



UDC 34

CRIMINAL OFFENSES AGAINST BANKRUPTCY DEBTORS WHO DO NOT ACT IN GOOD FAITH TOWARDS THE MANAGEMENT AND ADMINISTRATION OF BANKRUPTCY ESTATE TO ENSURE LEGAL CERTAINTY

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ABSTRACT

Debtors who are not in good faith will make every effort to avoid bankruptcy in the PKPU process and also do not have good faith to carry out their debt payment obligations if declared bankrupt, the debtor has the potential to take actions that are not compliant with the bankruptcy decision and are not cooperative with the duties of curator in managing and disposing of the bankruptcy estate. The research used in this research process uses a type of normative legal research. The bankruptcy process takes a long time because many debtors do not comply with the bankruptcy decision and obstruct the duties of the curator so that the bankruptcy process has no legal certainty.

KEY WORDS

Criminal action, debtor, law, regulation, public service.

Crimes in the field of bankruptcy can be classified as extraordinary crimes or so-called White Collar Crime which is usually translated into Indonesian with the term white collar crime, referring to non-violent crimes motivated to obtain money committed by professionals in the business world or government. The term white collar crime was first proposed by Edwin Shuterland in 1939 in his speech before the American Sociological Society. By Shuter Land White Collar Crime is defined: "A crime committed by someone who is honorable and has a high social status in the context of this occupation" [2].

White collar crime is very difficult to prosecute because the perpetrators use sophisticated ways to hide their activities through a series of very complex transactions. Most of the white collar crimes that are commonly committed are Bankruptcy Fraud [3].

Bankruptcy Fraud is a white collar crime that often occurs can be grouped as follows: First, the Bankruptcy Petition as a trick of the debtor, for example, the debtor has fled and the debtor's assets have been transferred [4]. Second, abuse of bankruptcy by debtors, for example, such as avoiding criminal charges, avoiding debt payments, transferring bankruptcy assets. Third, the actions of the debtor those are detrimental to creditors, for example, such as the debtor dissolving the company [5].

In the sociology of law that develops in society related to the bankruptcy process, there are many bankruptcy cases in Indonesian judicial institutions, many cases of debtors declared bankrupt by court decisions are hanging and there is no termination of bankruptcy (Completion) because it is influenced by several factors, one of which is that there is no firmness regarding criminal sanctions against bankrupt debtors who do not comply with the bankruptcy process. Article 234 Paragraph (2) of the Bankruptcy and PKPU Law only regulates criminal sanctions against PKPU administrators who are not independent.

Bankruptcy cases where the debtor does not act in good faith Case example of Indonesian Educational Television Station (hereinafter referred to as TPI) case No.52/Bankruptcy/2009/ PN.Niaga.JKT. PST there was a police report against the debtor who did not comply with the bankruptcy decision with all the consequences of the general confiscation but the debtor continued to carry out his business activities by ignoring the bankruptcy decision so that the debtor was reported on charges of Article 399 of the Criminal Code but until now the case is not running, then the case of the debtor not in good faith towards the duties of the curator, namely in bankruptcy case Number: 51/Pdt.sus-Bankruptcy/2021/PN.Niaga Sby PT Rita Sinar Indah, which has been approximately 4 years



unfinished because the debtor is not cooperative by not submitting all company asset documents. In addition, it is difficult to impose criminal sanctions on delinquent debtors such as the case of PT Mahkota Berlian Cemerlang Case Number: 40/Pdt.Sus-PKPU/2023/PN.Niaga Sby, creditors who are not registered in the Accounts Receivable Register make Police Reports but stop with the decision of Miscellaneous Lawsuit Number: 63/Pdt.Sus./GLL/2023/PN Niaga Surabaya and Articles in the Criminal Code cannot ensnare debtors who are not in good faith.

The Bankruptcy and PKPU Law only regulates related to transnational law, namely only in articles 212, 213 and 214 but does not contain criminal sanctions. These articles still cannot accommodate criminal offenses for debtors who do not act in good faith in the management and administration of the bankruptcy estate so that the Bankruptcy and PKPU Law does not yet regulate criminal offenses against debtors who do not act in good faith in the management and administration of the bankruptcy estate, However, even though Law Number 1 of 1945 concerning the Criminal Code (hereinafter referred to as the old Criminal Code) regulates the act of harming creditors, this norm still cannot ensnare debtors who commit fraud because the norm is still vague because it focuses on losses and the old Criminal Code does not regulate the measure of losses and in the Bankruptcy and PKPU Law itself there is a legal mechanism against debtors who commit acts of harming creditors, namely in Article 41 through Article 49 of the Bankruptcy and PKPU Law, which is related to the rules for action pauliana lawsuits. Therefore, a more measurable norm is needed, namely through a more specific legislative regulation outside the Criminal Code, namely including new norms related to criminal acts of debtors who do not act in good faith in the Bankruptcy and PKPU Law.

