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The Status of Property Granted in The Provisions of Bankruptcy Law in Indonesia

Nyulistiowati Suryanti[1], Deviana Yuanitasari[2], Hazar Kusmayanti [3]
[1]Universitas Padjadjaran, Indonesia, nyulistiowati@unpad.ac.id
[2]Universitas Padjadjaran, Indonesia, deviana.yuanitasari@unpad.ac.id
[3]Universitas Padjadjaran, Indonesia, hazar.kusmayanti@unpad.ac.ic

Abstract

In carrying out their obligations to pay debts, Debtors often make various efforts to avoid having their assets being included in the guarantee of payment. Moreover, Debtors occasionally contrive, by providing grants, their assets in the bankruptcy decision to not be subsumed in the bankruptcy court. The aim of this research is to analyze how the arrangements for giving grants made by Bankrupt Debtors are reviewed from the Civil Code and Bankruptcy law as well as the role of the Curator in protecting Creditors and Debtors in the bankruptcy process. This research uses a normative juridical approach, where library data or secondary data is the main data, in addition to being supported by field data. The research results show that in the context of bankruptcy law, grants are an action that must be paid close attention because it can be said to be a legal action that is not required. If the Debtor gives away assets before being declared bankrupt, it can be indicated as an effort to avoid confiscation of collateral by the court. The curator has the authority to include a gift in the list of bankruptcy estates that will be sold to pay the debtor's debts to his creditors. In such cases, the Curator can file an Actio Pauliana lawsuit with the commercial court to cancel the gift so that the assets can be included in the bankruptcy estate list. This study provides a focused examination on the legal status of gratuitous transfers in Indonesian bankruptcy law—a subject that, despite its practical urgency, remains underexplored compared to broader studies on bankruptcy proceedings or creditor protections.

Keywords: Bankruptcy; Grant; Bankruptcy Estates.

1. INTRODUCTION

The development of the business world undoubtedly attracts the attention of various parties, especially those operating in the business sector, because the increasing development of the business world is an indicator that can be used to determine the economic development of a country. When an entrepreneur develops his company, the funds used as capital in advancing his business will not only come from his own funds, but will most likely be obtained by applying for loans and borrowing from third parties, obviously with accompanying agreements such as the ability to pay off the debt in full.[1] and the time of payment.

If a person or legal entity obtains a loan from a third party, which can also be provided by a person or a legal entity, then the party obtaining the loan is usually called the Debtor while the party providing the loan is called the Creditor. In order to strengthen the Creditor's confidence that the Debtor will actually repay

1 Kilborn, Jason J, "Small Business Bankruptcy Reform in the Arab World: Two Steps Forward, One Step Back." *Arab Law Quarterly* 1 (2020): 1–36. https://doi.org/10.1163/15730255-BJA10064.

 DOI: http://dx.doi.org/10.29303/ius.v13i1.1593

the loan after the agreed loan period ends, there are principles contained in the law which constitute a guarantee as to the extent to which a Debtor's debts will be paid. This principle is contained in Article 1131 of the Civil Code which states that if the Debtor unintentionally at the agreed time not to pay off his debt to the Creditor, then the Debtor's assets, both movable and immovable, both existing and future existence, it becomes collateral for the debt which can be sold to become a source of repayment of the debt.[2]

A bankruptcy will commence and occur if someone is unable or stops paying their debts. This situation of stopping paying debts is because the person (Debtor) is no longer able to pay his debts. Bankruptcy can be one way to overcome the problem of financial difficulties, which are propelled by poor company performance, loss of market share, and likely to be in a position to survive economic changes.[3] Based on Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as Bankruptcy Law, without discussing Suspension of Debt Payment Obligations), a person can file a bankruptcy petition if the Debtor has two or more Creditors and does not pay in full at least one debt that is overdue and collectible.

Bankruptcy and Suspension of Debt Payment Obligations in Indonesia were initially regulated in Faillissements Verordening which was then amended by Law No. 4 of 1998, which was then revoked with the enactment of Bankruptcy Law. This law regulates alternatives for resolving debt payments submitted by someone by handing over a Bankruptcy or suspension of debt payment obligations application. Basically, the bankruptcy decision or suspension of debt payment obligations will refer to the approval of the majority of creditors. In line with the name of the law, bankruptcy should include or be preceded by a fair suspension of debt payment obligations (suspension of debt payment obligations) which can only be carried out by a court that specifically handles bankruptcy and suspension of debt payment obligations issues.[4]

When the bankruptcy[5] petition submitted is granted by the Court that specifically handles Bankruptcy (and suspension of debt payment obligations), namely the Commercial Court, then one of the things that characterizes bankruptcy is that from the date the bankruptcy decision is declared, it is the role of the Curator appointed by the Commercial Court, who has the duties and authority to carry out the duties of managing and/or settling bankruptcy estates under the supervision of the Supervisory Judge. The assets of the bankrupt debtor (boedel) will serve as collateral for payment of the bankrupt debtor's debts to its creditors.

From an etymological point of view, the word bankruptcy comes from Italian, namely faillie or fallimento, which was then adopted in French to become faillite. The term faillite in French was then adopted in Dutch as the word faillie(t) and translated as "bankrupt" in Indonesian.[6] Meanwhile, the term bankruptcy comes from the word bancorotto which later became the word bankrupt in English.[7]

2 Sutan Remy Sjahdeini, *Hukum Kepailitan (Memahami Faillissementsverordening Juncto Undang-Undang No. 4 Tahun 1998* (Jakarta, Pustaka Utama Grafiti, 2002), 7.

3 John Y. Campbell, "Predicting Financial Distress and the Performance of Distressed Stocks.*" Journal of Investment Management of Harvard University : Harvard University* 4, 2010.

4 Thomas H. Jackson and Robert E. Scott, "On the Nature of Bankruptcy: An Essay on Bankruptcy Sharing and the Creditor's Bargain," 75 Va. L. Rev (1989): 155.

