning the paradigm of positivistic legalistic thinking and made the Supreme Court Decision PK No. 024 PK / N / 1990 as one of the legal ways in deciding corporate bankruptcy cases.

The purpose of this study is to find out and analyze bankruptcy regulations and PKPU not yet based on Islamic justice values. And you to know and analyze the weaknesses of the current bankruptcy regulations and PKPU you to know and analyze the reconstruction of bankruptcy regulations and PKPU based on Islamic justice values.

METHOD

This research is descriptive analysis because researchers want to describe or explain the subject and object of research, which then analyzes and finally draws conclusions from the results of the study (Mulyana, 2003). The approach that the author uses is the Sociological

Juridical approach. The Sociological Juridical approach is to emphasize research aimed at obtaining legal knowledge empirically by plunging directly into its object (Hidayat, 2003).

The Sociological Juridical approach is aimed at reality by looking at the application of law (Das Sein), the desired rule of law (Das Sollen) with the reality that occurs (Das Sein).

This research is categorized into doctrinal hukun research (both juridical, normative and philosophical). Through juridical-normative and philosophical research, a juridical aspect and at the same time the content of values of laws and regulations are carried out which are the basis for the work of the criminal justice system (criminal law enforcement system). In addition, this study also seeks to explain how the structure of the justice system for corruption crimes, from investigation, prosecution to trial (Soeharto & Adimihardja, 2000).

The data analysis method used in this study is qualitative data analysis to obtain descriptive data. Descriptive is non-hypothetical research, so that in the research step there is no need to formulate a hypothesis, while qualitative is data described by words or sentences that are separated into categories to obtain conclusions (Asikin, 2004).

RESULTS AND DISCUSSION

Bankruptcy and PKPU Regulations Are Not Based on Islamic Justice Values

The development of bankruptcy law and PKPU in Indonesia to the stage of material substance rather than bankruptcy law itself, it can be said that some bankruptcy law in Indonesia has not upheld the values of justice contained in Islamic law, as contained in the theory of mashalah or benefit which contains the ariti of solving problems , in this case what is meant by the regulation of bankruptcy law has not been based on Islamic justice values, in accordance with the thoughts of Imam al-Ghazali with his Mashlahah legal theory (magashid ash-shari'ah) which is to realize the general benefit (nzashlahah al-ammah) one principle held in the theory of Mashlahah is that there is not a single problem that cannot be solved because the instructions in the book of Allah Almighty are complete, by making the rules of sharia law the most important and at the same time compatible with the needs of space and time, namely with the aim of realizing this "expediency", in accordance with the general principles of the Qur'an:

1. al-Asl fi al-manafi al-hall wa fi al-mudar al man'u (everything that is beneficial is permissible, and everything that is harmful is forbidden);
2. La darara wa la dirar (do not cause harm and do not be a victim of harm); ad-Darar yuzal (danger must be eliminated)

Among the rules in bankruptcy law and PKPU that have not been based on the value of Islamic legal justice are as follows;

1. Regarding the grace period of the decision while PKPU which gives only 45 days to creditors to settle their debts, this is contrary to Surat al-Bagarah verse 280 which reads:

"And if (the debtor) is in trouble, then give a delay so that there is spaciousness (for him). And saving (some or all of that debt) is better for you if you know."

In Surah al-Baqarah verse 280 it is explained that the creditor must give a grace period to the debtor until the debtor is able to pay it, if only given 45 days it is difficult for the debtor to pay it off.

2. If you look at the concept of bankruptcy dispute resolution and PKPU, it prioritizes business principles rather than contracts.

3. Law no. 37 of 2004, article 2 paragraph 1 which states that One of the conditions for bankruptcy of a debtor is if the debtor does not pay off his debts to at least 2 creditors, in this case it should be added, because in fact it is contrary to the nature of the need for bankruptcy legal remedies that should be for the benefit of all creditors, this is in accordance with the words of the prophet: In another hadith, the Prophet (peace be upon him) said: "The soul of a believer still depends on his debt until he pays it off," (H.R. Tirmidhi).

