MORFAI JOURNAL
Multidiciplinary Output Research For Actual and International Issue
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JURIDICAL ANALYSIS OF THE LEGAL CONSIDERATIONS OF THE PANEL OF JUDGES ON THE AMOUNT OF DEBT AS GROUNDS FOR REJECTING A BANKRUPTCY PETITION

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Received : 2024-08-23 Published : 2024-10-30 DOI : 10.54443/morfai.v4i3.2169
Accepted : 2024-09-21

Abstract

The Bankruptcy Law specifies the requirements for filing a bankruptcy petition. However, its implementation does not always align with the applicable regulations. For example, in Decision Court Number 37/Pdt.Sus-Pailit/2021/PN.Niaga.Jkt.Pst, the court rejected the entire petition despite the formal and substantive conditions being met, as the debt amount was less than IDR 500,000,000. This decision contradicts Supreme Court Regulation Number 4/19, which allows for bankruptcy through a simple lawsuit. This research employs a normative juridical method with a statute and case approach. The findings indicate that Article 50 of the Judiciary Law affirms that court decisions must contain the reasoning and legal provisions upon which they are based. Judges are obliged to provide reasoning aligned with legal provisions and are prohibited from imposing debt value limitations as a basis for rejecting bankruptcy petitions since the Bankruptcy Law does not specify a minimum debt amount.

*Keywords:**Bankruptcy; Creditors; Debt; Panel of Judges***

1. INTRODUCTION

A business downturn is often an early sign of more serious financial problems for a company because as revenues decline and operating costs continue to rise, the company struggles to meet its financial obligations. If this situation continues without effective remedial action, the risk of bankruptcy increases.(Riyawan et al., 2023). When a company faces a bankruptcy situation and is no longer able to pay its obligations to creditors, the creditors have the right to file a bankruptcy petition with the authorized Commercial Court in accordance with Article 300 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as "UUKPKPU")(Priscilla, 2020). In the last 4 years, there have been many cases of bankruptcy applications and suspension of debt payment obligations ("KPKPU") with the aim of fulfilling creditors' rights proportionally and fairly. Since 2019, the trend of KPKPU application submissions has shown quite significant fluctuations. In 2019, there were 435 applications submitted. This number increased sharply in the following year, namely 2020, where there were 635 applications submitted. This increase continued until it peaked in 2021 with a total of 726 applications, reflecting an increase in demand for the use of this legal mechanism. However, in 2022, the number of applications began to show a decline to 625 applications. This downward trend continued into 2023, where as of October 14, 2023, there were only 563 applications submitted.(Setiawati, 2023).

Based on the provisions in Article 2 paragraph (1) of the UUKPKPU, there are two main requirements that must be met to submit a bankruptcy application.(Noor, 2020). These requirements include the existence of more than one creditor, as well as the existence of debt that is due and collectible.(G. Putri et al., 2024). Furthermore, Article 8 paragraph (4) of the UUKPKPU emphasizes that the court is obliged to grant a petition for a declaration of bankruptcy if there are facts or circumstances that simply prove that the conditions as stipulated in Article 2 paragraph (1) have been fulfilled.(Simatupang, 2022). This bankruptcy application can be submitted either by the debtor himself or by one or more creditors who submit claims.(Gultom & Agustina, 2023). Looking at the description of the regulations above, it is quite clear that the UUKPKPU has set clear and firm criteria to meet the

requirements for a bankruptcy application to be accepted by the court. However, the reality in the field often shows that the application of these provisions is not always in line with the situations and conditions faced by debtors. This creates a mismatch between the established legal norms and the practices that occur, thus requiring further attention and evaluation to ensure justice and legal certainty for all parties involved in the bankruptcy process. An example can be found in Decision Number 37/Pdt.Sus-Pailit/2021/PN.Niaga.Jkt.Pst. Initially, the bankruptcy petitioner used the legal services of Mahfuddin & Associates and had not paid for the use of these services with a due date of January 3, 2021, both of which had a legal relationship (debtor and creditor) in accordance with the Legal Consultant Services Agreement (No.II-07/MAHFUDIN-DGL-XII/2020) dated December 7, 2020 with a debt amount of IDR300,000,000.