5 Kiseleva, Irina Anatolievna, Vladimir Ivanovich Kuznetsov, Natalia Alekseevna Sadovnikova, Andrey Vasilyevich Pikalov, and Arina Andreevna Dolgaya, "Models of Assessing The Probability Bankruptcy of Enterprises." *Journal of Critical Reviews 7*, no. 9 (2020): 1111. http://creativecommons.org/licenses/by/4.0/.

6 Elyta Ras Ginting, *Hukum Kepailitan Teori Kepailitan* (Jakarta: Sinar Grafika, 2018), 3.

7 Elyta Ras Ginting, 4

Bankruptcy[8] is an option for resolving debt payments, due to the short nature of the settlement compared to civil settlements in general, where speed and legal certainty are very much needed, especially by people engaged in the trading sector. Apart from the provisions in Article 1131 of the Civil Code which is the legal basis for guaranteeing the payment of Debtors' debts to Creditors, the Bankruptcy law also regulate specifically in Article 21 where it is stated that "bankruptcy covers all of the Debtor's assets at the time the decision to declare bankruptcy as well as everything obtained during bankruptcy".[9] Bankruptcy legal regulations are based on and designed based on the cooperative actions of debtors towards their creditors during the legal process.[10] Basically, assets which are someone's property rights give the owner the right to carry out any legal action on the assets, for example selling, bequeathing or donating them to a third party, however, it is different if the assets are assets which become a bankruptcy[11] proceeding which are assets that serve as collateral for payment of a person's debts in a bankruptcy case.

A grant is generally defined as a donation or contribution made by someone to another party while the grant giver is still alive and the implementation is carried out while the grant giver is still alive. Indeed, the implementation of grantmaking must comply with applicable legal regulations. In Indonesia, provisions regarding grants are regulated in various legal regulations, namely in the Civil Code, Customary Law or Islamic Law, therefore grants must not be made haphazardly so that the grant is binding and valid in the eyes of the law. This research discusses grants regulated in the Civil Code, where grants are regulated in Articles 1666 to Article 1693 of the Civil Code.

In practice, contributions in the form of grants are mostly made by someone who is a bankruptcy debtor. A grant which is a legal act that is not required to be carried out by a person, in this case a bankrupt debtor, tends to be mistrustful or suspected of having bad intention or bad faith, because sometimes the bankrupt debtor creates as much debt as possible and then submits a request for a bankruptcy declaration, so that there is no need to pay all his debts, the Debtor first hides his assets,[12] one of which is by giving donations. Apart from being vulnerable to claims from third parties, this also becomes a problem when the grantor is declared bankrupt. In this research the authors will analyze how the arrangements for giving grants made by Bankrupt Debtors are reviewed from the Civil Code and Bankruptcy law as well as the role of the Curator in protecting Creditors and Debtors in the bankruptcy process.

There are several articles on the topic of bankruptcy, such as: "Implementation of the Doctrine of the Business Judgment Rule on Bankruptcy Law in Indonesia", written by Andika Wijaya, in the journal Yuridika: Volume 35 No 1, January 2020 the research in this article is carried out by reform-oriented research methods, to make changes to Law No. 37/2004 to clarify the application of the BJR doctrine in bankruptcy law in Indonesia[13], "The Rationalization of Debt Discharge Policy for Individual Debtors in Indonesian Bankruptcy Regime", written by Robert in the Sriwijaya Law Review, Volume 6 issue 1

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8 Agus Nurudin, "Bankruptcy and Postponement of Debt Payments for Large Companies." International Journal of Economics and Business Administration 8, no. 2 (2020): 388–95. https://doi.org/10.35808/ijeba/469.

9 Man S.Sastrawidjaja, Hukum Kepailitan dan Penundaan Kewajiban Pembayaran Utang Bandung: Alumni, 2006), 75.

10 McCoid John C, "Discharge The Most Important Development in Bankruptcy History", American Bankruptcy Law Journal 70, no. 2 (1996):163–194.

11 Mackevicius, Jonas, Ruta Sneidere, and Daiva Tamuleviciene, "The Waves of Enterprises Bankruptcy and The Factors That Determine Them: The Case of Latvia and Lithuania." Entrepreneurship And Sustainability 6, no. 1 (2018): 190–210.

12 Ainurnisa Handayani, "Perlindungan Hukum Bagi Kreditor Dan Penyelesaian Utang Debitor Terhadap Kreditor Ditinjau Dari Undang-Undang Kepailitan Dan SUSPENSION OF DEBT PAYMENT OBLIGATIONS", Varia Hukum 3, no.2 (2021): 1-29, https://doi.org/10.15575/vh.v3i2.12589.

13 Wijaya, A, "Implementation of the Doctrine of the Business Judgment Rule on Bankruptcy Law in Indonesia", Yuridika 1, no. 35 (2019): 1–14. https://doi.org/10.20473/ydk.v35i1.12436.

Januari 2022 this article aims to argue why it is rational for the Indonesian government to implement a debt discharge policy in the Indonesian bankruptcy regime[14], "Temporary Measures on Bankruptcy: Alternatives to the Moratorium on Act 37/2004 in Resolving Indonesian Bankruptcy During the COVID-19 Pandemic", written by Cintya Sekar Ayu Permatasari in Lex Scientia Law Review, Volume 5 No. 2 2021[15], "Generalized Additive Model with Embedded Variable Selection for Bankruptcy Prediction: Prediction Versus Interpretation", written by Carlos Valencia, Sergio Cabrales, Laura Garcia, Juan Ramirez and Diego Calderona, This paper explores the properties of using a generalized additive model with embedded variable selection for the prediction of bankruptcy. The main purpose is to explore an innovative way to close the gap between interpretation and prediction that has prevented widespread use of methods based on machine learning.[16] Suud Fuadi, Thohir Luth, Sihabudin, Siti Hamidah, " Forms of Religious Court's Authority Expansion on Sharia Bankruptcy Case", the main purpose is to explore the various forms of authority expansion by religious courts concerning sharia bankruptcy cases. Through a literature research methodology, the study aims to provide insights into the ways in which religious courts assert their authority in handling disputes related to sharia bankruptcy.[17] However, none of these works specifically address the legal implications of grants made by debtors shortly before being declared bankrupt. This paper seeks to fill this gap by focusing on the legal status of such gratuitous transfers, their potential to harm creditors, and the curatorial responses available under Actio Pauliana.

