



# Application For Bankruptcy By Creditors Perspective Of Law Number 37 Of 2004 Concerning Bankruptcy And Suspension Of Debt Payment Obligations (Study of Decision Number 3/Pdt.Sus-Pailit/2021/PN Niaga Jkt. Pst)

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## Abstract

*Settlement of debtors' debts to creditors through the bankruptcy process must meet the elements and requirements in filing an application for bankruptcy. In this case, the law requires that there must be two or more creditors and the non-payment of debts due to at least one creditor. The mechanism for the settlement of debtor assets in the event of bankruptcy is carried out by the Curator through several stages, namely: bankruptcy, verification meeting, making a list of debts and receivables of Bankruptcy, reconciliation and the stage of settlement of bankrupt assets. The basis for the judge's consideration in imposing a bankruptcy decision is in Decision Number 3/Pdt.Sus-Pailit/2021/PN Niaga Jkt. Pst, namely considering whether or not the conditions in the bankruptcy petition are fulfilled by the bankruptcy applicants. Apart from taking into account the circumstances in which the Bankrupt Respondent was proven to have completely failed to pay its due debt to at least one creditor.*

**Keywords:** Application for Bankruptcy; Creditors; Bankruptcy Law.

## A. Introduction

The main thing needed by a company in carrying out its business activities is business capital in the form of funds or money. In order to meet business capital, companies often apply for credit from financial institutions (banks) or borrow funds from certain other parties, which results in the emergence of an obligation from the company to pay the loan debt to creditors. Credit or loan funds obtained from parties banks or certain other parties, are generally used to develop or increase production results, so that the company's goal of gaining profit can be achieved.

In practice, not all companies can benefit from the business activities they run. Due to various factors, some companies often experience a downturn, it can even be said to lead to bankruptcy, so they are unable to fulfill their obligations to pay their debts to creditors. A company in its position as a debtor, if it is no longer able to pay its debts to creditors, then the company can be considered to be in a state of insolvency, meaning that it is unable to pay.

According to bankruptcy law, if the debtor is no longer able to pay his debts to the creditors, the debtor or creditor can file an application for bankruptcy to the

Commercial Court<sup>1</sup>. The provisions for filing a bankruptcy petition are regulated in Article 2 of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (hereinafter referred to as the Bankruptcy Law), which clearly regulates the conditions for a bankruptcy application<sup>2</sup>, namely: "Debtors who have two or more creditors and does not pay off at least one debt that has matured and can be collected, is declared bankrupt by a court decision, either at his own request or at the request of one or more creditors<sup>3</sup>. Based on the provisions of the article, it is understood that in the event that the debtor has two or more creditors and the debtor is unable to pay at least one debt that has matured, then the debtor can be declared bankrupt. The petition for bankruptcy in this case can be filed by the debtor submitted by the creditor. Bankruptcy is a process in which a debtor who has financial difficulties to pay his debts is declared bankrupt by the court<sup>4</sup>.

In this case the commercial court, because the debtor is unable to pay his debt<sup>2</sup> This statement results in the debtor losing his right to control and manage his assets which are included in the bankruptcy, starting from the time the bankruptcy decision is rendered. One of the important stages in the bankruptcy process is the insolvency stage. This stage is important because it is at this stage that the fate of the bankrupt debtor is determined. Will the debtor's assets be divided up to cover the debt, debtors can still breathe easy with the acceptance of a peace plan or debt restructuring.

If the debtor is declared insolvent, then the debtor is truly bankrupt and the assets will immediately be divided, although this does not mean that the business of the bankrupt company cannot be continued<sup>5</sup>. Was in a state of insolvency. These provisions aim to protect the interests of creditors. Because, by not applying insolvency test as a condition in determining that a company in Indonesia is legally bankrupt (Bankrupt), then the difficulty of declaring a debtor in Indonesia declared bankrupt will be avoided.

The logic can be seen in the monetary crisis which actually did not make Indonesian debtors in a state of insolvency. However, most of the companies lost market share which resulted in reduced revenues or profits, even most of the companies suffered losses. However, in certain circumstances the monetary crisis may cause the debtor to no longer be able to pay the debt due to the difference in the exchange rate resulting in the debt in foreign currency not being paid with income in rupiah.

Based on the description above, the authors are interested in studying more deeply about the insolvency situation in bankruptcy with the title: "Implementation of Bankruptcy Applications by Creditors with Perspective Law Number 37 of 2004

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<sup>1</sup> Ronald Saija, "Perlindungan Kreditur Atas Pailit Yang Diajukan Debitur Dalam Proses Peninjauan Kembali Di Pengadilan Niaga," *Sasi* 24, no. 2 (2018): 114-123.

<sup>2</sup> Juditia Damlah, "Akibat Hukum Putusan Kepailitan Dan Penundaan Kewajiban Pembayaran Utang Berdasarkan Undang-Undang Nomor 37 Tahun 2004," *Lex Crimen* 6, no. 2 (2017): 91-98.

