

The Authority of the Commercial Court in Bankruptcy Disputes

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Abstract

The purpose of this study is to find out and understand the authority of the commercial court based on the application of Law Number 37 of 2004 in resolving bankruptcy disputes. This study uses descriptive analysis research techniques supported by a normative juridical approach. The results of the study show that legal considerations in a decision must be juridical and become the basis of a decision. Court decisions must contain certain articles of the relevant regulations and unwritten legal sources that are used as the basis for adjudicating, therefore the Commercial Court Decision at the Central Jakarta District Court Number 04/Pdt.Sus-Pailit/2016/PN.Niaga.Jkt. Pst is in accordance with Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations.

1. Introduction

The Government Regulation, Law Number 1 of 1998 concerning Amendments to the Bankruptcy Law, enacted or promulgated on April 22nd, 1998 and came into effect from August 1998 is only a refinement and adjustment to the old bankruptcy regulations. The improvement is made by changing, deleting, and adding provisions (legal norms) in the old bankruptcy regulations. The Law Number 1 of 1998, Government Regulation was approved by the DPR of the Republic of Indonesia on September 1998.

As a sign of approval from the DPR of the Republic of Indonesia; Law Number 4 of 1998 concerning the Stipulation of Government Regulation, the law was issued; Number 1 of 1998 concerning Amendments to the Bankruptcy Law. Government Regulation in Lieu of Law on Bankruptcy of 1998 and Law Number 4 of 1998 will be referred to as the Bankruptcy Law in the future.

Bankruptcy within the company is the most terrifying legal phenomenon. After approximately six years of the 1998 Bankruptcy Law, a revision of the Law emerged, namely Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations. This law was promulgated and

came into force on October 18th, 2004. Furthermore, Law Number 37 of 2004 is referred to as the Bankruptcy Law, abbreviated as UUK and PKPU.

This UUK and PKPU are based on several principles, among others are:

a. The Principle of Balance

This law regulates several provisions that embody the principle of balance. Some provisions can prevent the misuse of bankruptcy institutions by dishonest debtors. On the other hand, some provisions can prevent the misuse of bankruptcy institutions by creditors who do not have good intentions.

b. Business Continuity Principle

In this law, a provision allows a prospective debtor company to continue to operate.

c. The Principle of Justice

In bankruptcy, the principle of justice implies that the provisions regarding bankruptcy can fulfil a sense of justice for the concerned parties. This principle of justice prevents the arbitrariness of the collectors who seek payment of their respective bills to the debtor, ignoring other creditors.

d. Principle of Integration

The principle of integration in this law implies that the formal legal system and its material law are integral to the civil and national civil procedural law. It has a wider scope in terms of norms, material scope, and the process of settling debts.

This more comprehensive coverage is needed due to developments and legal needs in society. At the same time, the provisions in force, so far, have not been adequate as a legal means to resolve debt problems fairly, quickly, openly, and effectively.

Some of the new subject matter in the UUK and PKPU among others: First, the definition of debt is clearly defined in order not to give rise to various interpretations in this law likewise, the notion of maturity. Second, regarding the requirements and procedures for applying the declaration of bankruptcy and a request for suspension of the obligation to pay debts, including the provision of a solid time frame for deciding on a declaration of bankruptcy and/or suspension of obligation for payment of debt.

The general explanation of the Bankruptcy Law, especially in the section on the main points of improvement of the Bankruptcy Law in the sub-section, has mentioned the affirmation and establishment of a special court that will solve problems in general.[4] The provision regarding the commercial court is a provision which is a new provision added to the Bankruptcy Law.

This institution is in the form of a commercial court with judges who will have special duties. The establishment of this commercial court is a differential step over the general court, which is possible based on Law Number 14 of 1970 concerning the Principles of Judicial Power.

Commercial courts are not an independent judiciary but one of courts within the general judiciary. The commercial court is authorized to examine and decide on bankruptcy disputes and suspension of debt repayment obligations.

However, along with the development of needs in the community, this commercial court is also given the authority to examine and decide disputes in the field of Intellectual Property Rights (IPR) following government regulations.