Weaknesses of Current Bankruptcy and PKPU Regulations

Some weaknesses in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations are the lack of balance and fairness of position between Debtors and Creditors in Bankruptcy Terms and Decisions. Some examples of bankruptcy cases that are considered to lack justice are declared bankrupt, a business institution that still has the ability to pay its debts, including the Central Jakarta Commercial District Court declaring PT Telekomunikasi Selular (Telkomsel) bankrupt. The telecommunications giant was declared bankrupt because it did not fulfill the agreement agreed with its partners. Some of these weaknesses are in the description below;

1. The minimum requirement of creditors as bankruptcy applicants. Article 2 paragraph (1) of the Bankruptcy Law confirms that bankruptcy can be applied for if it meets two conditions: the debtor has two or more creditors and the debtor does not pay at least one debt that is due and collectible. This article, considered by Hotman Paris to be evidence that the Bankruptcy Law is contrary to the nature of the need for bankruptcy legal remedies that should be for the benefit of all creditors.

In practice, problems can arise when other creditors who are not bankruptcy applicants and whose bills are due or not yet due do not intend to take legal action (bankrupt the debtor). As a result, other creditors were forced to register as creditors.

2. The condition that the debtor can be bankrupt must also meet proof that a minimum of 75 percent of the debtor has debts and is due, plus not paid. Debtors are also burdened to prove that a minimum of 75 percent of creditors have overdue receivables. If there is only one creditor, the case can be resolved through ordinary civil lawsuits or requests for execution of collateral provided that there is an improvement in the civil case process in terms of time.
3. The PKPU period is very short. The basic idea of PKPU is to provide an opportunity for debtors to reorganize or reorganize their businesses. Realignment of the business takes a lot of time. In fact, the time given by the Insolvency Law is only 45 days. These 45 days are considered difficult to use to complete peace proposals, lobbying, and business reorganization. He suspects that the entry of the 45-day deadline is based on the motive of benefiting creditors. if the creditor submits PKPU. The debtor is forced to submit a peace proposal to all creditors. Ideally, creditors also submit peace proposals.
4. Separatist creditors have the right to go bankrupt and vote without losing the right to collateral. There is injustice, where the rights of creditors have been protected by collateral for the debtor's wealth, but the debtor remains bankrupt on the vote of the separatist creditor.

The high requirements for counting votes and must be met by the cumulative voting requirements of concurrent creditors and separatist creditors stipulated in Article 281 of the

Bankruptcy Law, are the main causes of PKPU's legal efforts to become the main obstacle to peace proposals submitted by debtors often experiencing defeat (Hoff & di Indonesia, 2000).

"In practice, it often happens that only about one year after homologation of the composition plan, it turns out that the debtor defaults because it has been forced from the beginning. So the debtor is forced to make a peace proposal that benefits the creditors when in fact they are no longer able to pay," Hotman added.

The senior advocate advised that article 281 of the Bankruptcy Law should be revised so that separatist creditors are not entitled to participate in voting unless they agree to become concurrent creditors as previously applied in Perppu No. 1 of 1998.

5. Related to honorarium or curator fees (management). Currently, the rules for the honorarium of the curator are based on the percentage of the debtor's total assets or the presentation of the total amount owed. This rule is considered to be the cause of 'cannibalism' and 'games' of people who have interests and benefit from it.
6. There are multiple interpretations of the ratings of tax bills, labor wage bills, and separatist creditor receivables.
7. Regarding PKPU submissions, in fact, PKPU is mostly submitted by creditors because the Bankruptcy Law and PKPU allow it.

Reconstruction of Bankruptcy and PKPU Regulations Based on Islamic Justice Values

There are several points that need to be reconstructed in the regulation of Bankruptcy and Suspension of Debt Payment Obligations based on the value of Islamic Justice, this refers to the theory of Mashlahah according to Imam Al-Ghazali, where in this Mashlahah theory Imam Al-Ghazali binds to three main factors that must be owned by a rule namely Daruriwah, Qoth'iyah and Kulliyah. Because there is the deepest principle found in the theory of mashlahah, namely that there is no problem that cannot be solved, the point is that every problem must be solved (Royke A, 2014).