Furthermore, the second bankruptcy petitioner, Mikael Suharso, also had a legal relationship with the petitioner as evidenced by the Debt Agreement Letter dated February 8, 2021 which matured on March 11, 2021 with a nominal value of IDR105,000,000. Before filing the bankruptcy petition, the petitioners had given 3 warning letters. However, the respondent did not respond to the summons letter so that the bankruptcy applicants filed an application to the Commercial Court on August 27, 2021. The decision stated that the judge rejected all applications submitted by the bankruptcy applicants even though formally and materially the bankruptcy application was in accordance with the UUKPKPU. There were considerations by the judge in rejecting the application, namely that the amount of debt below IDR 500,000,000 was not comparable to the impact of the debtor being declared bankrupt, which could kill the debtor's business. Given that in the defense of the bankruptcy applicant that he was facing difficult times due to the Covid-19 Pandemic(Hutapea, 2021).

In order to analyze the differences between the existing state (das sein) and the state that should be (das sollen), the researcher wishes to dig deeper into the aspects underlying Decision Number 37/Pdt.Sus-Pailit/2021/PN.Niaga.Jkt.Pst. This study specifically focuses on examining the legal regulations governing the amount of debt as a basis for rejecting a bankruptcy petition filed by a creditor. In the context of bankruptcy law, provisions regarding the amount of debt are important elements that must be met to meet the requirements for a bankruptcy petition. Through this study, the author will review in more depth how the court applies these provisions, by referring to a relevant case study, namely Decision Number 37/Pdt.Sus-Pailit/2021/PN.Niaga.Jkt.Pst. This case will be used as a reference to analyze whether the amount of debt used as the basis for the petition by the creditor has met the criteria stipulated in the bankruptcy regulations, and how the court considers this in determining whether to accept or reject a bankruptcy petition.

Basically, research on the amount of debt as a basis for rejecting a bankruptcy application is still limited. Even so, there are several studies that have been conducted previously. First, this study is different from that conducted by Putri and Prasetyawati (2022) where this study examines the judge's considerations regarding whether the amount of debt can be used as a legitimate and appropriate reason in filing a bankruptcy application against a debtor.(RP Putri & Prasetyawati, 2022). Second, this study also has differences with that conducted by Syahla, Mahardhika Satriawan, and Kurniawan (2024) who studied in more depth the comparison of the minimum debt amount regulations adjusted to the type of debtor who filed for bankruptcy in the US Bankruptcy Code.(Syahla et al., 2024). Third, this study has a different scope from the study conducted by Nugroho where in that study, Nugroho examined the need for an insolvency test provision before the examination of the bankruptcy petition by the judge to provide protection for solvent companies and there are no problems with financial performance that could be declared bankrupt while this study focuses more on the judge's considerations in Decision Number 37/Pdt.Sus-Pailit/2021/PN.Niaga.Jkt.Pst.

Based on the three studies, there is no discussion of the legal consequences of the absence of specific regulations governing the minimum amount of debt in bankruptcy for debtors. However, the three studies have discussed the provisions of the insolvency test that must be carried out before an examination of a bankrupt company is carried out. This is a potential for the development of national law in Indonesia. Specific regulations regarding the minimum amount of debt are needed so that companies that are financially good are not declared bankrupt. Therefore, the research conducted by the author is aimed at obtaining an overview of the minimum amount of debt that must be paid by debtors

based on the bankruptcy regulations in Indonesia and solutions to the problem of the minimum amount of debt in bankruptcy for debtors.