This research was conducted using a normative juridical approach combined with a comparative legal analysis. The normative aspect explores legal norms within Indonesian bankruptcy and civil law, particularly regarding gratuitous transfers. Meanwhile, the comparative method highlights how similar issues are treated under Dutch and American legal systems, offering insights to evaluate and possibly enhance the effectiveness of Indonesia's current regulatory framework.[18]

In accordance with the approach method used, a study was carried out on the norms and principles contained in secondary data - spread across primary, secondary and tertiary legal materials - including a study of legislation on bankruptcy law, legal books on bankruptcy, articles in journals related to the object of research regarding bankruptcy, all the aforementioned inter-related materials were then analyzed qualitatively.

2. ANALYSIS AND DISCUSSION

2.1. Arrangements for Providing Grants Made by Bankrupt Debtors are Reviewed from the Civil Code and Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations

14 Robert Robert, Rosa Agustina, Bismar Nasution, "The Rationalization of Debt Discharge Policy for Individual Debtors in Indonesian Bankruptcy Regime", *Sriwijaya Law Review,* no. 6 (1), 101-121., DOI: 10.28946/slrev.Vol6.Iss1. 928. pp.

15 Ayu Permatasari, C., and Mellynda, O, "Temporary Measures on Bankruptcy: Alternatives to the Moratorium on Act 37/2004 in Resolving Indonesian Bankruptcy During the COVID-19 Pandemic", *Lex Scientia Law Review 2*, no. *5* (2021): 19-40. https://doi.org/10.15294/lesrev.v5i2.50600.

16 Carlos Valencia, Sergio Cabrales, Laura Garcia, Juan Ramirez and Diego Calderona, "Generalized additive model with embedded variable selection for bankruptcy prediction: Prediction versus interpretation", *Cogent Economics & Financ* 7, no. 1 (2019, https://doi.org/10.1080/23322039.2019.1597956.

17 Suud Fuadi, Thohir Luth, Sihabudin, Siti Hamidah, "Forms of Religious Court's Authority Expansionon Sharia Bankruptcy Case." *Journal Of Law And Sustainable Development*, no. 12 (2003): 01-18, DOI: Https://Doi.Org/10.55908/Sdgs.V11i12.2383.

18 Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat* (Jakarta: PT. Radja Garafindo Persada, 1995), 19.

In essence, a person's rights, obligations and authority are regulated by the existence of a law. The law obviously regulates and limits a person's freedom of ownership of a right they own. Even though property rights are absolute rights in the Civil Code concept, legal reality shows that there are certain restrictions in using them. In Indonesia, "Property rights are a social function", meaning that property rights must be exercised in a way that is in accordance with their objectives, must not conflict with the public interest or cause harm to the State and Nation if the conflict is revoked by the Government.[19] For example, giving a donation that is considered an inheritance, it can be said that the donation must not deny the existence of heirs or harm the heirs. This means that the freedom of the subject of property rights to give away assets as they wish is hampered by the existence of *legitime portie* as regulated in the Civil Code.[20]

The definition of a grant as stated in Article 1666 of the Civil Code is: "an agreement whereby the donor, during his or her lifetime, freely and irrevocably, hands over an object for the needs of the done who accepts the gift. The law does not recognize other types of gifts including those who are still alive." This grant is classified into what is called a "free" agreement (in Dutch: "om niet") where the free word is intended only for the performance of one party, while the other party does not need to provide a counter-performance as rewards. Such agreements are also called "unilateral" agreements as opposed to "reciprocal" (bilateral) agreements.

The elements of grants, based on the provisions of the Civil Code, are as follows:[21]

1. A grant is a unilateral agreement that is made free of charge, meaning that there is no contra performance on the part of the grant recipient;
2. For grants it is always required that the donor has the intention to benefit the party being given the grant;
3. The object of the grant agreement is all kinds of property belonging to the grantor, both tangible and intangible objects, movable and immovable objects, including all kinds of receivables from the grantor;
4. Grants cannot be withdrawn;
5. The grant must be made while the donor is still alive;
6. Grants must be made by notarial deed.

According to the Civil Code, grants are divided into two types, namely ordinary grants and testamentary grants, where the provisions regarding grants often also apply when giving grants. The difference lies in the timing of the grant. If the grant is made while the recipient of the grant is still alive, it is called an ordinary grant. If the gift is carried out after the death of the grant giver, it is called a testamentary grant as stated in the grant deed, according to Article 957 of the Civil Code: "A grant is a special assignment, in which the heir gives to one or more people certain items, or all items and their types, for example all movable or fixed assets or the right to use the proceeds of some or all of the items."

In practice, giving these grants often causes problems, for example lawsuit related to bankruptcy. Bankruptcy provisions aim to distribute the debtor's assets to his creditors by carrying out joint confiscation so that the debtor's assets can be distributed to creditors according to their rights. Article 1131 of the Civil Code, which is a general principle in bankruptcy, contains the principle of *"Paritas Creditorium"* that Creditors have equal status, whereas Article 1132 of the Civil Code contains the principle of "*Pari*

19 Surojo Wignjodipuro, *Pengantar Ilmu Hukum* (Jakarta: Gunung Agung, 1982), p.88.

20 Nor Mohammad Abdoeh, "Hibah Harta pada Anak Angkat (Telaah Filosofis terhadap Bagian Maksimal Sepertiga)", Millah: Jurnal Studi Agama 18, no. 2 (2019): 207-234, DOI :10.20885/millah.vol18.iss2.art2.

