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Bankruptcy Statement And The Law Consequences

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ABSTRACT

Problems bankruptcy it is important in gave a legal certainty related to wealth of company .The certainty applied with article 22 bankruptcy code who said that since decision statement of bankruptcy spoken each a lawsuit who carried out by third not going to be covered unless that thing it would bring terms of advantages wealth it self. It is also the act of bankruptcy winners give rights to creditors and parties that other concerned parties to ask for a request for the cancellation of over legal action a debtor.

Keywords: *the bankruptcy as an indication of a shortcut.*

INTRODUCTION

The problem of bankruptcy resulted in a debtor who had been declared bankrupt lost all civil rights to learn what care of a treasure wealth which has been put in and the bankrupt assets of freezing civil rights this imposed by article 22 the act of bankruptcy as of bankrupt spoken since the time of the decision. This is also true of a husband or a wife of the insolvent debtor who marries in union wealth. In principle , as consequences of the provisions of article 22 the act of bankruptcy as shown above , then the entire agreements between the debtor which declared bankrupt with a third party conducted after bankrupt , does not and can not are repaid from and the bankrupt assets of , unless the engagement that bring the advantages for wealth. And hence so lawsuit filed with the purpose of acquiring the fulfillment of engagements and the bankrupt assets, while in bankruptcy , that directly submitted to an insolvent debtor , only be brought in a form of report for matching .in this case meeting was only have the law in the form of matching , But it was enough to see can be presented as one of the damaging evidence he had prevent expired on the rights of the entry into force of in the suit.

In the process of bankruptcy use the term peace while terms of laws become main subjects of includes : How do the parties in the problem of bankruptcy ? and How



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is it possible for as a result of laws against the debtor and a creditor or the state as well as all party who engages in connection with such bankruptcy ?

LITERATURE REVIEW

Bankruptcy is the common confiscation of all the assets of the bankrupt debtor whose management and settlement are carried out by the curator under the supervision of a Supervisory Judge as regulated in Law No.37 of 2004 Article 1 paragraph (1).

The purpose of bankruptcy statement is really to get a seizure common up wealth debtor (all the wealth of seized / frozen) for the benefit of all people creditor (creditors) .Bankruptcy principle that is a joint venture to get the payment for everyone creditor fairly .The process of bankruptcy based on legislation no. 37 2004 arranged in article 6 s / d article 11, :

Stage of Registration of Bankruptcy Request. The applicant submits a request for bankruptcy statement to the Chairman of the Commercial Court. The Registrar of the Commercial Court shall register the application on the date the application is filed and to the applicant a written receipt shall be signed by the competent authority on the same date as the registration date. After registering the request for bankruptcy statement, the clerk shall submit the application to the Chairman of Commercial Court no later than 2 (two) days after the application registered. Before the trial begins, the courts through the bailiffs summon the parties, among others: 1) Required to call the Debtor, in the case of a bankruptcy petition filed by the Creditor, the Prosecutor, Bank Indonesia, Bapepam, or the Minister of Finance. 2) Can call creditors in the case of a request for bankruptcy statement filed by the debtor (voluntary petition) and there is doubt that the requirements for declaring bankruptcy as referred to in Article 2 paragraph (1) of the Bankruptcy law have been fulfilled.

The summons shall be made by a bailiff with a letter of acceptance no later than 7 days before the first hearing is held. Within no later than 3 days after the date of the request for bankruptcy statement is registered, the court shall examine the petition and establish the hearing. The first hearing on the request for bankruptcy statement



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shall be held within no later than 20 (twenty) days after the date on which the application is registered. According to Article 6 Paragraph (7) of the UUK, the Court may suspend the holding of the hearing until at least 25 (twenty five) days after the date of the application being registered. This delay on the request of the debtor and must be accompanied by sufficient reason.

Article 10 Paragraph (1) of the Bankruptcy Law states that as long as the decision on the request for bankruptcy statement has not been pronounced, any creditor, prosecutor, Bank Indonesia, Bapepam or the Minister of Finance may apply to the court for. 1) put been seized assurance against part or the entire wealth of debtor, or 2) pointing curator while to scrutinise the management business debtor, and payments to creditors, diversion, or assurance wealth debtor who in bankruptcy is the responsibility of curator.