<sup>3</sup> Ronald Hasudungan Sianturi;, Tengku Putra Muhammad Iqbal;, and Zaendrico Immanuel Ferdolin Hutabarat;, "Tinjauan Yuridis Terhadap Hutang Yang Jatuh Tempo Dan Dapat Di Tagih Dalam Permohonan PKPU Dan Pailit Yang Diajukan Oleh Debitur," *Concept and Communication* null, no. 23 (2019): 301-316.

<sup>4</sup> Rai Mantili; and Putu Eka Trisna Dewi;, "Penundaan Kewajiban Pembayaran Utang (PKPU) Terkait Penyelesaian Utang Piutang Dalam Kepailitan" 6, no. 1 (n.d.): 1-19.

<sup>5</sup> MH Drs. Susanti Adi Nugroho, SH., "Hukum KePailitan Di Indonesia," n.d.

concerning Bankruptcy and Postponement of Debt Payment Obligations (Study of Decision Number 3/Pdt. Sus-Bankruptcy/2021/PN Niaga Jkt. Pst).

## B. Literature review

Etymologically, bankruptcy comes from the word bankrupt, then the term "bankrupt" comes from the Dutch language "failiet" which has a double meaning, namely as a noun and an adjective<sup>6</sup>. The term "failiet" itself comes from the French "failite" which means a strike or payment jam, while in English it is known as the word "to fail" with the same meaning, and in Latin it is called "failure"<sup>7</sup>. Furthermore, the term bankruptcy in Dutch is "faiyit" or "failissement" as bankruptcy. Then in country-English-speaking countries for the breakdown of bankruptcy and bankruptcy use the terms "bankrupt" and "bankruptcy"<sup>8</sup>.

Bankruptcy comes from the root word bankrupt which means bankrupt. Bankrupt means to suffer huge losses until the company collapses. In English terms for bankrupt is Bankrupt. According to John M. Echols and Hassan Shadily in Munir Fuady, what is meant by bankrupt is bankrupt, bankrupt. Bankruptcy means bankruptcy, bankruptcy. Another English word for bankrupt is insolvent which also means bankrupt, bankrupt. Insolvency means a state of bankruptcy, a state of being unable to pay.

Has the same meaning as bankrupt, which in English is called bankrupt or insolvent. Bankruptcy has the same meaning as bankruptcy and in English it is called bankruptcy or insolvency<sup>9</sup>. The word bankrupt, which in English is called bankrupt comes from an Italian law called banca rupta.

Munir Fuady explained that what is meant by bankruptcy or bankruptcy is a general confiscation of all debtor's assets in order to achieve peace between the debtor and creditors or so that the assets can be divided equally among creditors.<sup>7</sup> Meanwhile, according to R. Subekti, bankruptcy is "an attempt to together to get payments for all those who owe debts fairly".

In Indonesia, the definition of bankruptcy itself is not mentioned. Article 1 paragraph (1) of the Bankruptcy Law states: "Debtors who have two or more creditors and do not pay at least one debt that has matured and can be collected, are declared bankrupt by a decision of the competent Court as referred to in Article 2 of the Bankruptcy Law, either at the request of the Bankruptcy Law. itself, or at the request of one or more creditors.

<sup>6</sup> Marthasia Kusumaningrum, "Perkembangan Pengertian Utang Menurut Undang - Undang Kepailitan Di Indonesia," *עלון הגיטע*, no. July (2011): 37-39.

<sup>7</sup> Muhammad Rizki, "Analisis Hukum Mengenai Efektivitas Kurator Dalam Kepentingan Debitur Yang Dinyatakan Pailit Di Pengadilan Negeri Medan (Studi Putusan NO. 2/ PDT.SUS - PAILIT/ 2016/ PN.NIAGA MDN)," no. 2 (2019).

<sup>8</sup> Ria Sintha Devi, "Tinjauan Yuridis Sita Jaminan Dan Pemberesan Harta Milik Debitur Dalam Hal Terjadinya Kepailitan," *Jurnal Ilmiah Maksitek* 4, no. 4 (2019): 102-110.

<sup>9</sup> Hary Kurniawan, "Penundaan Kewajiban Pembayaran Utang Pada Kepailitan Melalui Perdamaian" (1952).

Bankruptcy is a general confiscation which covers all of the debtor's assets<sup>10</sup>, for: the interests of all its creditors. The purpose of bankruptcy is the distribution of the debtor's wealth by the curator to all creditors by taking into account their respective rights. Through this general confiscation, it is avoided and ends with confiscation and execution by creditors individually. Thus, the creditors must act together (*concursum creditorum*) in accordance with the principle of agreement (*consensus*)

If a person is declared bankrupt, the bankrupt debtor does not have any more authority over all of his assets, both existing ones as well as what he will receive during the bankruptcy. That bankruptcy

itself includes the entire assets of the bankrupt at the time he is declared bankrupt (with a few exceptions for the individual bankrupt) as well as assets obtained during his bankruptcy. Loss of authority for the bankrupt to administer and transfer the rights to his assets which include assets. Therefore, the entire authority of the bankrupt debtor to manage all of his assets is then transferred to the curator<sup>11</sup>.