Law Number 1 Year 2023 on the Criminal Code (hereinafter referred to as the National Criminal Code) also regulates criminal offenses against trust in carrying out business which substantially the norms in the National Criminal Code are not much different from the Old Criminal Code, only differences in the use of language nomenclature and criminal sanctions are aggravated.

Crimes in the field of bankruptcy regulated in other laws and regulations, namely the Criminal Code, are in articles 396 to 402, but do not regulate the actions of debtors who do not act in good faith in obstructing the duties of the curator in the management and administration of the bankruptcy estate, which can result in the absence of certainty of completion in the administration of the bankruptcy estate by the curator, so that many bankruptcy cases are hanging because it is caused by debtors often not complying in the administration process.

The development of national criminal law is inevitable. Indeed, in this modern era, the demand for legal development does not only mean replacing colonial criminal law products with national law products. However, there must also be harmonization of the law with legal developments that apply in society, so that in the end the criminal law is truly aspirational to the needs of the wider community, both in terms of legal certainty, justice and benefits as described in the objectives of the law [6].

Currently, to ensnare debtors who are not in good faith, namely the perpetrators of bankruptcy crimes, the articles that use the majority of general criminal articles such as forgery of letters, false statements, embezzlement, unpleasant acts and fraud, even though the bankruptcy criminal articles are also regulated in the Criminal Code, although limited and cannot be applied to the perpetrators. Legal reform is defined as a process of examining various formulations of legal provisions and applicable laws and regulations, and a number of changes are implemented to achieve efficiency, justice and also the opportunity to obtain justice according to applicable law [7].

Based on the above background, several problems can be stated as follows: a) the urgency of regulating criminal offenses against bankrupt debtors who do not act in good faith towards the management and administration of bankruptcy estate to ensure legal certainty; b) the concept of regulating criminal offenses against bankrupt debtors who do not act in good faith towards the management and administration of bankruptcy estate to ensure legal certainty.



RESULTS AND DISCUSSION

Debtors who are not in good faith intentionally or due to negligence have committed unlawful acts resulting in losses to creditors that have been regulated in accordance with Article 41 through Article 49 of the Bankruptcy and PKPU Law, this legal event was carried out within one year before the bankruptcy verdict was pronounced. In deliberate actions or due to negligence, debtors who are unable to pay their debts commit fraud (unlawful acts). Acts of bad faith in the Civil Code are contained in Article 1365 of the Civil Code, namely "Every act that violates the law and brings harm to another person, obliges the person who causes the loss, because of his fault to replace the loss." Unlawful acts committed by debtors include negligence and intentional acts, there must be elements of fault and loss that have been regulated in Article 1365 of the Civil Code so that there is no error in determining unlawful acts.

The debtor has been declared bankrupt, so from the date of bankruptcy, the authority of the directors in the bankrupt debtor ends to manage the company or bankruptcy property. He added that in Article 69 of the Bankruptcy and PKPU Law, the curator has the authority to secure bankruptcy assets. Therefore, when the debtor uses bankruptcy assets, his actions can be suspected of being a criminal offense regulated in Article 399 of the Criminal Code. If this bankruptcy property is used by the TPI debtor, it must be with the prior permission or knowledge of the curator.

Legal certainty in the Bankruptcy and PKPU Law is undermined because it does not specifically regulate criminal acts by debtors who are not in good faith so that many bankruptcy cases are not completed and continue to hang, curators also have difficulty dealing with debtors who are not in good faith because there is no punishment that can make a deterrent effect on fraudulent debtors in the end the interests of creditors are harmed.