2. METHOD

This research uses a normative legal approach, which methodologically refers to an in-depth study of laws and regulations, legal doctrine, and applicable principles so that it can reveal the practical and conceptual implications of the application of these legal norms in a particular context.(Muhaimin, 2020).Researchers apply a statute-based approach that aims to identify and understand the legal rules that govern the issues being studied.(Marzuki, 2019). In addition, the case approach is also applied to review and analyze in depth and comprehensively the legal issues that arise in bankruptcy cases, as reflected in the Jakarta Commercial Court Decision Number 37/Pdt.Sus-Pailit/2021/PN.Niaga.Jkt.Pst. Furthermore, this study enriches its analysis with a conceptual approach that connects and examines the relationship between the principles of bankruptcy law, the principles that underlie it, and the theories of bankruptcy law that are developing(Marzuki, 2019). Through this approach, this study is expected to provide a deep and comprehensive understanding of the dynamics and implementation of bankruptcy law in Indonesia.

3. RESULTS AND DISCUSSION

3.1 Legal Analysis of the Panel of Judges' Legal Considerations on the Amount of Debt as a Reason for Rejecting a Bankruptcy Application Based on Bankruptcy Law

The considerations taken by the judge are a very important aspect in determining the value of a decision. A judge has a very important responsibility in the judicial process, namely ensuring that every decision taken is based on a thorough analysis of relevant legal considerations. In carrying out his duties, the judge not only acts as a mediator for the parties in the case, but also as a guardian of justice who is obliged to pay attention to every aspect of the law, including those that may not be submitted by the parties. (Kho & Adiasih, 2021). This not only reflects the principle of justice (ex aequo et bono), but also plays a role in creating legal certainty and providing concrete benefits for all parties concerned in a case so that every consideration produced must go through a careful, planned, and thorough process. Furthermore, Ali Abdul Razak Sungkar is of the view that the decision taken by the judge must also pay attention to and provide a positive impact on the affected parties, so that the decision is not just a formality, but is truly useful in resolving existing disputes.(Sungkar, 2021).

In the judicial system, a decision rendered by a judge has the potential to be overturned by a higher court, such as the High Court or the Supreme Court. This can happen if the decision is deemed not to be based on comprehensive analysis, in-depth consideration, or adequate caution. Therefore, a judge is expected to carry out his duties with full responsibility, prioritizing accuracy in considering, trying, and deciding every case he faces. In addition, every decision taken must be accompanied by logical, structured reasons, and in accordance with applicable legal principles and regulations, in order to ensure justice for all parties involved. These reasons can be built by referring to existing jurisprudence, relevant legal theories, and customary legal practices in society. Article 50 of Law Number 48 of 2009 concerning Judicial Power (“UUKK”) underlines the importance of clarity in court decisions.

The provision mandates that every reason underlying the decision, whether derived from articles in relevant laws and regulations or from unwritten law, must be explicitly stated in the judge's decision. In compiling his/her legal considerations, the judge must be careful and compile them systematically using clear, straightforward Indonesian language in accordance with the rules so as not to cause misunderstandings for all interested parties. The legal considerations must include all relevant elements, such as the facts of the incident that occurred, the legal facts found, the process of analyzing the legal facts, and the application of legal norms in accordance with Article 5 of the UUKK. If the judge is faced with a case that is not yet regulated in positive law in Indonesia, or where the regulations are still vague and unclear, then the judge is given the freedom to interpret and interpret the legal norms. In this context, the judge has the right to explore new possibilities in law enforcement, so that it can produce decisions that are not only fair, but also relevant to the development of society and the broader need for justice.

In bankruptcy law, a bankruptcy petition has characteristics that fundamentally distinguish it from ordinary civil cases. This difference lies in the simpler and more specific aspects of proof. In the process of filing a bankruptcy petition, the court does not require an in-depth examination as in other civil cases. The court only needs to ensure that two main elements are met, namely the existence of two or more creditors (concursus creditorum) and the existence of debts that are due and collectible, but have not been paid by the debtor. This makes the proof process simpler compared to ordinary civil cases where the proof can be very complex and comprehensive.(Son, 2023). Referring to Article 8 paragraph (4) of the UUKPKPU, a bankruptcy statement application must be accepted if it meets all the requirements specified in simple proof as stipulated in Article 2 paragraph (1) of the UUKPKPU.(Rongkonusa et al., 2023). This provision is an important legal basis for judges in making decisions, because it is clearly regulated in the applicable legal provisions. This simple proof includes evidence that shows that the debtor has a debt, and there are two or more creditors involved.(Anugraha & Budhiawan, 2023)In order to prove the existence of a debt, creditors can show that they have sent a warning letter to the debtor, which the debtor unfortunately ignored.

