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Institutionalization of the Approval Principle of Majority Creditors for Bankruptcy Decisions in Bankruptcy Act Reform Efforts

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ABSTRACT

This study aims to determine the urgency of institutionalizing the principle of bankruptcy decisions that must be approved by the majority creditors with a test stone in the form of a bankruptcy decision Number: 04/Pdt.Sus-PKPU/2018/PN.Niaga.Jkt.Pst then also to analyze the opportunities for institutionalizing the principle. mentioned in Indonesian law. This research is a normative legal research with an approach in the form of a conceptual approach, and a statute approach and a case approach. The results show that the urgency of applying the principle of "Approval of Bankruptcy Decisions Must be approved by Majority Creditors" in Indonesia is based on the Bankruptcy Decision Number: 04/Pdt.Sus-PKPU/2018/PN.Niaga.Jkt.Pst, in addition to following the development of global bankruptcy law. , also in order to provide justice to fellow creditors so that no creditor feels aggrieved in any future bankruptcy decisions. The principle itself requires that each bankruptcy decision be approved by at least 50% of the majority of creditors according to the number of claims (receivables), not the majority according to the number of people. Even though, the application for a bankruptcy statement was made by the Debtor himself, the bankruptcy decision should not have been taken by the court without the approval of the creditors or the majority of creditors. Also, the opportunity to apply this principle in Indonesia is very possible considering that the principle is in accordance with the character of the nation which clearly makes consensus & deliberation as an alternative in every problem that exists within the Indonesian nation, it is not wrong if this is also applied in the concept of the Bankruptcy Law in the future (das sein).

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1. INTRODUCTION

The meaning of debt pursuant to Law No 37 of 2004 on the Bankruptcy and Postponement of Debt Payment Obligations (hereinafter abbreviated as Law No 37/2004) means debt: an obligation which is declared or may be expressed directly or arising in the future in a sum of either Indonesian currency or foreign currency or arising out of an agreement or because of an agreement or because of an agreement It can clearly be inferred, on the basis of the concept of the editorial article, that the essence of debt is a duty that the debtor must fulfill. (Muthia Sakti, 2020)

While debt is an obligation to be fulfilled or repaid by the debtor, sometimes the obligation is not fulfilled by the debtor or the debtor fails to pay his debt. Conditions of stopping payment may occur because the debtor is unable or unable to pay. The borrower suffers a loss because the receivables are not met, all of which have the same effect. As reported by M, this is

generally referred to as bankruptcy. Bankruptcy in Hadi Shubhan is a situation in which the debtor is unable to make payments on his creditors' debts. Usually, the failure to pay is triggered by financial hardship from the company of the debtor that has suffered a setback. By not satisfying these receivables, it suggests that a conflict has arisen between them. (Budiman, H., Nurlaela, E., Rahmat, D., Akhmaddhian, S, 2020)

There are many ways in which debtors can settle conflicts over stopping paying. Bankruptcy is one means of settling the conflict, in addition to other forms of resolving it, as the author explained earlier. The need for bankruptcy law in the case of a company borrowing from many creditors is most evident in the case of a company borrowing from several creditors. As Matej Marinc & Razvan Vlahu say in their book The Economics of Bankruptcy Law, in the absence of bankruptcy laws, coordination issues between creditors can lead to untimely bankruptcy. In the event of a company borrowing from many creditors, the need for bankruptcy law is most apparent. Coordination issues between creditors will prematurely trigger bankruptcy without bankruptcy legislation in place.(Suartha, I.D.M., 2020)

Bankruptcy itself is a ruling made by the Judge, resulting in the general confiscation, at a later date, of all properties held and assets owned by the debtor. Bankruptcy administration and arbitration shall be carried out by the curator, under the supervision of the supervisory magistrate, of the two officials directly appointed at the time of reading the bankruptcy decision. (Yuniyanti, S.S.,2020)