21 Tyas Pangesti, "Pembatalan Hibah dan Akibat Hukumnya (Studi Kasus Perkara Nomor 20/PDT.G/1996/PN.Pt, Tesis Program Pascasarjana Universitas Dipenogoro, 2009, p.18.

Passu Prorate Perte", namely that all Creditors have the same rights to the Debtor's assets, unless there are valid reasons to take precedence.[22] The sentence, unless there are valid reasons for priority, relates to the differentiation of creditors into 3 (three) types in the bankruptcy provisions, namely Separatist Creditors, Preferred Creditors and Concurrent Creditors.

Separatist Creditors are Creditors who have the privilege of prioritizing payments because they have payment guarantees for their receivables in the form of material collateral. Preferred Creditors are Creditors who have the special right to prioritize their payments based on the provisions of the law, as regulated in Articles 1139 and 1149 of the Civil Code, apart from the existence of laws that specifically regulate prioritization of payments such as work wages. Concurrent Creditors are Creditors who do not have collateral to take priority. These Concurrent Creditors will compete among themselves to get payment from the Debtor in a balanced manner according to the amounts of receivables they have. The provisions of Article 1131 and Article 1132 of the Civil Code in conjunction with Article 21 of the Bankruptcy law regulate and provide creditors with the position of concurrent creditors so that the bankruptcy debt will be distributed among creditors equally *(ponds gewijs/paritas creditorium)*.[23]

The Debtor's legal action in the form of giving a donation will be detrimental to the Creditor if it is deliberately carried out by the Debtor with the intention of defrauding the donated object into the bankruptcy court, which will be very prejudicial to the Creditors and the act of stashing part of their assets so that they are not confiscated by the Court as collateral for the repayment of their debt to the Creditor. The legal action carried out by the Debtor was executed before the Bankruptcy Decision was pronounced, where the Debtor entered into an agreement with a third party to donate part of his assets so that they would not be confiscated by the Court as collateral for repayment of his debts. The Debtor's legal actions mentioned above are clearly very detrimental to the Creditor in that the amount of debt repayment that the Creditor will receive will be less considering that the Debtor's assets which should have been confiscated as collateral for repayment of the debt have been given by the Debtor to someone else so that the assets that have been donated are no longer recorded as assets of Debtor's wealth and avert collateral confiscation by the Court.[24]

The act of giving grants (*donations*) carried out by a Debtor who has been declared bankrupt will of course have an impact on the fulfillment of the Debtor's obligations, causing the value of the bankruptcy debt to decrease. Therefore, in the Bankruptcy law there are several regulations regarding gifts or grants to protect creditors as follows:

1. Legal Protection from Curators

The curator is one of the important organs in bankruptcy. The main task of the curator is to manage and/or settle the bankruptcy estates as stated in Article 69 of the Bankruptcy law with the aim of maximizing the value of the bankruptcy estates.[25] The task of the curator is so important that in the decision to declare bankruptcy it

22 Susanti Adi Nugroho, *Hukum Kepailitan di Indonesia, Dalam Teori dan Praktik Serta Penerapan Hukumnya* (Jakarta: Prenadamedia Group, 2020), 37-38.

23 Imam Magribi, Dewi Tuti Muryati, Supriyadi ," Perlindungan Hukum Bagi Kreditor Dalam Kaitannya Dengan Permohonan Pailit Yang Diajukan Oleh Debitor Studi Kasus Pada PT. BANK CIMB NIAGA Melawan PT. Sumatera Persada Energi", Humani 7, no. 2 (2017), http://dx.doi.org/10.26623/humani.v7i2.

24 Anggi Hamonangan Siahaaan, Besty Habeahan, and Jinner Sidauruk, "Analisis Yuridis Upaya Hukum Actio Pauliana Terhadap Debitor Yang Menghibahkan Harta Kekayaannya Sebelum Pailit Berdasarkan UU No 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang", Nommensen Journal of Private Law 1, no. 1 (2022).

25 Nyulistiowati Suryanti, Pupung Faisal, Salsabila Muharani, "Kedudukan Aset Milik Pihak Ketiga yang Dijadikan Sebagai Boedel Pailit Oleh Kurator Berdasarkan UU Kepailitan dan UU Hak Tanggungan", Jurnal Legal Spirit 6, no.2 (2022).

must appoint immediately a Curator and Supervisory Judge as stated in Article 15 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. To carry out these duties, the Curator must of course rely on Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, in which the Law contains articles that regulate the duties and authority of the Curator.[26]

Regarding to the grants donated by the Debtor, the role of the Curator - who must manage and settle the bankruptcy estate - is divided into several actions, including:[27]

a. Immediately ensure and secure bankruptcy estates at the Debtor's location.
b. Stopping further burdens/obligations on the bankrupt boedel.
c. Announce the bankruptcy decision and invite the Creditors' meeting.
d. Verifying all claims from Creditors against Bankrupt Debtors.
e. Returning bankrupt assets which are in the unlawful possession/custody of a third party.
f. Realizing the potential of going concerns to increase bankruptcy estates.
g. Collecting the bankrupt Debtor's receivables from the Debtor.
h. Selling/resolving bankruptcy.
i. Dividing the proceeds from the sale of bankruptcy estates to each creditor according to their rights.
j. Elaboration of the liability[28] of the bankruptcy debtor's legal entity to the individual directors, commissioners or shareholders.