## **C. Method**

### **1. Types of Research**

This research is normative legal research, namely research conducted by researching library materials (secondary data) or library legal research<sup>12</sup>. Normative juridical research is research conducted by analyzing library materials or secondary data in the form of primary legal materials and secondary legal materials, 11 such as laws and regulations concerning the law of guarantees, taxation law and bankruptcy and court decisions that are related to the settlement of bankruptcy cases.

### **2. Nature of Research**

This research is descriptive analytical, which is to find out a comprehensive and systematic picture of the regulations used relating to the problem being studied. Analytical is to reveal the characteristics of the object by parsing and interpreting the facts about the subject under study. So this study reveals the laws and regulations relating to the object of research.

### **3. Sources and Types of Data**

The source of data in this study is secondary data which is supported by primary data. Primary data is data obtained directly from the results of field research. While secondary data is data obtained from the results of library research in the form of legal materials, which consist of primary legal materials, secondary legal materials, and tertiary legal materials.

### **4. Data Collection Techniques and Tools**

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<sup>10</sup> Desi Ratnasari, Muhammad Iqbal Fasa, and A. Kumedi Ja'far, "Pandangan Hukum Islam Terhadap Status Muflis (Debitur Pailit) Sebagai Gharimin (Mustahik Zakat)," *Reslaj : Religion Education Social Laa Roiba Journal* 4, no. 3 (2022): 528-544.

<sup>11</sup> Fillya Brenda Pondaag Shahnaz, Hendrik Pondaag, and Vecky Gosal, "Kajian Benda Jaminan Debitur Yang Dinyatakan Pailit Oleh Kreditur Menurut Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang" 7, no. 2 (2018): 44-68.

<sup>12</sup> Nur Yusriyyah Bakhtiar, La Ode Husen, and Muhammad Rinaldy Bima, "Pemenuhan Hak Kebebasan Berpendapat Berdasarkan Undang-Undang Nomor 9 Tahun 1999 Tentang Kemerdekaan Berpendapat Di Muka Umum," *Journal of Lex Theory (JLT)* 1, no. 1 (2020): 41-58.

Data collection techniques in library research (library research), are usually done by means of document studies or literature reviews. Document study is the first step of any legal research, because legal research always starts from a normative premise. Document studies for legal research include studies of legal materials, including: primary, secondary and tertiary legal materials.

## 5. Data Analysis

The data analysis method used in this study is qualitative analysis, which describes the data in the form of sentences arranged systematically by interpreting, using grammatical interpretation and systematic interpretation. Grammatical interpretation is done with how to decipher the meaning of words or terms according to language, word order or sound. Systematic interpretation is carried out by interpreting statutory regulations in relation to legal regulations or other laws.

## D. Result and Discussion

### 1. Debt Settlement Arrangements for Creditors in Process Bankruptcy

Bankruptcy according to Article 1 point 1 of the Bankruptcy Law, is "general confiscation of all assets of the Bankrupt Debtor whose management and settlement is carried out by the Curator under the supervision of the Supervisory Judge as regulated in this Law". From this definition, it can be understood that bankruptcy contains the following elements:

- 1) The existence of the debtor's inability to pay the debt;
- 2) Is a general confiscation or execution of the debtor's assets;
- 3) The general confiscation is for the benefit of the creditors.

Bankruptcy is a process in which a debtor who has financial difficulties to pay his debts is declared bankrupt by the court of course in this case the commercial court, because the debtor cannot pay his debts.

Based on the provisions of Article 1 Paragraph (1) of the Bankruptcy Law, it can be concluded that basically every debtor, both individuals and legal entities can be declared bankrupt by the Commercial Court, if he is considered to be in a state of not paying at least one debt that has matured and is collectible, has two or more creditors. The requirements for filing for Bankruptcy according to Article 2 Paragraph (1) of the Bankruptcy Law, namely: "a debtor who has two or more creditors and does not pay off at least one debt that has matured and is collectible, is declared bankrupt by a court decision, either at his own request or at the request of the bank application of one or more creditors".

Based on the two articles above, the legal requirements for a company to be declared bankrupt are as follows: 1) Existence of debt; 2) At least one of the debts is past due; 3) At least one of the debts is collectible; 4) The existence of debtors; 5) The existence of creditors; 6) more than one creditor; 7) The declaration of bankruptcy is made by the "Commercial Court"; 8) The petition for declaration of bankruptcy is submitted by the competent authority; 9) Other juridical requirements as stated in the Bankruptcy Law.



If the above conditions have been met, the judge must "declare bankrupt", not "can declare bankruptcy", so that in this case the judge is not given the space to give a broad "judgment" as in other cases.

The necessity of having two creditors is a requirement stipulated in Article 2 Paragraph (1) of the Bankruptcy Law which is the implementation of Article 1132 of the Civil Code (BW), which states that: "the object becomes a mutual guarantee for all those who owe it, the income from the sale of The object is divided according to the balance, that is, according to the size of the receivables of each, except if there are valid reasons for the creditors to take precedence. In essence, the provisions of Article 1132 of the Civil Code, emphasizes that the debtor's assets must be distributed fairly to creditors, which are divided by: 1) *Pari passau* is wealth that must be shared together among its creditors; 2) *Prorated* according to the amount of the balance of each creditor to the debtor's debt as a whole.