The Court may only grant such application if it is necessary to protect the interests of creditors as provided in Article 10 paragraph (2) of the Bankruptcy Act. Decision of the Commercial Court on the request of the declaration bankruptcy must be pronounced no later than 60 (sixty) days after the date of the request for bankruptcy statement is registered.

Is the result of paillit is: a) The debtor loses all his right to control and take care of his property assets, whether selling, pawning, and so forth and everything earned during bankruptcy from the date the decision of the bankruptcy declaration is pronounced. b) all new debt is no longer guaranteed by it wealth; c) To protect the interests of creditors, as long as the decision on the request for bankruptcy statement has not been pronounced, the creditor may apply to the court for: 1) put been seized assurance against part or the entire wealth of debtor. 2) To appoint a temporary curator to oversee the management of the debtor's business, to receive payments to creditors, transfer or use of the debtor's wealth (Article 10 of Law No.37 of 2004).

Should be announced twice in newspaper (Article 15 paragraph (4) of Law No.37 of 2004). The decision of the bankruptcy statement resulted in the debtor's property being included in the bankruptcy property since the decision was issued. The bankruptcy law does not provide explicit provisions concerning the change of the



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debtor's property status to a bankruptcy property after the decision of bankruptcy declaration. It is only implied by the provisions of the bankruptcy law.

The term bankruptcy is used in various articles of bankruptcy law (Sutan Reny Syahdeini, 2002: 197). Bankruptcy covers the entire wealth of the debtor at the time of the declaration of bankruptcy declaration is pronounced and everything acquired during bankruptcy (Article 21 of Law Number 37 Year 2004). There are two kinds of debtor assets that do not include bankruptcy property. The property is a debtor's asset referred to in Article 21 of Law Number 37 Year 2004 and assets not owned by the debtor.

The management of the bankruptcy property is done by the curator specified in the decision of the bankruptcy statement. The management of the bankruptcy of the bankruptcy by the curator is instantaneous, valid at that time as from the date of the pronounced bankruptcy verdict. Separatist creditors (creditor holders of material rights such as creditor holders of mortgage rights) or third parties under Article 137 paragraph (2) of the Bankruptcy Act may execute their rights as if there were no bankruptcy, will remain before the creditors or third parties execute, 56 paragraph (1) of the Bankruptcy Act which determines that the right of creditors and third party execution to prosecute their property which is in the possession of a bankrupt debtor or curator shall be suspended for a period not exceeding 90 days from the date of decision of the bankruptcy declaration.

METHOD

The method used in this research is the normative juridical approach¹. The research specification used is descriptive analysis, the method of research by collecting materials in accordance with the actual material then the materials are prepared, processed and analyzed to be able to provide an overview of existing problems. The secondary material obtained will be presented in a systematically arranged description as a complete series. Then the method used in the writing of this law is a qualitative method, namely data obtained systematically arranged in the form of description or explanation to describe the results of research.



RESULT AND DISCUSSION

Due to Bankruptcy to the engagement that has been made by the debtor before the bankruptcy statement is pronounced.

a. Unilateral Engagement and Mutual Engagement

Article 1234 of the Civil Code divides the engagement into: 1. The engagement that gives birth to the obligation to give something; 2. The engagement that gives birth to the obligation to do something; 3. Engagement that gives birth to the obligation to do nothing. Based on the achievements that must be met can be differentiated :1. Achievements that can only be dilaksanakan by the debtor itself; 2. Achievements which may be exercised by any party in their capacity as representative or power of the debtor. If we try to relate to the division of the engagement under article 1234 of the Civil Code of Achievement it is an achievement to do something. Against this "unique" achievement, the verdict of the bankruptcy statement resulted in the removal of the engagement by law and the creditor by law also occupying the same position as the concurrent creditor against the bankruptcy property. In such a case the Curator has no authority to take over or to do a good deed implicitly, let alone explicit, declare its intention to keep or not to continue the agreement.