Bankruptcy is most frequently used as a commercial solution to the debt crisis that crushes a debtor, where it is no longer possible for the debtor to pay his creditors for those debts. In accordance with Article 1(1) of Law 37/2004, the essence of bankruptcy is the general confiscation of all the properties of the bankrupt debtor, the administration and resolution of which is carried out by the curator under the supervision of the supervisory judge, in accordance with the provisions of that law. Bankruptcy is intended to avoid and substitute independent confiscation or separate execution by creditors by conducting collective confiscations such that the assets of the debtor can be allocated to all creditors in compliance with their respective rights, as there is bankruptcy to ensure that creditors gain their rights over the assets of the bankrupt debtor. (Rosidah, Z.N., 2020)

As stated in Article 1131 of the Civil Code, all the debtor's objects, both movable and immovable, both existing and new, shall, as follows, exist at a later date and shall be borne by each individual obligation. "In addition, Article 1132 of the Civil Code provides that it is explained as follows: "This content is a mutual guarantee for all those who pay for it; the revenue from the selling of those items is distributed according to the balance, that is, according to the size of the respective receivables, unless there are compelling reasons for the debtors to prioritize it. (Adhillah, S.U., et all, 2020)

In the explanation of the paper, all forms of creditors, both concurrent creditors, preferred creditors, and separatist creditors, are what creditors say. A creditor holding property guarantees, such as a pledge holder, fiduciary security, mortgage, mortgage and other property collateral, is known as a separatist creditor.

It is said to be "separatist" and has the connotation of "separation" since the status of the borrower is simply isolated from other creditors, which means that he can sell himself and receive the selling proceeds himself, which is different from the assets of the general bankruptcy. In other words, the Separatist Creditor is not affected by the bankruptcy declaration ruling, which means that the right of the Separatist Creditor to execute will still be exercised as the debtor has no bankruptcy. Although the role of a separatist creditor appears to be exceptional, Law 37/2004 lays down limits on the execution of the guarantee, as provided for in Article 59 of Law 37/2004. (Adhillah, S.U., et all, 2020)

In due observance of Article 56, Article 57 and Article 58, creditors holding the rights referred to in paragraph 1 of Article 55 shall exercise their rights within 2 (two) months of the beginning of the insolvency period referred to in paragraph 1 of Article 178 (1). After the expiry of the time referred to in paragraph (1), the Curator shall, without prejudice to the rights of the creditor of the right holder to the proceeds from the selling of the collateral, require the delivery of the collateral for further sale in accordance with the procedure referred to in Article 185. (Sulistya. E, 2020)

It is understood that separatist creditors can do little about debtor guarantees independent of other creditors as well as debtors prior to the enactment of Law 37/2004. This is the result of changes to the bankruptcy law and the postponement of the duty to pay debt from Law No. 4 of 1998 to Law No. 37/2004, which at the time had the following objectives: to prevent, first, the properties of the debtor if, at the same time, there were many creditors receiving the debt. (Sulistya. E, 2020)

Second, by selling the debtor's property without taking into account the desires of the debtor or other creditors, to prevent the presence of creditors who hold material security rights claiming their rights. Thirdly, to discourage fraud committed by one of the lenders or the debtors themselves. If we look at this target, the interests of all creditors in general have been met by any bankruptcy decision since the birth of Law 37/2004, but the reality is that many creditors, especially concurrent creditors, have not obtained debt repayment in many bankruptcy decisions.

In this case, the Central Jakarta Commercial Court Ruling, No: 04 / Pdt.Sus-Pkpu / 2018 / Pn.Niaga.Jkt.Pst, which granted bankruptcy status to 4 (four) legal entities, including 4 (four) legal entities, is one of the cases that demonstrates the low ability of concurrent creditors to claim debt repayment. In that case, the jury of judges assessed that it was not possible for the four debtors to offer guarantees for the repayment of creditors' debts. The assembly did not support homologation peace on the basis of these claims and judgments, while the majority supported the peace in voting.

Postponement of Debt Payment Obligations (PKPU) is a proven solution that can be taken to resolve the slowdown in the fulfillment of a company's obligations, namely the holding of PKPU. This means that the debtor in question submits to the trustee a request that the settlement of his debt be postponed for a certain period of time. In order to balance the life and purpose of the bankruptcy law itself, namely through the conduct of PKPU, UUK-PKPU accommodates this. (Iswantoro, I, 2020)

As a consequence of the number of decisions: 04/Pdt.Sus-Pkpu/2018/Pn. In that situation, Niaga.Jkt.Pst, the concurrent creditors have the ability not to get their receivables back, this is because all material properties have been pledged to separatists, it is estimated that concurrency will not accept any returns under bankruptcy. In fact, if, in that case, the cumulative sum of concurrent creditors receivable is still very high, that is to say, PT. Royal, more than 30 percent, from a bill of Rp 1.3 trillion, is an accumulated bill from 19 concurrent creditors, namely Rp. 381.4 billion people.