The main requirement for bankruptcy of debtors based on Article 2 Paragraph (1) of the Bankruptcy Law is only possible if the debtor has at least two creditors. The requirement for the existence of two or more creditors is known as a *concursum creditorum*. The Bankruptcy Law will lose its *raison d'atere* if a debtor has only one creditor.

The bankruptcy ratio is the general confiscation of all debtor's assets for later after the verification meeting is not reached accord, liquidation process is carried out on all of the debtor's assets for later the proceeds are distributed to all creditors according to the order of creditors according to the Bankruptcy Law. If the debtor has only one creditor, the bankruptcy will lose its ratio.

In addition to requiring two creditors, the bankruptcy application also requires conditions in which the debtor does not pay at least one debt when it is due and can be collected. This is in accordance with the provisions of Article 1 point 6 of the Bankruptcy Law, which states: Debt is an obligation that is stated or can be stated in the amount of money both in Indonesian currency and foreign currency, either directly or that will arise in the future or contingent, arising from an agreement or law and which must be fulfilled by the Debtor and if not fulfilled, entitles the Creditor to obtain fulfillment from the assets of the Debtor. The provisions of Article 1 point 6, if it is related to the explanation of Article 2 Paragraph (1) of the Bankruptcy Law, it is clear that what is meant by debt is debt that has matured and is collectible. Time collection as agreed, due to the imposition of sanctions or fines by the competent authority or because of a court decision, arbitrator, or arbitral tribunal. An agreement usually has a default clause. If the debtor does not perform acts as below, then the creditor can collect the debt at once even though the debt has not yet matured". (for example if the debtor is sued by another party outside this agreement, or the goods are encumbered with collateral in a lawsuit or fail to submit financial statements according to the agreed period or the debtor is divorced from his wife or husband). The acceleration clause gives creditors the right to accelerate the maturity period of the debt, if the creditor feels he is not safe (deem itself insecure). The acceleration clause is broader than the default clause which is used if the creditor deems that it needs to be done, even though the debt has not yet matured, the creditor can accelerate the maturity of the debtor's debt in the event of an event of default,

meaning that something has happened or something has not been fulfilled as agreed by the debtor in the credit agreement, thereby causing creditors to delay maturity.

The creditor's use of an acceleration clause must be accompanied by good faith. What is meant by good faith is the existence of reasonable evidence, and the evidence does not have to be in the form of a Court decision. In general, common law does not mention the description of good faith, but here it is emphasized. The provisions of Article 2 Paragraph (1) of the Bankruptcy Law do not distinguish between the terms of the debt that have matured and the debt that has been collected, but rather put them together. The unification can be seen from the phrase "and" between the words "maturity" and "billable". However, in essence the two terms are actually different decompositions and occurrences. A debt may have been collected, but not yet due. Debts that have matured are debts with the lapse of the scheduling period specified in the agreement, so that the creditor has the right to collect it. However, it can happen that even though it is not yet due, the debt can be collected because one of the events called events of default occurs. Things that need to be considered in filing a Bankruptcy application in the Bankruptcy Law is the difference between filing an application against debtors who are bank companies, securities companies, stock exchanges, clearing and guarantee institutions, depository and settlement institutions, insurance companies, reinsurance companies, pension funds, and state-owned enterprises engaged in the public interest. Against non-company debtors that have been mentioned, then according to Article 2 of the Bankruptcy Law, it can be filed by: 1). the debtor himself; 2). One or more creditors; 3). Attorney; 4) Bank Indonesia; 5) BAPEPAM; 6) Minister of Finance.

The Bankruptcy Law distinguishes between bank and non-bank creditors, between debtors of securities companies and non-securities companies. This distinction is made in relation to the provisions of the Bankruptcy Law regarding who can apply for a declaration of bankruptcy. In the event that the respondent or the debtor is not a bank or a securities company, the petition for declaration of bankruptcy shall be submitted by: 1) own debtor; 2) One or more creditors; c) Public prosecutor's office.

In the event that the debtor is a securities company, the application for a declaration of bankruptcy can only be submitted by the Capital Market Supervisory Agency. Based on Article 1 Paragraph (3) of the Bankruptcy Law, that in the case of a debtor who is a bank, the application for a declaration of bankruptcy can only be submitted by BI (Bank Indonesia). Elucidation of Article 1 Paragraph (3) of the Bankruptcy Law does not state the reasons why only Bank Indonesia can apply for a declaration of bankruptcy if the debtor is a bank. Thus, in relation to the Bankruptcy Law, banks can act both as debtors and creditors in bankruptcy.

A bankruptcy decision will cause the debtor to lose his right to control and manage his assets which are included in the bankruptcy estate, starting from the date the bankruptcy declaration decision is pronounced. Since the bankruptcy declaration decision is pronounced, all management and/or settlement of the bankruptcy estate shall be carried out by the curator even though an appeal or judicial review is filed against the decision.

The definition of a curator in the Bankruptcy Law is: "Balai Harta Peninggalan or an individual who is appointed by the Court to manage and settle the assets of the Bankrupt debtor under the supervision of the Supervisory Judge".