The cancellation of the agreement made by the Debtor must indeed be carried out by a judge at the request of the Creditor in bankruptcy by the Curator, as stated in Article 41 paragraph (1) of the Bankruptcy Law which states that: For the benefit of the bankruptcy estate, the court can request the cancellation of all legal actions of the Debtor which have been made. being declared bankrupt which is detrimental to the interests of creditors, which is done before the decision to declare bankruptcy is pronounced.

Furthermore, when it is related to the provisions in the Civil Code, Article 1341 of the Civil Code states that:

"Nevertheless, the Creditor may apply for the invalidation of all actions that are not required to be carried out by the Debtor, in whatever name, which is detrimental to the Creditor; provided it is proven that when the action was carried out, the Debtor and the person with whom or for whom the debtor acted, knew that the action would result in losses for the Creditors. "

However, the rights obtained by third parties in good faith[29] over goods that are the object of illegal actions must be respected. To request the annulment of an action that is not the Debtor's obligation or was carried out for free by the Debtor, it is sufficient for the Creditor to show that at the time of carrying out the action the Debtor knew

26 Arumi Riezky Sari and Iwan Erar Joesoef, "The Role of Curators in Handling of Bankruptcy: Study of The Delay in Implementing Bankruptcy Decisions", Procceding: Call for Paper 2 nd National Conference on Law Studies: Legal Development Towards A Digital Society Era.

27 Ricardo Simanjuntak (Kurator), "Eksistensi Hibah Dalam Mengoptimalkan Boedel Pailit Dalam Penyelesaian Kepailitan di Indonesia", Focus Group Discussion (Hybrid), Bandung, on Saturday, 26th August 2023.

28 Deviana Yuanitasari, Hazar Kusmayanti, and Agus Suwandono, "A comparison study of strict liability principles implementation for the product liability within Indonesian consumer protection law between Indonesia and United States of America law", Cogent Social Sciences 9, no. 2 (2023), DOI: 10.1080/23311886.2023.2246748.

29 Yuanitasari, Deviana and Hazar Kusmayanti, "Pengembangan Hukum Perjanjian Dalam Pelaksanaan Asas Itikad Baik Pada Tahap Pra Kontraktual", *Jurnal Ilmu Hukum Kenotariatan* 3, no. 2 (2020).

that in this way he was harming the creditors, regardless of whether the person who benefited also knew that or not."

1. Actio Pauliana

Protecting the interests of Creditors as well as Debtors is one of the objectives of bankruptcy law in addition to other objectives of bankruptcy law such as: (1) avoiding conflicts if several Creditors at the same time request repayment of their receivables from Debtors; (2) avoiding Creditors who want to obtain special privileges, who demand their rights by selling goods belonging to the Debtor or controlling them themselves without considering the interests of the Debtor or other Creditors; or (3) to avoid fraud committed by the Debtor himself.[30]

Article 21 of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations explains that bankruptcy includes all of the Debtor's assets at the time the bankruptcy declaration is announced as well as everything obtained during the bankruptcy. In this case, all of the Debtor's assets are classified as bankruptcy estates, whether productive assets or non-productive assets.

From the perspective of Bankruptcy Law, a grant is an action carried out by the Debtor in transferring his assets to avoid confiscation of collateral by the Court. In connection with this, namely the existence of legal actions carried out by creditors that are not required, then in the Bankruptcy law there are provisions that regulate this, namely in Article 43 and Article 44 of the Bankruptcy law . According to Article 43 of the Bankruptcy and Suspension of Debt Payment Obligations Law: "The grant made by the bankrupt debtor can be canceled in court if the curator can prove that at the time the grant was made, the debtor knew or should have known that the action would result in losses for creditors."

In Article 44 of the Bankruptcy and Suspension of Debt Payment Obligations Law it is regulated that:

"Unless it can be proven otherwise, the Debtor is deemed to know or should know that the grant is detrimental to the Creditor, if the grant is made within a period of 1 (one) year before the decision to declare bankruptcy."

The Bankruptcy law regulate that there are two efforts by the Curator to optimize bankruptcy estates related to grants, namely if the Debtor obtains the donated assets in accordance with the provisions of the Civil Code, namely with an authentic deed (Notarial deed). In that case the Curator is obliged to include it in the list of bankruptcy estates which will be auctioned or sold privately to pay off his debts to Creditors. On the other hand, if the Debtor donates his assets to a third party then the Curator will file an actio pauliana lawsuit to cancel the grant, so that Assets that have been donated to third parties can be included in the bankruptcy estate list.[31]

Actio pauliana is the Creditor's legal effort to cancel the Debtor's actions which are detrimental to the Creditor through the courts as long as it can be proven that when the action was carried out, the Debtor or the person with whom the Debtor acted, knew that the action could harm the creditor, taking into account:[32]

30 Anita Afriana, S. H. "Implementasi perdamaian (accord) pada pengadilan niaga dalam penyelesaian perkara kepailitan di Indonesia." Jurnal Ilmiah Hukum DE'JURE: Kajian Ilmiah Hukum 2, no. 2 (2017): 219-233.

31 Elisabeth Nurhaini Butarbutar, "Proof Of The Actions Of The Debtor That Adverse The Creditor In The Lawsuit Of Actio Pauliana", Jurnal Yudisial 12, no. 2 (2019): 215-234. http://dx.doi.org/10.29123/jy.v12i2.322.

32 Susanti Arsi Wibawani (Hakim Pengadilan Niaga, Jakarta), "Eksistensi Hibah Dalam Mengoptimalkan Boedel Pailit Dalam Penyelesaian Kepailitan di Indonesia", Focus Group Discussion (Hybrid), Bandung, on Saturday, August 26th, 2023.

a. This legal action is an action that is detrimental to creditors carried out within a period of 1 (one) year before the bankruptcy decision (specifically for grants).

b. This legal action is an act that is detrimental to the creditor which the Debtor is not obliged to carry out.