The poor capacity for redemption of accounts receivable by concurrent creditors is known to be due to the weak status of concurrent creditors in Law 37/2004 relative to separatist creditors in that creditors have no incentive to repay their debts, so the funds of the bankruptcy debtor are also depleted to pay off the receivables of the staff (in case the company goes bankrupt). Thus, starting from the above explanation, the author will clarify in depth via this paper the urgency of the institutionalization of the concept of the bankruptcy agreement that must be accepted by the majority of creditors and the prospects for institutionalization in the Indonesian context.

2. RESEARCH METHODS

This research is a normative or doctrinal research that focuses on discussing a case in the form of a court decision that was born as a result of problems in the related regulations. The

approach used by the writer is the conceptual approach, and the statute approach and the case approach. This study uses the deduction method originating from the submission of the major premise (in the form of a court decision). Then a minor premise is submitted (namely the Bankruptcy Law), from the two premises a conclusion or conclusion is drawn in the form of a renewal of the Bankruptcy Law relating to the application or institutionalization of the principle of bankruptcy decisions must be approved by the majority creditor. **(Leonard. T, 2020)**

3. RESULTS AND DISCUSSION

The Principle of Approval of the Bankruptcy *Decision the Renewal of Bankruptcy Law must be accepted by the majority of creditors*

Casuistically, disputes are always related to an agreement even though the basis of the agreement often comes down to an agreement, but in the end when a dispute occurs it is precisely the agreement itself that is the most difficult to achieve, in the sense that the agreement itself is the object of the dispute, as stated by William Ury that settlement through negotiation by both parties often does not meet expectations and does not reach an agreement: "the purpose of negotiation is not always to reach agreement. **(Leonard. T, 2020)**

For agremeent is only a means to an end, and that end is to satisfy your interset. the purpose of negotiation is to explore whether you can satisfy your interests better through an agreement than you could by pursuing your best Alternative to a Negtiatied Agreement". Still according to William Ury, the factors that influence the dispute resolution process are: interests (interests), rights (rights), and power status (power). Ury argued that each party involved in the dispute had an interest to be achieved, the rights to be fulfilled and the status of power that he wanted to show, exploit and defend. **(Leonard. T, 2020)**

Likewise occurs in cases of Bankruptcy and Postponement of Debt Payment Obligations which is a dispute between creditors and debtors which usually originates from the debtor's inability to fulfill his achievements where the debtor is no longer able to pay these debts to the debtors. creditors. As we all know, the PKPU UUK after being revised has a wider scope than before. Among the changes in the UUK and PKPU, one of which is the inclusion of the principle of justice as the legal principle for bankruptcy and PKPU. (Handayani. O, 2020)

The definition of the principle of justice as stated in the General Elucidation of UUK and PKPU is to prevent arbitrary actions by collectors who seek to pay their bills regardless of other creditors. Even though in practice, UUK and PKPU still have not provided justice for debtors, this is evidenced by the actions of creditors competing individually to claim debtor assets for their respective interests. In this case, the bankruptcy law serves as a tool to pressure debtors to pay their debts as soon as possible. (Handayani. O, 2020)

In fact, the most recent one that was reviewed in this study was the bankruptcy of the Central Jakarta Commercial Court Decision in the PKPU Application Case with Number: 04 / Pdt.Sus-Pkpu / 2018 / Pn.Niaga.Jkt.Pst, which in the decision finally gave bankruptcy status on 4 (four) legal subjects, including: (Handayani. O, 2020)

1. Bankruptcy that befell PT Royal Standard
2. Bankruptcy Case of PT Jaya Smart Technology
3. Untung Sastrawijaya, and
4. Irma Halim