In the decision to declare bankruptcy, it is obligatory for judges to appoint a Curator and a Supervisory Judge. The curator appointed by the Court Judge has an independent position and does not have a conflict of interest with debtors or creditors and is not currently handling bankruptcy cases and delays in paying debt obligations for more than 3 (three) cases.

The Curator's task is to manage and/or settle the bankruptcy estate. For this reason, the Curator is authorized to carry out the duties of managing and/or settling bankruptcy assets from the date the bankruptcy decision is pronounced even though an appeal or judicial review is filed against the decision.

When referring to the balance principle adopted in the Bankruptcy Law, the implementation of the duties and functions of the Curator aims to prevent abuse by dishonest debtors and provide protection for creditors with bad intentions, as well as fulfill a sense of justice for the parties. This is also what underlies the demand for the independence of the Curator's position in carrying out his duties to manage and settle the assets of the bankrupt debtor, so that the Curator in carrying out his duties and authorities must act in the interests of the debtor and creditor.

## **2. Mechanism of Settlement of Debtor's Assets When Bankruptcy Occurs**

Management of the debtor's assets after being declared bankrupt by the court will be the main task of the Curator. The curator is a very important institution in bankruptcy. In Bankruptcy, the Curator is a person who has special expertise to manage and/or settle the bankruptcy estate with the aim of distributing the assets of the debtor to his creditors with certain procedures and procedures.

The curator is an institution established by law to settle the bankruptcy estate. In every bankruptcy decision by the court, it includes the appointment of a curator who is appointed to manage and transfer the bankruptcy estate under the supervision of the supervisory judge. After the debtor is declared bankrupt by the court, the bankrupt debtor is by law not authorized to administer and/or transfer his assets which have become bankrupt assets. From this proportion, it appears that the curator will determine the completion of the bankruptcy estate settlement. Therefore, the law is very strict and very detailed in regulating the powers and duties of the curator.

According to the provisions of Article 70 Paragraph (1) of the Bankruptcy Law, which can be curators are: 1) Individuals or civil partnerships domiciled in Indonesia, possessing the special skills needed to manage and settle bankrupt assets; and 2) Has been registered with the ministry whose scope of duties and responsibilities is in the field of law and legislation (Article 70 Paragraph (2) of the Bankruptcy Law).

The Curator in carrying out his duties is independent with the Debtors and Creditors, is not required to obtain approval from or give advance notice to the debtor or creditor.<sup>27</sup> The authority of the Curator to manage and/or settle bankrupt assets in principle starts from the decision of the bankruptcy declaration from the Commercial Court, even if the decision is appealed or reconsidered (Article 16 Paragraph (1) of the Bankruptcy Law). The legal basis for the regulation regarding the management and settlement of the distribution of bankrupt assets can be seen



from the definition of a curator. In Article 1 Paragraph (5) of the Bankruptcy Law, what is meant by a curator is “Hall Harta Peninggalan or an individual appointed by the Court to administer and settle the assets of the bankrupt debtor under the supervision of the supervisory judge in accordance with this law.” In this case, the steps taken by the curator in the bankruptcy estate management process are making announcements and creditor meetings, continuing the business (On Going Concern), verification meetings (receiving accounts), reconciliation. If there is no peace, the settlement stage will immediately be carried out. As of the date the bankruptcy decision is pronounced, the bankrupt debtor is no longer allowed to manage assets that have been declared bankrupt (bankrupt assets). Furthermore, the implementation of the management and/or settlement of the bankruptcy estate is handed over to the curator who is appointed by the court, supervised by the supervisory judge appointed by the Court Judge. The appointment must be determined in the decision on the bankruptcy declaration. The curator's implementation of the bankruptcy estate management is instantaneous, and takes effect from the date the decision is made, although an appeal or judicial review is filed against the decision.

The first step taken by the curator in the context of managing the bankruptcy estate is to declare the bankruptcy of the bankrupt debtor in the State Gazette of the Republic of Indonesia at least 2 daily newspapers published determined by the Supervisory Judge, which aims to identify creditors from debtors who are declared bankrupt, as well as to submit claims and verify debts. In addition, the announcement also aims to determine who becomes a creditor, so that it is later recorded as a bankrupt creditor. The announcement is made within 5 (five) days from the date of the bankruptcy decision.

The supervisory judge conveys the plan for holding the first creditors meeting to the curator, who is then obliged to notify the curator regarding the first creditors meeting by registered mail or by courier no later than 5 days after the bankruptcy decision is made. On the specified day, a verification meeting will be held (matching accounts payable). In this verification meeting, the considerations and legal order of each creditor will be determined.

Furthermore, a verification meeting is held in this case chaired by the supervisory judge. Debt verification meeting is a meeting to match the debts of the bankrupt debtor as a determination of the classification of incoming claims against the bankrupt assets, which aims to detail the amount of receivables that can be paid to each creditor which is classified into a list of recognized receivables, receivables owed doubtful (while recognized), as well as disputed receivables, which will determine the consideration and order of rights of each creditor.

Important things that need to be considered in the implementation of the verification meeting, is: 1) Notification to creditors about the deadline for submitting receivables at the verification meeting; 2) Submission of receivables with written evidence; 3) Testing the truth of receivables; 4) Making a list of receivables; 5) Notification of a list of receivables; 6) The submission of receivables is no later than 2 (two) days before the verification meeting and there are no objections at the verification meeting, unless the debtor is outside the territory of Indonesia, as regulated in Article 133 of the Bankruptcy Law.