If a creditor files a bankruptcy petition, the creditor has the right to collect his debt. Evidence of the debtor's inability to fulfill payment obligations must be done through a simple procedure.(Adam et al., 2021). In other words, in a trial related to a PKPU application, there is no obligation to strictly comply with the rules regarding the evidentiary system or the use of evidence as regulated in civil procedure law.(Andrew & Pratiwi, 2021). In addition, creditors can show the existence of debt by proving that debt payments have passed the previously agreed time period, so that the status of debt that has matured cannot be denied.(Heriani, 2024)In the case of proving the existence of two or more creditors, this can be proven through the acknowledgement of the debtor and creditor that there is a legal relationship that creates rights and obligations between them.(Andrew & Pratiwi, 2021).

The legal construction in the formation of the UUKPKPU in Indonesia, especially in formulating the requirements for a bankruptcy statement application, is only based on the unwilling attitude and/or insolvent condition of the debtor to pay his debts in accordance with the agreement with the creditors.(Kiemas et al., 2023), so that in the positive legal regulations in Indonesia there are no minimum requirements for the amount of debt to file for bankruptcy or consideration of the debtor's solvent condition to pay his debts.(Aprita, 2019). The formation of bankruptcy law based on the provisions of the Faillissementsverordening is basically aimed at providing legal protection to concurrent creditors. This protection is intended so that they can obtain the rights that have been guaranteed by law related to the debtor's assets. (Kusmadi et al., 2023). This objective is in line with the principles underlying bankruptcy law, namely to provide legal certainty in the settlement of debtors' financial obligations to creditors in a fair and proportional manner.

Based on the results of the dissection of Article 2 paragraph (1) in conjunction with Article 8 paragraph (4) of the UUKPKPU and outlining the concept of bankruptcy legal construction in Indonesia. The researcher found a common thread, that the UUKPKPU as a positive law in Indonesia provides formal and/or material protection for bankruptcy problems in Indonesia does not regulate the minimum amount of debt as a requirement for submitting a bankruptcy application to the commercial court.(Syahla et al., 2024). According to Oemar Moechthar and friends, the requirement of the amount of debt to submit a bankruptcy statement application is not enforced in positive law in Indonesia because it adopts the principles of modern bankruptcy.(Moechthar, 2020). With the aim of simplifying bankruptcy requirements with a modern paradigm so as to provide acceleration and ease in filing bankruptcy applications.(Moechthar, 2020). Therefore, in conducting examinations, decision-making and settling bankruptcy cases in commercial courts, the panel of judges should be guided by the provisions contained in Article 2 paragraph (1) in conjunction with Article 8 paragraph (4) of the UUKPKPU in fulfilling these provisions.

3.2 Legal Analysis of the Panel of Judges' Legal Considerations on the Amount of Debt as a Reason for Rejecting the Application for Declaration of Bankruptcy Based on the Decision of the Jakarta Commercial Court Number 37/Pdt.Sus-Pailit/2021/PN.Niaga.Jkt.Pst

Initially, the Bankrupt Respondent had an obligation to pay debts to Bankrupt Applicant I amounting to Rp300,000,000, with a payment deadline set on January 3, 2021. In addition, the Respondent also owed