In this case, the panel of judges considered that the four debtors were unable to provide guarantees for the repayment of debts to the creditors. Based on these arguments and assessments, the assembly did not endorse the homologation peace, even though in voting the majority approved the peace. As a result of the verdict in that case, the concurrent creditors have the potential not to recover their receivables, this is because because all material assets have been pledged as collateral to the separatists, the concurrent is not expected to receive any returns in bankruptcy. In fact, if the

accumulated amount of concurrent creditors receivable in that case is also quite large, namely for PT. Royal from a bill of Rp 1.3 trillion, more than 30%, is an accumulated bill from 21 concurrent creditors, namely Rp. 381.4 billion. (Wijaya. M.M.S., 2020)

Tagihan PT Royal Standard		
1	PT Bank Mandiri (persero) Tbk	Rp 159,3 Miliar,
2	PT Bank OCBC NISP Tbk	Rp 92,3 Miliar
3	PT Bank Danamon Indah Tbk	Rp 4.5 Miliar
4	PT Bank Central Asia Tbk	Rp 600 Juta
5	Molucca Holdings	Rp 640,8 Miliar
6	21 Kreditur Konkuren	Rp 381,4 Miliar.

Data: Decision Number: 04/Pdt.Sus-Pkpu/2018/PN.Niaga.Jkt.Pst

This situation is not only detrimental to the concurrent creditors who are included in the majority group and have agreed to do PKPU also resulting in the emergence of chain problems which if not resolved immediately will have a negative impact on the development of the business world in continuing its business activities. In order to prevent the same thing from happening again, it is necessary to make an effort to reform the bankruptcy law, namely by applying a principle that has actually been applicable globally in the laws governing bankruptcy and postponement of debt payment obligations. Of the 19 (nineteen) principles adopted in bankruptcy law globally, the most logical principle to be applied to prevent these concerns from recurring is “The Principle of Approving Bankruptcy Decisions Must Be Approved by Majority Creditors”. (Wijaya. M.M.S., 2020)

Opportunities for the Implementation of the Bankruptcy Judgment Approval Principle the Majority of Creditors

Legal development has a more comprehensive and fundamental meaning than the term legal development or legal reform. 'Legal formation' refers more to efficiency, in the sense of increasing the efficiency of the law. "Legal reform" implies composing a legal system to adapt to changes in society. Therefore, legal development is not only focused on the rule or substance of the law, but also on the structure or legal institutions and on the legal culture of society, legal education, the legal politics of the president and vice president, nationalism of members of the legislature, and effective and effective business dispute resolution mechanisms efficient. (Sarjiyati. S, Nugrogo., S.S., Pratiwi., A.E., 2020)

Therefore, in an effort to help realize the nation's competitiveness, legal politics must be able to direct legal development to support the realization of sustainable economic growth; regulating problems related to the economy, especially the business world and the industrial world; and create investment certainty, especially law enforcement and protection. Legal development is also directed at eliminating the possibility of criminal acts of corruption and being able to completely handle and resolve problems related to collusion, corruption, nepotism (KKN). (Sarjiyati. S, Nugrogo., S.S., Pratiwi., A.E., 2020)

Legal development is carried out through the renewal of legal materials while still paying attention to the plurality of the prevailing legal order and the effects of globalization as an effort to increase legal certainty and protection, law enforcement and human rights, legal awareness, and legal services that have justice and truth as the essence. order and welfare, in the context of running a country that is increasingly orderly, orderly, smooth, and globally competitive. Legal development that is carried out must be of "reform" quality. According to Satjipto Rahardjo, legal reform is a fundamental legal reform that has a 'paradigmatic' quality. So economic law reform is a fundamental reform of economic law which has a "paradigmatic" quality. Such paradigmatic quality legal development is carried out to support the realization of the nation's competitiveness as stated in the 2005-2025 Long-Term Development Plan and also to realize President Joko Widodo's mission, as stated in Nawacita. (Pujiningsih. S., 2020)

The legal development planning is making efforts so that these functions can be carried out properly so that the objectives of a rule of law can be achieved. Revolutionary law development,

namely changing consciously and fundamentally the economic legal system which has been of 'liberal' quality and under the control of developed countries into an economic legal system with 'kinship' or 'social' quality, as stated in the values. (Siregar. H., 2020)