After the verification meeting is completed, the Curator shall make a list of the debts and receivables of the bankrupt assets complete with their names and places of residence, along with the respective amounts of the debts and receivables. Furthermore, the curator provides a report on the state of the bankrupt assets by providing information to creditors about what they deem necessary. News the debt verification meeting must be placed at the clerk of the Commercial Court and a copy of it must be placed in the Office of the Heritage Office so that it can be seen and read free of charge by everyone with an interest.

The debtor has been declared bankrupt by the Commercial Court, the bankrupt debtor is still given the opportunity by law to propose a reconciliation plan with his creditors. Reconciliation in bankruptcy cases occurs in the bankruptcy case process through the supervisory judge. Peace in bankruptcy is more directed to the process of settling debtors' debts through the settlement of bankrupt assets.<sup>32</sup> Reconciliation is all agreements between the Debtor and all of its Creditors, in which an arrangement is made to settle all bills, which is usually in the form of an arrangement stating that by paying a percentage the debtor is released for the remainder.

If in bankruptcy a reconciliation plan is proposed and approved at the Creditors meeting by more than (one half) of the number of concurrent Creditors who are present at the meeting and whose rights are recognized or temporarily recognized, representing at least 2/3 (two thirds) of the total receivables concurrently recognized or temporarily recognized, then ratified by the Commercial Court in a homologation trial. The decision ratifying the peace has gained strength permanent law. Homologation of peace which has obtained legal force and resulted in the end of the debtor's bankruptcy. (Article 166 Paragraph (1) Bankruptcy Law). The homologated peace plan will have the following legal consequences: 1) the bankruptcy is declared terminated; 2) the decision to accept the settlement is binding on all concurrent creditors; 3) peace does not apply to separatist creditors and creditors who privileged; 4) reconciliation may not be proposed twice; 5) peace is the reason for the rights of the guarantor; 6) the creditor's rights still apply to the guarantor and fellow debtors; 7) the creditor's rights still apply to third party objects; 8) the suspension of execution of the debt guarantee ends; 9) actio paulina ends; 10) the bankrupt can be rehabilitated.

Settlement of bankrupt assets is an activity of selling or cashing the assets of the bankrupt debtor. Settlement is the main task of the curator as the party that carries out the management and settlement of bankrupt assets. As for the task of the curator in the settlement of the assets of the bankrupt debtor, the curator is given the following powers by law: 1) canceling legal actions taken by the debtor which were carried out before the bankruptcy which could harm his creditors; 2) choose the best way to do the settlement, it must be done by selling in public or by selling under the hands of various sales mechanisms; 3) To continue the debtor's business before payment is made, the curator has the duty to make a list of the payment divisions for approval from the supervisory judge. The substance of the section list includes, among others: a) Description of receipts and expenditures (including wages) curator); b) Names of creditors; c) The number of matching of each receivable; d) The distribution that must be received by each of these receivables.

If there is no reconciliation effort in the bankruptcy process because the bankrupt debtor does not offer reconciliation, the bankrupt debtor offers peace but is rejected by the creditors, or the bankrupt debtor offers peace which is then approved by the creditors but is rejected by the Commercial Court judge, then the next process is the stage of insolvency. Article 178 Paragraph (1) of the Bankruptcy Law regulates the situation of insolvency which states that: peace plan, the proposed peace plan is not accepted, or the ratification of the peace is rejected based on a decision that has permanent legal force, by law the bankrupt property is in a state of insolvency.”

The legal consequences of insolvency include, among others, bankruptcy assets are immediately executed and divided unless there are certain considerations (eg business considerations). The curator must initiate settlement and sell all of the bankrupt assets (Article 184 Paragraph (1) Bankruptcy Law. Insolvency in the bankruptcy settlement stage is a stage which will occur if there is no settlement or reconciliation until homologation is reached, at this stage the bankruptcy estate will be settled.

The curator will make settlement and sell the bankruptcy estate in public or privately and compile a list of distributions with the permission of the supervisory judge, as well as the supervisory judge may hold a creditors' meeting to determine the settlement method. As for the stages of settlement of bankruptcy assets by the Curator, according to the provisions of Article 16 Paragraph (1) of the Bankruptcy Law-PKPU, namely:

- a) Propose and carry out the sale of bankrupt assets. If the curator will sell the debtor's assets, the curator must propose the sale of the bankruptcy estate to the debtor. With regard to in the provisions of Article 15 Paragraph (1) of the Bankruptcy Law, the curator must initiate the settlement and sale of all bankrupt assets without the need for approval or assistance from the debtor, if: 1) The proposal to manage the debtor company was not submitted within a predetermined period of time or the proposal was submitted but was rejected; or 2) The management of the debtor company is terminated (Article 184 of Law No Bankruptcy). The sale of bankrupt assets can be carried out by the curator in order to finance management and settlement actions, including curator services. All objects must be sold in public in accordance with the procedures specified in the statutory regulations. If the sale in public is notis achieved, then the sale can be carried out under the hands with the permission of the supervisory judges (Article 185 of the Bankruptcy Law).
- b) Debtor's Debt Recording and Making a Distribution List. In carrying out the management and settlement of the assets of the bankrupt debtor, the curator must make a record of the bankruptcy estate no later than 2 (two) days after receiving the decision letter on his appointment as curator. Prior to recording all the assets of the bankrupt debtor, the curator may invite members of the creditor committee to attend the process of recording the assets of the bankrupt debtor which is carried out by the curator. The records made by the curator must be in such a form that it contains in detail all the assets of the bankrupt debtor, both movable and immovable assets, as well as documents/securities related to the valuables belonging to the bankrupt debtor. In addition to recording, the curator is also required to keep all letters, documents, money, jewelry, securities and

other securities by providing proof of receipt to the bankrupt debtor. The records made by the curator consist of columns and divide the items of bankrupt assets into movable and immovable assets, which have clear and detailed specifications and their respective amounts. Especially for objects in the form of animals that are really needed by the bankrupt debtor in connection with his work/equipment, medical equipment used for health, bedding and equipment used by the debtor and his family and food for 30 (thirty) days for the debtor and his family. debtor and the curator also recorded his family in that place, but it was not kept by the curator but was handed over to be used by the bankrupt debtor and his family. The recording of the assets of the bankrupt debtor is carried out by the curator under the hands of the supervisory judge. The approval of the supervisory judge is given in the form of signing the list of assets of the bankrupt debtor which is contained in the curator's records.<sup>36</sup> After the curator has completed recording all the assets of the bankrupt debtor, the curator must make a list stating the nature, amount of receivables and debts of the bankrupt assets, the name and place of residence of the creditor. along with the amount of the receivables of each creditor and curator are required to put the notes on the debtors of the bankrupt debtor which he made in the Registrar's Office of the District Court so that it can be seen by everyone without exception.

- c) **Announcement of the Amount of Bankrupt Debtors Payable by the Curator** The curator shall announce the amount of the bankruptcy debtor's debt by the curator after the notes made by the curator under the hand are complete and in accordance with all existing assets of the bankrupt debtor. The debt record made by the curator must be signed by a member of the creditor committee who is present to witness firsthand the process of recording the debtor's bankrupt debt made by the curator. Prior to signing the notes on the debtor's bankruptcy, the curator is required to re- check all the debts of the bankrupt debtor recorded in the debt record, to ensure that it matches the actual amount owed by the bankrupt debtor to creditors. If it is not appropriate, changes to the debt record can be made (renvooi), to match the actual amount owed by the bankrupt debtor. Changes in the number of debt records by the curator must request approval and re-signature from the supervisory judge and members of the creditors committee who are present and witness firsthand the making of the notes on the debtor's bankruptcy by the curator . in fact and has been acknowledged by the bankrupt debtor and creditors, then the debt record of the bankrupt debtor has fulfilled the requirements to be announced at the clerk of the district court where the bankruptcy case was decided.

### **3. Basis for Judges' Consideration in Deciding Bankruptcy Cases in Decision Number 3/Pdt.Sus-Pailit/2021/PN Niaga Jkt. Pst**

Application for Bankruptcy in the Decision of the Central Jakarta Commercial Court Number 3/Pdt.Sus-Pailit/2021/PN Niaga Jkt. Pst, filed by two Bankrupt Petitioners against four Bankrupt Respondents, namely:

- a) **Bankruptcy Applicant**

Denny Martinius Gunawan, address Komp Setra Mas Jl. Encep Kartawiria Crisan 10, RT. 002, RW. 018, Citeureup Village, Cimahi District, West Java (hereinafter

referred to as Bankruptcy Petitioner I). Steffie Prayogo, address Jl Amarilis Raya, Graha Candi Golf, RT. 012/RW 005, Karanganyer Gunung Village, Candisari District, Semarang City (hereinafter referred to as Petitioner II). The Petitioner for Bankruptcy I and Petitioner for Bankruptcy II, in this case grant power of attorney to Paulus Djawa, SH and Yayat Supriatna, SH, Advocate and Legal Consultant at Law Office Malibu, Complex Rukan Malibu City Resort Block 1 Number 14, Cingkareng Timur Village, Cingkareng District, West Jakarta (hereinafter referred to as the Petitioners).

b) Respondent for Bankruptcy

The Petitioners for Bankruptcy are filed by the Petitioners for Bankruptcy filed against: 1) PT. Kartika Asri Prima (Bankruptcy Respondent I), 2) Mr. Adi Nugraha (Patient for Bankruptcy II), 3) Mr. H. Moh. Lili Juharli (Patient for Bankruptcy III), 4) Mrs. Louisea Widjaya (Defendant for Bankruptcy IV). The position of the Bankrupt Applicants is as creditors, where between the Bankrupt Petitioners and the Respondents there is a legal relationship with a debt or loan agreement, which cannot be repaid due to economic difficulties.