For example, a grant that the Debtor deliberately made before he was declared bankrupt which reduced the fulfillment of his debt payments. After that, the Commercial Court will assess the validity of the grant which may be part of the restructuring or debt repayment plan proposed by the party submitting the Suspension of Debt Payment obligations.

2. Transparency and Proof:

In all cases, transparency and clear written evidence are essential. All grant transactions must be properly documented to avoid disputes or legal conflicts.[33] The legal strength of a grant deed lies in the function of the authentic deed itself, namely as a valid means of evidence according to law. This is a direct consequence which is a necessity of the statutory provisions, that there must be authentic deeds as a means of evidence. In the Civil Code Article 1683 states that: "No grant binds the donor, or produces any consequences whatsoever, other than from the day the gift is expressly accepted by the recipient of the gift himself or by a person who, with an authentic deed, has been authorized by the recipient of the gift to receive it. gifts that have been given to the recipient of the gift or will be given to him at a later date. If the acceptance has not been made in the letter of grant itself, then it can be done in an authentic deed, the original of which must be kept, as long as it is done so. while the grantor is still alive, in which case the gift to the person recently mentioned will only be valid from the day the acceptance is notified to him."

The function of a notarial deed in a grant is not merely as evidence, but also as an essential requirement for the validity of the grant agreement. Therefore, a grant that is not made with a notarial deed, or a grant that is made freely without a notarial deed, is a grant agreement that is absolutely void. Likewise, regarding grant renewal, a grant cannot be renewed at a later date by means of a notarial deed. This means that a grant is originally renewed and perfected by a notarial deed at a later date. Such renewal cannot take effect from the time of the original grant. As a practical illustration, the Commercial Court in Jakarta ruled in Decision No. 15/Pailit/2019/PN.Niaga.Jkt.Pst to annul a land grant made by the debtor to his sibling within one year prior to the bankruptcy petition. The court held that the transfer was conducted in bad faith to avoid confiscation by creditors. This decision reflects the application of Actio Pauliana in protecting the collective rights of creditors and preventing fraudulent asset depletion by debtors.

2.2. The Role of the Curator in Protecting Creditors and Debtors in the Bankruptcy Process

Bankruptcy is a general confiscation of all the Bankrupt Debtor's assets,[34] the management and settlement of which is carried out by the Curator under the supervision of a supervisory Judge as regulated in the Bankruptcy law. Based on this understanding, if a person is declared bankrupt and his assets are subject to general confiscation, the

33 Marianna Sucurro. "Financial Bankruptcy across European Countries" *International Journal of Economics and Finance* 9, no. 7 (2017): 132–46. https://doi.org/10.5539/ijef.v9n7p132.

34 Walter, György, and Jens Valdemar Krenchel. "The Leniency of Personal Bankruptcy Regulations in the EU Countries." Risks 9, no. 162 (2021): 1–20. https://doi.org/10.3390/risks9090162.

bankrupt debtor no longer has the authority to manage his assets because the management and settlement of his assets will be executed by a Curator whose performance will be supervised by the Supervisory Judge. Therefore, the role of the Curator is very extensive and decisive in the bankruptcy process.

The Bankruptcy law determine that those who can become a Curators is an officer of the Inheritance Property Office and someone who has special skills, namely having taken and passed Curatorial education, and is registered with the Ministry of Law and Human Rights; and is also an active member of the Curatorial professional organization. The duties of a Curator in the Bankruptcy law are regulated in Article 69, which states that:

1) The task of the Curator is to manage and/or settle bankruptcy estates.
2) In carrying out his duties, the Curator:
   a. It is not required to obtain approval from or provide prior notification to the Debtor or one of the Debtor's organs, although in circumstances other than bankruptcy such approval or notification is required;
   b. Can take out loans from third parties, only in order to increase the value of the bankruptcy estate.
3) If in making a loan from a third party the Curator needs to encumber the bankrupt's assets with a pledge, fiduciary guarantee, encumbrance, mortgage or other collateral rights for property, the loan must first obtain approval from the Supervisory Judge.
4) The encumbrance of bankruptcy estates with a pledge, fiduciary guarantee, encumbrance, mortgage or security rights over other assets as intended in paragraph (3), can only be carried out on the part of the assets that has not been used as collateral for debt.
5) To appear before the Court, the Curator must first obtain permission from the Supervisory Judge, unless it concerns disputes over matching receivables or in cases as intended in Article 36 (existence of reciprocal agreements), Article 38 (existence of leases), Article 39 (existence of reciprocal agreements). in relation to an employment relationship with a worker) and Article 59 paragraph (3) (regarding the release of collateral objects by the Curator)

When a bankruptcy case occurs, the Commercial Court can appoint one or more Curators, which is closely related to the level of complexity of the bankruptcy that occurred. In carrying out its duties, the Curator is responsible for errors and omissions made in executing the duties of managing and settling the assets of the bankruptcy debtor which cause losses to the bankruptcy estates. A Curator may be replaced at the request of the Curator himself, the request of another Curator serving in the same bankruptcy case, a recommendation from the Supervisory Judge or a request from the bankruptcy Debtor himself.

When appointed and continuing to carry out their duties, the curator must understand the principles contained in and form the basis for the creation of the Bankruptcy law as well as the objectives of enacting these laws.The Bankruptcy law contain principles that specifically underlie the implementation of the Bankruptcy law , these principles are: Principle of Balance, Principle of Business Continuity, Principle of Justice and Principle of Integration.

1. Principle of Balance

What is meant by the principle of balance is that this law protects both creditors and debtors, meaning that there should be no abuse of bankruptcy institutions and regulations by dishonest debtors or by creditors who do not have good intentions. In the general explanation of the Bankruptcy law , there are 3 (three) factors which are the reasons for the need for regulations regarding the Bankruptcy law , namely:

a. to avoid seizure of the Debtor's assets if at the same time there are several Creditors who collect their receivables from the Debtor,
b. to avoid Creditors holding material security rights claiming their rights by selling goods belonging to the Debtor without considering the interests of the Debtor or its Creditors,
c. to avoid fraud committed by one of the Creditors or Debtors themselves, for example the Debtor tries to give an advantage to one or several particular Creditors so that other Creditors are harmed, or there is a fraudulent act by the Debtor to abscond all his assets with the intention of relinquishing responsibility to creditors.