The Bankruptcy and PKPU Law has presented legal norms as a protection for creditors, namely by using the norms of action pauliana and Gidjzeling lawsuits. To find out the urgency of regulating criminal acts against bankruptcy debtors who do not have good faith in complying with the duties of the curator in the management and administration of the bankruptcy estate, first the role and function of the action pauliana lawsuit and forced gidjzeling efforts and then a conclusive discussion related to legal issues that are developing at this time. then it will be discussed in the following subchapters:

The provision of Action Pauliana for the benefit of creditors addresses an issue of legal protection for creditors, of course, not only limited to the fulfillment of creditors' rights to payment of debts by debtors, but the certainty of the time of payment is also an important and serious matter in the case of debt. And the legal protection provided by the Bankruptcy and PKPU Law for creditors is one of them with the existence of action pauliana. The Bankruptcy and PKPU Law will also provide a form of effort for creditors to claim their rights to the debtor through action pauliana which is also carried out by the Curator. This is also a logical consequence of the position of the curator as a party who has the duty to protect and manage the bankruptcy property for the benefit of all parties with an interest in the bankruptcy property" [8].

The curator also actively studies the legal actions carried out by the bankrupt debtor, which was also carried out a year before the bankruptcy. The regulation of action pauliana is also contained in Articles 41 to 49 of the Bankruptcy and PKPU Law, while the Civil Code is regulated in Article 1341. Although action pauliana is one of the efforts made by creditors in obtaining their rights, in the practice of enforcing the Bankruptcy and PKPU Law, it turns out that there are action pauliana provisions that have not fully protected the interests of creditors, namely for several reasons, namely the difference in meaning between Article 1341 of the Civil Code and Article 41 of the Bankruptcy and PKPU Law and the existence of several Articles 31 paragraph (2) of the Bankruptcy and PKPU Law.

The obstacles that are also faced by the curator are competency constraints in the examination of action pauliana lawsuits, constraints or problems regarding subjects who can file action pauliana claims and constraints in the settlement of action pauliana applications. So that the legal protection obtained by creditors is less than optimal.



Bankruptcy law in general is actually a business law or economic law but it is also not separated from civil and criminal law because in practice in society as a law that develops in a living law society, law is very dynamic and always follows the development of society, the higher the education of the people in a place is directly proportional to the quality of crime in society.

Sudarto said that the formation of special criminal laws that have the principles of criminal law that deviate from the principles of general criminal law does not eliminate the obligation of law executors to respect the legal principles of no crime without fault, as it is known that for the enforcement of criminal law it is necessary to mobilize many government agencies and members of community.

In line with this opinion, Andi Hamzah stated that it is a fact that more and more offenses are scattered outside the Criminal Code. This is due to, among others:

- There are rapid social changes so that these changes need to be accompanied and followed by legal regulations as well as criminal sanctions;
- Modern life is increasingly complex, so that in addition to the existence of long-lasting unified criminal law (KUHP), temporary criminal regulations are also needed;
- In many legal regulations the form of legislation in the fields of civil, administrative and especially state administration, it is necessary to link criminal sanctions to supervise these regulations so that the data are observed.

This bankruptcy declaration decision is made at the request of the bankruptcy court itself or at the request of one or more of its creditors Article 2 paragraph (1) of the Bankruptcy and PKPU Law, or at the request of other parties mentioned in Article 2 paragraph (2), (3), (4), and (5) of the Bankruptcy and PKPU Law [9].

The definition of ordered settlement by the court, explained by S.R. Sianturi, and regarding the order for settlement by court, read the provisions in Article 168 of Bankruptcy and PKPU Law which basically regulate the settlement of payment of debts of bankrupt debtors if there is no peace agreement as regulated in Articles 134 to 157 [10].

Law Number 1 of 2023 concerning the National Criminal Code is re-regulated in Chapter XXIII of Criminal Acts Against Trust in the Conduct of Business and the first part regulates Acts of Harm and Fraud against Creditors Article 511 to Article 515, then in the second part of fraudulent acts of Management or Commissioners Article 516 to Article 518, the third part of the peace to obtain profits Article 519, the fourth part of the withdrawal of goods without rights Article 520.

CONCLUSION

The urgency of regulating criminal offenses against bankruptcy debtors who do not act in good faith towards the management and administration of the bankruptcy body is a current need because the current Bankruptcy and PKPU Law is not in accordance with the objectives of bankruptcy law, namely resolving debt problems fairly, quickly, openly, and effectively. The curator in carrying out the task of managing and administering with legal certainty must be in line with the debtor's compliance in the bankruptcy process.

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