Bankrupt Applicant II Rp105,000,000, which was due on March 11, 2021. In an effort to collect the debt, the Bankrupt Applicants have issued three consecutive summonses. However, unfortunately, the Bankrupt Respondent did not respond or pay attention to the summons letters that had been submitted. The applicants then followed up on this by filing a Bankruptcy Declaration Application lawsuit with the Central Jakarta Commercial Court to obtain justice and legal certainty in obtaining the right to pay the debt. During the trial, it was revealed that the Bankrupt Applicant was facing significant financial difficulties due to the negative impact of the Covid-19 pandemic. Based on these conditions, the Panel of Judges reviewed and considered a number of important aspects in this case. First, the bankruptcy petition filed by the Applicants has met the requirements as stipulated in Article 2 paragraph (3), (4), and (5) of the UUKPKPU. This provision regulates the formal and material requirements that must be met in filing a bankruptcy petition. Furthermore, the petition is also in accordance with the provisions of Article 2 paragraph (1) in conjunction with Article 8 paragraph (4) of the UUKPKPU, which is the substantive legal basis for deciding this case.

The Panel of Judges also noted that although the UUKPKPU does not explicitly regulate the minimum debt value limit for filing a bankruptcy petition, the Supreme Court has provided guidelines through Supreme Court Regulation (Perma) Number 4 of 2019 concerning Simple Claims. In the Perma, it is stated that the value of the material claim permitted in a simple claim is a maximum of IDR 500,000,000 and must be resolved within a maximum of 25 days. Based on these provisions, the Panel of Judges considers that this case, which involves debts with a value of less than Rp500,000,000, is more appropriate to be resolved through the Small Claims mechanism. In addition, the Panel of Judges also considered the disproportionate impact between the value of the debt and the severe consequences that can be caused by the bankruptcy declaration, especially on the sustainability of the Bankrupt Respondent's business.Based on the above considerations, the Panel of Judges' Decision in a dissenting opinion rejected the application for a declaration of bankruptcy.

Richardo Simanjuntak stated that bankruptcy should be seen as an alternative to overcome financial difficulties.(Mardatillah, 2023). In his view, bankruptcy is not just a legal process, but rather a solution to overcome financial problems that have become a heavy burden and can no longer be resolved in the usual way.(Mardatillah, 2023). Bankruptcy is a condition that is closely related to the inability of a debtor to fulfill his obligations in paying off debts that have matured. This situation indicates that the debtor no longer has the financial capacity to complete debt obligations in accordance with the agreed agreement. However, in order for the bankruptcy to be processed legally, there must be concrete action in the form of filing a bankruptcy petition(Mantili & Trisna Dewi, 2021).

Bankruptcy as a legal instrument carries the principle of ultimum remedium, namely as the last step taken when the debtor is truly in a condition of being unable to fulfill his debt payment obligations.(Shohibah & Murtadho, 2024). This principle is clearly reflected in the sequence of events raised in the Jakarta Commercial Court Decision Number 37/Pdt.Sus-Pailit/2021/PN.Niaga.Jkt.Pst, where the creditors have made significant collection efforts by sending three summonses to the debtor. However, the debtor did not show an adequate response, either by not paying off the debt or by ignoring the offer to negotiate with the creditor regarding the debt restructuring plan. In this situation that has not yet reached a bright spot, the creditors then decided to file a bankruptcy statement application with the Commercial Court. This action was taken as a last resort to obtain certainty regarding the repayment of the debt owed to them, with the hope of facilitating a fair and sustainable settlement for all parties involved.(Joni et al., 2024)

In the context of the provisions stipulated in Article 8 paragraph (4) in conjunction with Article 2 paragraph (1) of the UUKPKPU, the requirements for submitting a bankruptcy statement application have been expressly determined so that the role of judges in handling bankruptcy cases becomes clearer.(Warsito, 2024). Based on the a quo article, the judge does not need to interpret or reinterpret the provisions contained in the law. This indicates that if the application submitted has fulfilled all the requirements stipulated in Article 2 paragraph (1) of the UUKPKPU, then the judge is expected to immediately issue a bankruptcy decision against the debtor. In this process, the judge does not need to consider the amount of debt owed by the debtor, but rather simply focus on fulfilling the formal requirements that have been stipulated.(RP Putri & Prasetyawati, 2022).