The Principle of Balance basically emphasizes that the Bankruptcy law provide equal protection to both Creditors and Debtors equally.

2. Principles of Business Continuity

In the explanation of the Bankruptcy law , it is stated that in this law there are provisions that allow prospective debtor companies to continue to operate. This explains that this law does not want existing and ongoing companies to become bankrupt and ultimately disbanded, because in a company not only the owner or shareholder that is involved, but also the employees or workers who are of course related to the survival of their family, as well as the agents or suppliers who collaborate with the company and the community around the company who are directly or indirectly interested in and benefit from the sustainability of the business. Business continuity (going concern) in the Bankruptcy law is realized in two ways, namely: (1) the submission of an accord by the Debtor during the bankruptcy process carried out by the Curator; and the second option is: (2) if no effort is submitted by the Debtor in bankruptcy, then the continuity of the business in the management phase can be submitted by the Curator. This submission is of course based on the Curator's careful consideration that the company still has the opportunities (prospective) for the continuity of its business. This principle means that a bankruptcy experienced by a person is not the end of his activities as an entrepreneur, because there is an opportunity for an accord to make an agreement with the creditors so that his business can recover.[35]

3. Principle of Justice

As stated in the explanation of the Bankruptcy law , it is hoped that the enactment of this law will fulfill a sense of justice for the interested parties. This principle aims to prevent arbitrariness on the part of collectors who seek payment of their respective claims against bankrupt Debtors without paying attention to other Creditors. This principle of justice is of course applied not only to creditors but also to debtors. In the Bankruptcy law , the principle of justice is contained in several articles, namely: Article 10, Articles 55, 56 and 57.

Article 10 of the Bankruptcy Law states:

(1) As long as the decision on the application for bankruptcy has not been pronounced, any Creditor, Prosecutor's Office, Bank Indonesia, Capital Market Supervisory Agency (now OJK) or Minister of Finance may submit a request to the Court to:

a. Placing collateral security for part or all of the Debtor's assets, or

b. Appoint a temporary Curator to supervise:

1) Management of the Debtor's business,

35 Nyulistiowati Suryanti, *Monograf Hukum Dagang, Perdamaian di dalam Kepailitan dan Penundaan Kewajiban Pembayaran Utang* (Bandung: LoGoz Publishing, 2017), v.

2) Payments to Creditors, transfer or enlargement of the Debtor's assets in Bankruptcy are under the authority of the Curator.

(2) The application as intended in paragraph (1) can only be granted if this is necessary to protect Creditors.

(3) If the application as intended in paragraph (1) letter a, [i.e.: (1) a.] , is granted, the Court may determine conditions for the applicant's Creditors to provide collateral that the Court deems reasonable.

This arrangement not only protects creditors but also debtors, where granting creditors' requests aims to protect creditors, on the other hand, asking creditors for guarantees when their requests are granted is a form of protection for debtors.

When a bankruptcy decision is determined by the Commercial Court, a stay period applies. In several other countries such as the United States, the Netherlands and Canada, the Automatic Stay concept is applied to their bankruptcy laws. This period is known as the calm period where creditors and debtors have the right to apply for a stay when applying for bankruptcy, and the judge will order that creditors cannot exercise their rights temporarily. This is done with the aim of ensuring that the Debtor's assets (bankruptcy boedel) remain safe until the Curator has finished carrying out his verification duties on the bankruptcy boedel, this action also aims to ensure that there is certainty of a fair distribution of the Debtor's assets (bankruptcy boedel) to the Creditors.

Article 55 of the Bankruptcy and SUSPENSION OF DEBT PAYMENT OBLIGATIONS Law:

(1) By being attentive to the provisions as intended in Article 56, Article 57 and Article 58, every Creditor holding a pledge, fiduciary guarantee, security right, mortgage or collateral rights over other objects, can execute their rights as if bankruptcy had not occurred.

(2) In the case of collecting a receivable as intended in Article 136 and Article 137, they can only do so after checking the billing, and only to take repayment of the amount recognized from the billing.

Article 56 of the Bankruptcy and SUSPENSION OF DEBT PAYMENT OBLIGATIONS Law regulates as follows:

(1) The Creditor's execution rights as intended in Article 55 paragraph (1) and the rights of third parties to claim that their assets are under the control of the Bankrupt Debtor or Curator, are suspended for a maximum period of 90 (ninety) days from the date the decision to declare bankruptcy is pronounced.

(2) Withholding as referred to in paragraph (1), the Curator may use bankruptcy estates in the form of immovable or movable objects or sell bankruptcy estates in the form of movable objects which are under the control of the Curator in the context of continuing the Debtor's business, in the event that reasonable protection has been provided. for the interests of Creditors or third parties as intended in paragraph (1).

The purpose of implementing this suspension is so that the Curator can maximize the value of the bankruptcy Debtor's assets and thus the Creditors will also receive maximum repayment.

4. Principle of Integration

TheBankruptcy law are said to adhere to the principle of integration, meaning that this law regulates not only the material aspects but also the formal aspects of how to resolve debt and receivable problems related to payment alternatives through bankruptcy and postponing debt payment obligations.

Scrutinizing at the provisions of Article 1131 of the Civil Code which is a guarantee for the payment of the Debtor's debts, that all property of a person who owes money, whether movable or immovable, existing or future existing ones as well as new or new ones that will exist in the future, is a surety (guarantee) of all obligations entered into by a person. The provisions in this article do not state the mechanism for repayment of these debts, but the Bankruptcy law regulate the mechanism for Creditors to obtain debt repayment from Debtors.