The submission of a Bankruptcy petition by the Bankrupt Petitioners is for the Bankrupt Respondents to be declared Bankrupt with all the legal consequences. The panel of judges at the Central Jakarta Commercial Court, which examined and adjudicated on the bankruptcy petition filed by the Bankruptcy Applicants, in their decision handed down the verdict which in its entirety reads as follows: a) Receive and grant the petition of the Bankruptcy Applicants to entirely; b) Declaring that the District Court and Central Jakarta Court are authorized to examine and decide this case; c) Declare the Respondent Bankrupt I/PT. Kartika Asri Prima, Respondent for Bankruptcy II/Mr. Adi Nugraha, Defendant for Bankruptcy III/Mr H. Moh. Lili Juharli and Respondent for Bankruptcy IV/Mrs. Louise Wijaya, are in a state of *coarctatio* all the legal; d) Appoint Mr. Bambang Nurcahyono, SH, MH, Commercial Judge at the Central Jakarta District Court as Supervisory Judge; e) Designate and determine: 1) Mrs. Hj. Tutut Rohkyatun, SHMH, Curator and Management, in accordance with the evidence of Curator and Management No. AHU.AH.04.03-139, dated June 10, 2016; 2) Mr. Dr. H. Muhammad Nurohim, SH. MH, M.Kn., Curators and Administrators registered with the Ministry of Law and Human Rights of the Republic of Indonesia with proof of Curator and Management Registration No. AHU-63 AH.04.03- 2018, having an office at Jl. Soekarno Hatta No. 176A RT. 003. RW.001, Semarang;

As a team of Curators in the bankruptcy process of the Respondents for Bankruptcy.

The basis for consideration of the Panel of Judges examining and adjudicating Bankruptcy officials Number 3/Pdt.Sus-Pailit/2021/PN Niaga Jkt. Pst, it has complied with the provisions of the applicable laws and regulations (Bankruptcy Law), that is, it has fulfilled the elements and conditions specified in submitting the application for Bankruptcy. In this case, the Bankruptcy petition is filed by the Creditors, namely the First Bankrupt Petitioner and the Second Bankrupt Petitioner a debtor element has two or more creditors. Where between the Bankruptcy Applicant I and the Bankrupt Respondent I there is a legal relationship in the form of a debt agreement amounting to Rp. 350,000,000, which occurred on November 4, 2020, which is proven to have



exceeded the deadline for the return (maturity), which is November 18, 2020. In addition to having a relationship with the Bankruptcy Applicant I, the Bankrupt Respondent I also has a legal relationship in the form of debts and receivables with the Bankrupt Petitioner II amounting to Rp. 425,035,000 which occurred on November 02, 2020 with a deadline of November 12, 2020. Furthermore, the Bankrupt Respondents also have a legal relationship with Arief Purnawan who is the other (1st) creditor who has a claim to the Bankrupt Respondents amounting to Rp. 150,000,000 and also claims from Meliani other creditors (2nd) of Rp. 100,000,000, also with other Creditors (3rd). Thus, the Bankrupt Debtor is proven to have two or more creditors. b. Elements of Debtors Not Paying at least one debt that has fallen tempo.

Based on the agreement between the Bankrupt Petitioners and the Bankrupt Respondent and also the agreement between the Bankrupt Respondent and other Creditors, it appears that the Respondents did not pay the debts that were due from the creditors. Thus, the element of "not paying at least one debt that has matured and can be collected" has been fulfilled by the Bankrupt Respondents.

c) Elements at your own request or at your own request or more creditors.

The Bankruptcy Petitioners for Bankruptcy were filed by creditors, namely Bankruptcy Petitioner I (Denny Martinius Gunawan) and Bankruptcy Petitioner II (Steffie Prayogo), who were registered at the Registrar's Office of the Commercial Court at the Central Jakarta District Court on January 13, 2021 under Registrar Number 3/ Rev. Sus- Pailit/2021 PN. Jkt. Pst. Based on the examination and evidence at the trial, it has been proven that the Respondents have outstanding debts to the Bankrupt Petitioners. Thus, it can be concluded that the application for Bankruptcy is filed or at the request of one or more creditors.

d) Elements of facts or circumstances that are proven simply

Proving that the Respondents are unable to pay their debts to the Bankrupt Applicants can be seen from the maturity date stated in the agreement. In addition, the Bankrupt Respondents also have debts that are also due and can be collected from other creditors, namely: Arief Purnawan, Meilani, and Sutanno.

## **E. Conclusion**

Settlement of debtors' debts to creditors through the bankruptcy process must meet the elements and requirements in filing an application for Bankruptcy. In this case, the law requires that there must be two or more creditors and the non-payment of debts due to at least one creditor, The mechanism for settlement of debtor's assets in the event of bankruptcy is carried out by the Curator through several stages, namely: announcing bankruptcy, verification meeting, making a list of debts and receivables of Bankruptcy, reconciliation and the stage of settlement of bankrupt assets, The basis for the judge's consideration in imposing a bankruptcy decision is in Decision Number 3/Pdt.Sus-Pailit/2021/PN Niaga Jkt. Pst, namely considering whether or not the conditions in the bankruptcy petition are fulfilled by the bankruptcy applicants. Apart from taking into account the circumstances in which the Bankrupt Respondent was proven to have completely failed to pay its due debt to at least one creditor.

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