The values of Pancasila and Article 33 of the 1945 Constitution. In 1931 Mohammad Hatta gave rise to the term 'people's economy' as opposed to the dichotomous of 'colonial-capital economy' as the starting point for his structuralism. This is in line with the popular orientation that animates Indonesian independence to displace "Daulat Tuanku" and replace it with "Daulat Rakyat". This colonial-capital economy, which began with the colonialism of the VOC and the Dutch East Indies, along with the culture and implementation of the 1870 Agrarian Law, is arguably still sustainable (in the form of a capitalistic economy and economic conglomeration) to this day. Economic law system with 'kinship' or 'social' quality, is actually also a legal system that does not just rely on the rule of law but pays more attention to the rule of moral or rule of justice. (Siregar. H., 2020)

A similar view was expressed by several world economists by providing a strategic place for law in supporting the economy of a nation. However, even so, as a nation, Indonesia must also be able to ensure that Indonesia's economic development is efficient and just, French economist Jean Tirole, winner of the 2014 Nobel Prize for Economics, also said that regulation is able to create a conducive climate in order to tame a small number of powerful companies that control the industrial sector.

The regulation, such monopolistic markets often produce conditions that are socially undesirable, such as prices higher than what they should be based on production costs, or firms holding out by closing the entry of new and more productive firms. This view is relevant if it is related to the decision Number: 04/Pdt.Sus-PKPU/2018/ PN.Niaga.Jkt.Pst which gave the debtor bankruptcy status only because there was no peace agreement with 2 (two) creditors even though all creditors had approved the deed. peace, then the view from Jean Tirole can be justified that currently Indonesia's regulation (Bankruptcy Law) has not been able to create a conducive climate in order to tame strong companies. (Karjoko. L., Handayani. I.G.A.K., Jaelani.A.K., 2020)

Therefore, the role of the government which positions the law as a strategic factor that supports and controls the economic sector is the first step in building awareness of the importance of law as a tool to facilitate economic progress. This facilitation actually varies in the development agenda, among others, as initiated by Douglas North and Max Weber. Both thinkers adore private actors in development. North views, the law is needed to facilitate its realization “protection of property rights and enforcement of contracts lowers transaction costs for exchange and allows resources to be transferred to those who can use them in the most productive fashion. (Karjoko. L., Handayani. I.G.A.K., Jaelani.A.K., 2020)

It is known that the current Indonesian Bankruptcy Law (Law Number 37 of 2004) is the government's response to the monetary crisis that hit almost all parts of the world in mid-1997 which devastated the joints of the economy and the business world was the one who suffered the most and felt the most. the impact of the current crisis. The downturn in Indonesia's economic life can be ascertained that many businesses are unable to continue their business, including to fulfill their obligations to pay their debts to creditors, this is what creates legal problems if the product of legislation as a regulation to provide legal certainty and protection for all parties is not complete and perfect. To overcome the problems that arise in a bankrupt business world which will result in the failure to fulfill obligations that are due, the government has made changes in laws and regulations, namely by revising the existing Bankruptcy Law. (Karjoko. L., Handayani. I.G.A.K., Jaelani.A.K., 2020)

After that incident, purely there have never been any efforts made to make changes or renewal to the product of the law, even though many principles and regulations regarding bancrupty law have developed in the world, one of which concerns "the principle of approval of bankruptcy decisions must be approved by creditors. majority". This was not too surprising considering the system used in the amendment of the Bankruptcy Law at that time

was not making changes completely, but only changing certain articles that needed to be changed and adding various new provisions to the existing Law. (Ahmad Dwi Nuryanto, 2019)

In this regard, according to the author, it is deemed necessary to encourage the government to reform the Bankruptcy Law by accommodating the principles of bankruptcy law that apply universally, including by applying "the principle of approval of bankruptcy decisions must be approved by the majority creditors". This is not without reason considering that the current Bankruptcy Law opens opportunities for debtors to be bankrupt even if only by requesting one of the debtors. As stated in Article 2 of the Bankruptcy Law, an applicant in a bankruptcy case is one of the following parties.