In the above considerations, the Panel of Judges also referred to Article 3 of Perma No. 4/2019 regarding Amendments to Supreme Court Regulation Number 2 of 2015 concerning Procedures for Settlement of Simple Lawsuits as a product issued by the Supreme Court. The hierarchical position of the Perma is below the Law (UU) and is equal to the Government Regulation (PP)(Satory & Sibuea, 2020). Perma has the function of covering up legal deficiencies or gaps, and is also used as a solution to the problem of the backlog of cases in court.(Hutapea, 2021). Perma acts as a delegated regulation or derivative regulation under the law, because the authority to establish it comes from the authority delegated by the law maker.(Hutapea, 2021).

Perma No. 4/2019 is not part of the complimentary UUKPKPU(Tjoneng, 2020). This is due to the fact that the UUKPKPU has regulated in detail and comprehensively both the formal legal aspects and the material legal aspects. The formal law contained in this law is based on the principles of civil procedural law, while the material law has been formulated completely, clearly, and firmly.(Hutapea, 2021). This is due to the fact that the UUKPKPU has regulated in detail and comprehensively both formal and material legal aspects. The formal law contained in this law is based on the principles of civil procedural law, while the material law has been formulated completely, clearly, and firmly.

The provisions contained in this law are designed so that the implementation of trials related to bankruptcy and suspension of debt payment obligations can run efficiently and effectively, without giving rise to doubt or the need for additional interpretation of other supporting regulations.(Priscilla, 2020). In the construction of bankruptcy law in Indonesia, it only looks at the legal event of a debtor not wanting or not being able to pay his debts, without looking at the minimum amount of debt that can be submitted to fulfill the bankruptcy requirements. Bankruptcy law is also formed as protection for creditors to collect their right to pay their receivables.(Syahla et al., 2024).

4. CONCLUSION

Based on the analysis of the discussion above, the bankruptcy application submitted by the creditor is in accordance with the provisions of Article 2 paragraph (1) in conjunction with Article 8 paragraph (4) of the UUKPKPU. In addition, formally the bankruptcy statement application has been fulfilled in its entirety in accordance with the simple lawsuit based on PERMA No. 4 of 2019. However, the Panel of Judges gave non-juridical considerations that the amount of debt of only IDR 500,000,000 (not comparable to the decision of the debtor to be bankrupt which can kill the debtor's business. That based on the analysis that has been carried out using positive law on bankruptcy in Indonesia, the judge's consideration is not in accordance with the UUKPKPU and is also not in line with the construction of bankruptcy law in Indonesia. In this context, bankruptcy law in Indonesia does provide space for the protection of debtors who still have solvency, as long as they show good faith to complete their debt payment obligations. However, in this case, the facts revealed at the trial showed that the debtor was facing serious liquidity problems due to the impact of the Covid-19 pandemic. In addition, the debtor did not respond to the summons filed by the creditor, which is a legal effort to collect debt. Looking at the Indonesian legal system which adheres to civil law, judges have an obligation to adjudicate based on the provisions of applicable positive law. Therefore, Decision Number 37/Pdt.Sus.Pailit/2021/PN.Jkt.Pst can be declared inconsistent with the UUKPKPU, considering that judges should pay attention to the economic conditions of debtors who are under pressure and unable to meet their financial obligations in this unfavorable situation. The solutions that can be taken to overcome the problem of the minimum amount of bankruptcy debt are:There should be a limitation on the minimum amount of debt that can be used as a basis for filing a bankruptcy petition and a provision stating that a limited company can be declared bankrupt based on the total amount of all debts that exceed the assets of the limited company so that the Bankruptcy Law requires the application of insolvency test provisions, before the examination of the bankruptcy petition by the judge to provide protection for solvent companies and there are no problems with financial performance that could allow them to be declared bankrupt, because the existing requirements are not explained in full.

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