Especially for the achievement which can be represented or exercised, if at the time of decision of bankruptcy declaration there is a new reciprocal agreement partially fulfilled or even executed altogether, then the party with whom the bankrupt debtor has entered into agreement may request to the Curator to provide certainty about continuation of implementation agreement within a specified period of time. The opposing party shall have the right to request the Supervisory Judge to establish such period, in the event that the Receiver does not give a decision or consent to the proposed period of time

If within the aforementioned period of time, whether agreed or stipulated by the Supervisory Judge, the Receiver shall not give an answer or the Curator expressly declares that he is unwilling to continue the exercise of the treaty, then the treaty is legally declared to be terminated and the counterpart in the contract by law becomes



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concurrent lender on bankruptcy property. On the other hand, if the Curator expresses his ability to continue the execution of the agreement, the counterpart in the agreement shall be granted the right to ask the Curator to give assurances over his / her gesture to execute the agreement.

b. Cancellation and Cancel By Law

In the above description it has been explained that the ongoing engagement, in which one or more obligations that have not been executed by the debtor is bankrupt, while the verdict of bankruptcy declaration has been pronounced, for the sake of the law the engagement becomes void, unless according to the considerations of the Curator can still be fulfilled from the property bankrupt. And the creditors together become concurrent creditor of bankruptcy property. In addition to the foregoing, the Bankruptcy Act grants the rights of the creditor and / or other interested parties to request the cancellation of the legal proceedings of the insolvent debtor, which is performed before the declaration of the bankruptcy statement is pronounced which is detrimental to both the bankruptcy property as a whole and against certain concurrent creditor.

The important point to emphasize here is that such treaties or deeds are irrevocable and not null and void. This should be returned to the basic principle of the validity of a treaty as formulated in article 1320 of the Civil Code Legislation jo article 1338 Book of civil law legislation. This means that as long as the agreement and / or legal deed done do not touch the objective aspect of the terms of the validity of the agreement, the agreement can only be requested for cancellation, on the basis of its unfulfilled terms of competence and / or non-agreement.

c. the cancellation of the agreement

In principle, the Bankruptcy Legislation gives a "fair" right to both the Curator and the creditor to cancel the contract and / or legal action of the bankrupt debtor made before the bankruptcy declaration is decided but not fully resolved at the time the bankruptcy statement is issued. Even in certain respects, both the Curator and each of the interested creditors have the right to request the cancellation of a completed legal act before the bankruptcy statement is pronounced. Such provision is



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very meaningful in protecting the interests of the creditors as a whole, and in particular to avoid the intention of mischievous debtors who intend badly with certain parties and aim to harm the interests of one or more good ethical lenders, as well as the interests of bankruptcy as a whole.

To be able to cancel a legal act that has been done by the debtor bankrupt with a third party before the declaration of bankruptcy is pronounced, which harms the bankrupt property. The Bankruptcy Act requires that the cancellation of such legal action (harmful) is done by the debtor and the party with whom the legal act is done knowing that the legal act will cause harm to the creditor, unless the act is a legal act that must be done based on the agreement and / or the law.

This means that only non-mandatory legal acts can be undone. Furthermore, to create legal certainty for parties concerned not only credit, but also the recipient of objects provided by the debtor Bankruptcy Act stipulates that as long as legal acts that harm the creditors are made within a period of 1 (one) year before the verdict the bankruptcy statement is stipulated, and the act is not obliged to be done by the debtor, unless it can be proven otherwise, the debtor and the party with whom the act is committed shall be deemed to know or should know that such act shall cause harm to the creditor. In Article 42 of Bankruptcy legislation is clearly spelled out a more concrete meaning of the formulation of "deeds which should be known to harm creditor" into three basic criteria:

1. 1. Any legal act which harms the creditors shall be filed within 1 (one) year before the decision on bankruptcy is stipulated. 2. Such legal act is a legal act that must be done by the debtor bankrupt 3. Such legal act: a. It is the engagement in which the debtor's obligations far exceed the obligations of the party to whom the engagement is committed; b. It is a payment of, or granting a guarantee for, outstanding and unaccountable debt; c. Is an affiliated legal relationship that:

1) Performed by an individual debtor, with or against: (1) The husband or his wife, adopted child, or family to third degree and (2) A legal entity in which the debtor or party referred to in number 1) is a member of the board of directors or management



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or if such party, jointly or jointly, participates directly or indirectly in the ownership of such legal entity at least 50% (fifty percent) of paid up capital.