Apart from the four principles contained in the Bankruptcy law , there are other principles contained in the Bankruptcy law , namely:[36]

1. the principle of balanced protection,
2. the principle of approval of the majority of creditors,
3. the principle of eligibility to be declared bankrupt,
4. the principle of "stand still" or "stay" ,
5. the principle of prioritization of privileges,
6. ultimatum remedium principle.

When the bankruptcy decision is pronounced and the Curator has been appointed, then in performing his duties executing bankruptcy resolution, it is broadly divided into 2 (two) phases or stages. The first phase is called the Quasi Custody Phase/Secretary Phase/Conservatorship Beslag/Administration Phase. The second phase is called the Auction Phase/Insolvency[37] Phase/Executor Beslag/Settlement[38] Phase.

In the first phase, namely the Management Phase, the Curator carries out the following duties:

1. The curator announced bankruptcy in several mass media,
2. The Curator inventories all of the Debtor's assets (immovable and movable objects including securities),
3. The curator submits an application for sealing if there is concern that there is an attempt to eliminate the assets of the bankrupt Debtor,
4. Inventorying Creditors, from the Curator's actions in inventorying Creditors, based on existing evidence, Creditors are divided into recognized Creditors, temporarily recognized Creditors and rejected Creditors. Apart from that, based on the evidence (letters) it can be seen which are the Preferred Creditors, Separatist Creditors and Concurrent Creditors.
5. The Curator receives letters from a third party containing the existing commitment between the Debtor and the Creditor. After examining these letters, the Curator can determine whether the commitment is continued or not,
6. The Curator will determine the deadline for entry or registration of billings/collections from Creditors,
7. The Curator holds a Debt Matching Meeting to determine which Creditors to accept or reject. If there are no further objections from Creditors to the meeting's decision, then the agreement that has occurred will be ratified by the Commercial Court (Homologation).

In this phase, the Debtor can apply for Accord, where restructuring of the Debtor's debts will be carried out by looking at the Debtor's capabilities and the amount of the

36 Bernard Nainggolan, Perlindungan Hukum Seimbang Debitor, Kreditor dan Pihak-Pihak Berkepentingan Dalam Kepaiilitan (Bandung: Alumni, 2011), 143.

37 Dijck, Gijs van, Ruben Hollemans, Monika Masnicka, Catarina Frade, Lorenzo Benedetti, Lucilla Galanti, Paula Fernando, et al. "Insolvency Judges Meet Strategic Behaviour: A Comparative Empirical Study", Maastricht Journal of European and Comparative Law 27, no. 2 (2020): 158–77. https://doi.org/10.1177/1023263X20906669.

38 Hazar Kusmayanti, Deviana Yuanitasari, Endeh Suhartini, Mohammad Hamidi Masykur, Dede Kania, Ramalinggam Rajamanickam, and Maureen Maysa Artiana, "Acte Van Dading In the settlement of industrial relations disputes in Indonesia", Cogent Social Sciences 9, no. 2 (2023). DOI: 10.1080/23311886.2023.2274148

Debtor's assets (bankruptcy debt). Apart from that, the creditor's approval for the amount of debt repayment of the debtor's debt is also approved by the creditors.

The second phase, namely the Clearing Phase, will occur if:

1. Accord is not proposed
2. Reconciliation is proposed but not approved/not accepted by the Creditors who have voting rights
3. Accord was proposed and accepted but not ratified
4. Legal attempts were not granted while an accord was not proposed
5. Legal attempts are not granted and accord is not accepted
6. Legal attempts are not granted; the settlement is accepted by the Creditors but not ratified by the Judge.

The settlement phase indicates that the Curator begins to auction the assets of the bankrupt Debtor, the results of which will then be distributed to the Concurrent Creditors in a balanced manner in accordance with the balance of the receivables. Definitely, the Curator in this settlement phase must also fulfill the rights of Separatist Creditors and Preferred Creditors.

In performing their duties, curators must understand the objectives, principles and norms underlying the implementation of the Bankruptcy law so that they can act independently and impartially in order to provide the same legal protection to Creditors and Debtors.

2.3. Comparative Perspective on Gratuitous Transfers in Bankruptcy

In the Netherlands, as the origin of Indonesian bankruptcy law, the concept of "pauliana" also applies to legal actions undertaken before bankruptcy that diminish debtor assets, particularly gratuitous transfers. Dutch law allows cancellation of such transfers if they are made in bad faith and within a suspect period before bankruptcy. Similarly, in the United States, under the Bankruptcy Code Section 548, any transfer made with "actual intent to hinder, delay, or defraud" creditors within two years before the bankruptcy filing can be reversed.

These international models show that clear time frames and presumptions of fraudulent intent are essential to ensure creditor protection. Compared to Indonesian practice, which requires more judicial discretion and proof of subjective bad faith, incorporating objective indicators (such as timing and lack of consideration) may improve legal certainty and creditor fairness.

3. CONCLUSION

In the context of bankruptcy law, a grant is a legal act that must be critically scrutinized, particularly when executed shortly before bankruptcy proceedings. This paper has shown that Indonesian law provides mechanisms such as Actio Pauliana to protect creditors from fraudulent transfers. However, legal certainty and enforcement may be enhanced by adopting international best practices. For example, in the Netherlands and the United States, the law presumes fraudulent intent for gratuitous transfers made within a defined suspect period. Incorporating such principles into Indonesian law could provide better safeguards for creditors and improve the integrity of bankruptcy processes.

This study contributes to legal scholarship by highlighting a relatively overlooked issue, the legal treatment of grants in bankruptcy and suggesting legal improvements based on comparative analysis. Further empirical research on court practices and data trends in grant annulments may deepen understanding of the law's practical effects.

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