Referring to the initial theme that the need for reconstruction in the Palitan law and PKPU so that creditors and debtors get justice, among these reconstructions are;

1. With a grace period of 45 given to the bankrupt debtor to pay off his debt, this is very difficult for the insolvent debtor should the time be increased based on the circumstances and ability of the bankrupt debtor in accordance with the Qur'an surah al-bagarah verse (280) which reads; "And if (the debtor) is in trouble, then give a delay so that there is spaciousness (for him). And saving (part or all of the debt) is better for you if you know "according to the author should be given a maximum of 1 year, because the debtor, needs time to produce his product, this takes time, the debtor also waits for the bill from the customer to have entered the invoice, or the debtor also needs time to bring investors to revive his business, so according to the author, 1 year is enough.
2. One of the requirements in order to be able to bankrupt a debtor is if the debtor does not pay off his debts to at least 2 creditors, because in reality it is contrary to the nature of the need for bankruptcy legal remedies that should be for the benefit of all creditors, this is in accordance with the words of the prophet: In another hadith, the Prophet said: "The soul of a believer still depends on his debts until he pays them off " (H.R. Tirmidhi). According to the author, in this case, related parties should prepare public accounting to make financial statements so that everything becomes transparent, then make a report to the

commercial court until waiting for all debtor receivables to be repaid, and hold meetings with all related parties to discuss debt payment schemes, finally execution. There are two things to note,

a. In the settlement of the above concept, is to prioritize Peace (mediation) or in the form of negotiations carried out before commercial courts or can also pass arbitration,
b. In order not to be shackled by the time stipulated by law, article 225 paragraph 4 should be constructed so that the time can be regulated more flexibly.

3. With such a large Curatorial Fee, the result of the rule that instructs the amount of the fee based on the percentage of the total debt, when viewed from an Islamic perspective is very contrary to the letter as contained in the letter. **Al-Ma'idah verse 2;**

O believers! Do not violate the shiars of Allah's holiness, and do not (violate the honor) of the haram months, do not (disturb) hadyu (sacrificial animals) and qala'id (marked sacrificial animals), and do not (also) disturb those who visit Jerusalem; they seek the gifts and blessings of their Lord. But when you have finished ihram, then you may hunt. Do not let (your) hatred for a people because they hinder you from the Grand Mosque, encourage you to go beyond (them). And help you in virtue and piety, and do not help in sin and enmity. Be fearful of Allah, indeed, Allah is very heavy in His torments.

According to the author, the amount of the fee should be in accordance with the agreement with the applicant, or open a tender openly and transparently, so that it can choose a curator as expected that can reduce costs, so as not to make it difficult for the debtor.

CONCLUSION

The development of bankruptcy law and PKPU in Indonesia to the stage of material substance rather than bankruptcy law itself, it can be said that some bankruptcy law in Indonesia has not upheld the values of justice contained in Islamic law, as contained in the theory of mashalah or benefit which means solving problems, Some weaknesses in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations is the lack of balance and fairness of position between the Debtor and the Creditor in the Terms and Bankruptcy Judgment. With a grace period of 45 given to the bankrupt debtor to pay off his debt, this is very difficult for the bankrupt debtor should the time be increased based on the circumstances and ability of the bankrupt debtor in accordance with the Qur'an Surat al-Bagarah verse (280), One of the conditions in order to be able to bankrupt a debtor is if the debtor does not pay off his debt at least 2 creditors, because in reality, it is contrary to the nature of the need for bankruptcy legal remedies that should be for the benefit of all creditors, With such a large Curator Fee, as a result of the rules that instruct the number of fees based on the percentage of total debt, according to the author should be the number of fees in accordance with the agreement with the applicant, or open tenders openly and transparently, so that they can choose curators as expected which can reduce costs, so as not to make it difficult for the debtor.

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