2) Conducted by the debtor who is a legal entity with or against: (1) A member of the board of directors or management of the debtor, or spouse, or adopted child, or family up to the third degree, of the member of the board of directors or management. (2) Individuals, either alone or together with a spouse, or adopted child, or family to the third degree of such individuals participating directly or indirectly in the ownership of the debtor of at least 50% (fifty percent); (3) Individuals with spouses, or adopted children, or their families up to third degree, who participate directly or indirectly in the ownership of the debtor at least 50% (fifty percent) of the paid up capital.

3) Conducted by the debtor who is a legal entity with or against other legal entity, if: (1) Every member of the board of directors or management of the two business entities is the same person (2) The spouse, or adopted child, or family up to the third level of each member of the board of directors or management of the debtor is a member of the board of directors or management of another legal entity or vice versa (3) Any member of the board of directors or management or members of the regulatory body of a debtor, or husband, wife, or adopted child, or family until the third degree, either alone or jointly participates directly or indirectly in the ownership of another legal entity at least 50 % (fifty percent) of the paid up capital; (4) A debtor is a member of the board of directors or management of another legal entity (5) The same legal entity, or any common person, whether or not together with his spouse and / or adopted children, and his family to the third level participate directly or indirectly in the two legal persons shall be at least 50% (fifty percent) of the paid up capital.

4). Conducted by a debtor who is a legal entity with or against another legal entity within a group of legal entities in which the debtor is a member. Another provision directly related to the cancellation of the treaty is what in law science is known as Action Pauliana. This Pauliana action can be said to be a breakthrough on the basic nature of the treaty which is only valid and binding among the parties that make it (article 1340 paragraph (1) Book of Civil Code). The breakthrough set forth in the provisions of article 1341, verse 91) of this Code of Civil Law gives the right to the



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creditor to file a cancellation of any unlawful legal action carried out by the debtor, under any name that harms the creditor; to the extent that it can be proved that at the time the legal action is taken, the debtor and the counterpart with whom the debtor takes legal action knows that such action will result in harm to the creditors.

If we read further the formulation given in article 1341 paragraph (3) it is clear that implicitly the Civil Code recognizes the existence of two kinds of unlawful legal action, namely legal action committed or born as a result of a leaded agreement behind, and unilateral legal action. And specifically for the actions performed free of charge by the debtor, the cancellation of such legal act may be applied if the creditor can indicate that at the time the act is committed, the debtor knows that in this way he will harm the creditors, regardless of whether the beneficiary with such legal action also knowing it or not.

However, the rights obtained by third parties in good faith in the object of the act of abrogation shall remain respected (article 1341 paragraph (2) of the Civil Code and the origin of the 1977 paragraph (1) of the Law Civil, bezit applies as perfect title). In Bankruptcy legislation, the importance of Actio Pauliana as one of the reasons that can be filed by creditors to cancel the legal act of a bankrupt debtor made before the declaration of bankruptcy was announced, remains a concern.

If we read the provisions of article 30 jo article 28 of the Bankruptcy Act we can implicitly say that in the event of a lawsuit against a bankrupt debtor in the form of debt matching, the Receiver and / or creditor denying such matching shall be granted the right to request the cancellation of any debtor's conduct (which gives rise to the right to sue mentioned in article 28 of the Bankruptcy legislation) that harms the insolvent property, as long as the act has been committed "intentionally" along with the other party.

The provision is slightly different from the provisions of article 41 of the Bankruptcy law that grants the right of cancellation of a bankruptcy debtor's act, which is deemed to be detrimental to the creditor's interests by the insolvent debtor before the bankruptcy statement is stipulated. The formulation of Article 41 paragraph (3) of the Bankruptcy law expressly states that the legal act of the bankrupt debtor which



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must be performed by the existence of the agreement and or the law is exempt from the cancellation pursuant to Article 41 of the Bankruptcy Act. So herein is not preceded by the existence of a suit for matching as referred to in Article 28 of the Bankruptcy Act. In principle, the cancellation pursuant to article 41 of the Bankruptcy Law is also only to be prosecuted if it can be proven by the debtor and the party with whom the legal act is done knowing that the legal act will result in harm to the creditor.

The provision is contained in article 46, which specifically regulates the payment of debts that have been made by the insolvent debtor to the creditor. Article 46 of the Bankruptcy law stipulates that if. 1. It can be proven that at the time of payment the creditor is aware that the bankruptcy requirements of the debtor have been filed with the Court; 2. If the payment is a result of a debtor between a bankrupt debtor and a creditor, which is intended to, by providing such payment, give the creditor an advantage before the bankruptcy declaration is declared cancellation.