One or more creditors, either individually or collectively, may file a bankruptcy application as long as it meets the requirements stipulated by the bankruptcy law. Creditors who file bankruptcy requests for debtors must meet the requirements that their claim rights are proven simply or that the creditor's rights to collect are also simple. Meanwhile, in order to be declared bankrupt, a debtor must meet the requirements stipulated in Article 2 Paragraph (1) in conjunction with Article 8 Paragraph (4) of the Bankruptcy Law as follows:

Based on this, in the future there will be more opportunities for a decision on bankruptcy to debtors to see or because of a small number of creditors which of course will be very detrimental to other debtors and creditors. Even though there is Adrian Sutedi's opinion that the Bankruptcy Law should take the stance that judges can only grant bankruptcy requests if the petition is approved by the majority creditors. But in fact, if you look at the decision Number: 04/Pdt.Sus-PKPU/2018/ PN.Niaga.Jkt.Pst, this is not common.

The things that the authors convey are also expected to be a venue for the application and actualization of the concept from point 4 of Pancasaila which clearly makes consensus & deliberation as an alternative in every problem that exists in the body of the Indonesian nation, so it is not wrong if this is also applied in the concept of law. Future bankruptcy (das sein). Matters regarding the concept in point 4 (four) of the Pancasila have also been accommodated in Law Number 12 of 2011 concerning the Establishment of the Laws and Regulations Article 6 Paragraph (1) and Paragraph (2) and the explanation stated, that the contents of the statutory regulations -The legislation must reflect the principles: (Lego Karjoko, Zaidah Nur Rosidah, I Gusti Ayu Ketut Rahmi Handayani, 2019)

a. The principle of protection; the point is that every Material Contained in Laws and Regulations must provide protection to create public order.
b. Humanitarian principles; the point is that every Material Contained in the Legislation must reflect the protection and respect for human rights as well as the dignity and worth of every citizen and population of Indonesia.
c. The principle of nationality; the point is that every Material Contained in the Legislation must reflect the character and character of the diverse Indonesian nation while maintaining the principles of the Unitary State of the Republic of Indonesia.
d. The principle of kinship; the point is that each Material Contained in the Legislation must reflect deliberation to reach consensus in every decision making.
e. The principle of archipelagoness; the point is that every Material Contents of Legislation always takes into account the interests of the entire territory of Indonesia and the Content of Legislation made in the regions is part of the national legal system based on Pancasila and the 1945 Constitution of the Republic of Indonesia.
f. The principle of diversity in diversity; the point is that the Content of Legislation must take into account the diversity of the population, religion, ethnicity and class, special regional conditions and culture in the life of the community, nation and state.
g. The principle of justice; the point is that every Material Content of Laws and Regulations must reflect justice proportionally to every citizen.
h. The principle of equality in law and government; the point is that each Material Containing Legislation may not contain

anything that is discriminatory based on background, among others, religion, ethnicity, race, class, gender, or social status.

i. The principle of order and legal certainty; the point is that every Material Contains of Laws and Regulations must be able to create order in society by guaranteeing legal certainty.
j. The principles of balance, harmony and harmony; the point is that each Material Contents of Laws and Regulations must reflect balance, harmony and harmony between the interests of individuals, society and the interests of the nation and state..

Referring to point d above, every product of legislation must prioritize these values and principles as a reflection. The principles in Article 6 Paragraph (1) and Paragraph (2) letter d of Law Number 12 Year 2011 concerning the Formation of the Prevailing Laws, according to the author, are in line with the concept that the author offers in the context of reforming regulations governing Bankruptcy and PKPU in Indonesia, namely through the application of "the principle of approval for bankruptcy decisions must be approved by the majority creditors".

4. CONCLUSION

The principle itself requires that each bankruptcy decision be approved by at least 50% of the majority of creditors according to the number of claims (receivables), not the majority according to the number of people. Even though, the application for a bankruptcy statement was made by the Debtor himself, the bankruptcy decision should not have been taken by the court without the approval of the creditors or the majority of creditors. Then, in order to be declared bankrupt a debtor must meet the requirements as stipulated in Article 2 Paragraph (1) in conjunction with Article 8 Paragraph (4) of the Bankruptcy Law.

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