So the debt payments made by the insolvent debtor to the creditor made by the bankruptcy statement are announced, can be requested for cancellation. In the subsequent provisions, namely in the formulation of Article 47 paragraph (1) of the Bankruptcy Act, this principle of good faith as formulated in Article 1341 Paragraph (2) of the Civil Code above can also be met. The provision expressly states that the provisions concerning the cancellation and returns which have been accepted as mentioned above shall apply to the holder of a payment order and a letter of appointment which, due to legal relations of the holder, shall be required to receive payment. In this case the obligation to repay the payment that has been made is the party issuing the payment order, as long as it can be proven that the issuer of the letter, at the time of issuance of the letter is found to meet one of the two conditions mentioned above.

Any lawsuit aimed at requesting the cancellation and return of all that has been deposited on the basis of such denunciation shall be made by the Curator himself, in his capacity as a representative of the bankrupt debtor. Although creditors can not request the cancellation directly, the creditor is still given a tub to add to the receipt of



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a request. This provision in principle may be said in tune and in accordance with the provisions of Article 28 jo Article 30 of the Bankruptcy Legislation.

d. Due to Bankruptcy to Unlawful Legal Acts.

1. Grant. The grant that the debtor said can be requested cancellation if the Curator can prove that at the time the grant is made the debtor knows or should know that the action will cause harm to the debtor. Furthermore, to create legal certainty for a third party having good faith in the Bankruptcy Law is also determined that unless it can be proven otherwise, the debtor is considered to know and should know that the grant is detrimental to the creditor if the grant is made within 1 (one) year before the decision of the statement bankruptcy set.

2. Unchecked Payment. The payment of a debtor's debit debts may only be withdrawn, if it is proved that the payee knows that the bankruptcy claim has been sought or the reporting for it has been entered, or if the payment is the result of a negotiation between the debtor and the creditor, to make such payments, to give advantage to this latter that exceeds the other creditor.

e. Trade Agreement with Timing.

One form of reciprocal agreement is an agreement made with the timing, in which one or more parties to the agreement are required to perform one or more achievements within a specified period of time determined in the future.

f. Agreement with Obligation To Submit Goods.

If a reciprocal agreement with such time stipulation is a trade agreement with the pretation to deliver merchandise which may be traded in the course of the delivery of the Goods shall be executed at a certain time or shall pass after the bankruptcy declaration, it shall be declared null and void by law. the opposing party can simply volunteer himself as a creditor of the Konkuren. Furthermore, if by the cancellation of the engagement, the bankrupt property is harmed, then the opponent is obliged to indemnify it.

g. Lease agreement.

Article 38 Bankruptcy legislation differentiates as a result of bankruptcy statements for lease agreements and advances and no down payment. Especially for



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a lease agreement with an advance, if the rental advance has been paid, then the lease agreement can not be terminated, except for the expiry of the prepayment of the said period. With respect to the general lease, both the Curator and the leasing party shall be entitled to terminate the lease, taking into account the prevailing provisions of the accelerated termination provided for in the prevailing laws and regulations, treaties and customs, with a grace period not less than 3) months of advance notice. Since the day the bankruptcy statement is in force, rent is a debt of bankruptcy.

h. Employment agreement.

The bankruptcy statement grants the employee the right to work for the bankrupt debtor and / or the Receiver to seek termination of employment by heeding the provisions stipulated in applicable laws and regulations, including any contact or employment agreement signed by and between the respective employee with the bankrupt debtor.

CONCLUSION

Whereas in view of the provisions of Article 22 of the Bankruptcy Act stating that the endorsement of peace which has a definite legal force, simply not denied by the bankrupt debtor, is a right that can be exercised against the bankrupt debtor.

Against all persons who have become the bearers of all recognized receivables, as well as against debtors' counterparts, for example in the case of joint liability (Article 154 juncto article 155 of the Bankruptcy Act).

Liber related to bankruptcy that is outside the competence of the Commercial Court such as an indication of fraud. Need to find alternatives to solve the problem of bankruptcy is important to accelerate the time and legal legality process.



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