The determination of the commercial court as the court authorized to examine and decide on bankruptcy applications or cases is solely to streamline the process of examining bankruptcy applications and delaying debt payments as well as certain other commercial cases. Meanwhile, the organization follows the provisions that apply to general courts.

Based on the description in the background of the problem above, the main issues formulated in the form of this research are as follows:

- a. How is the authority of the commercial court in resolving bankruptcy disputes in the decision of the commercial court at the Central Jakarta District Court Number 04/Pdt.Sus-Pailit/ 2016/PN.Niaga.Jkt.Pst?
- b. Is the decision of the commercial court at the Central Jakarta District Court Number 04/Pdt.Sus-Pailit/2016/PN.Niaga.Jkt.Pst in accordance with Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations?

2. Research Method

This study uses descriptive analysis to collect all data from the commercial court at the Central Jakarta District Court and other legal materials to support data analysis, followed by analyzing the data qualitatively, namely testing without using mathematical models and statistical formulas, then the results will be presented in a descriptive analysis.

3. Results and Discussion

The Authority of the Commercial Court in Bankruptcy Disputes

The enactment of the UUK and PKPU has transferred the absolute authority from the general court to examine bankruptcy applications by stipulating the commercial court as the court that has the authority to accept bankruptcy applications and postpone debt repayment obligations.

The Commercial Court, apart from examining and deciding applications for declaration of bankruptcy and suspension of debt payment obligations is also authorized to examine and decide other cases in the field of commerce that stipulation is carried out by law. The commercial court is given exclusive authority to handle all cases related to the application for a declaration of bankruptcy and suspension of debt payment obligations.

Before the enactment of the UUK and PKPU, the settlement of bankruptcy cases was resolved by the district court, which is part of the general court as regulated in Law Number 14 of 1970 concerning the Principles of Judicial Power jo. Law Number 35 of 1999 concerning Amendments to Law Number 14 of 1970 concerning Basic Provisions of Judicial Power.

However, since the enactment of the UUK and PKPU, the settlement of bankruptcy cases is examined and decided by a commercial court within the general court environment. Then the commercial court, to a certain level, will be determined and given the authority to examine and decide other cases in the field of commerce.

The general explanation of the Bankruptcy Law states that the establishment of a commercial court is intended as a differentiation over the general court. The commercial court is the only judicial institution authorized to resolve bankruptcy problems in addition to problems related to trade. the stipulation will be carried out by government regulation by taking into account the level of needs and capabilities as well as the availability of human resources.

The commercial court is part of the general court. The establishment of a commercial court cannot be separated from the additional memorandum of the third agreement between Indonesia and the IMF (International Monetary Fund) which was agreed upon on April 8th, 1998. In particular, the agreement contained in Appendix VII concerning Indonesia, namely Bankruptcy and Judicial Reforms. Updating the Bankruptcy Law, the updated one is the establishment of a Special Commercial Court. This agency will handle bankruptcy proceedings and trade disputes. The trained judges will handle the trial, and the Supreme Court will handle appeal decisions from the Special Commercial Court.

Specifically, with regard to the authority to examine and apply for a declaration of bankruptcy and postponement of debt payment obligations, Article 280 paragraph (1) of the Bankruptcy Law states:

"Applications for declaration of bankruptcy and suspension of the obligation to pay debts as referred to in chapters one and two shall be examined and decided by the commercial court within the general judiciary."

Elucidation of Article 280 paragraph (1) reaffirms:

"With this provision, all applications for declaration of bankruptcy and suspension of the obligation to pay debts submitted after the entry into force of the law on bankruptcy is amended by a government regulation instead of law, can only be submitted to the commercial court."

Another absolute competence of the commercial court is regulated in Article 280 paragraph (2) of the Bankruptcy Law, namely other cases in the commercial sector that stipulation is carried out by government regulation (the government regulation in question does not yet exist). The authority of the commercial court is regulated in Article 2, paragraph (1) to paragraph (5) of the Bankruptcy Law that stipulates the general principle of court competence based on the debtor's domicile.

Aspects of international civil law are contained in Article 2, paragraph (2) of the Bankruptcy Law, which concerns debtors who have left the jurisdiction of the Republic of Indonesia. In this case, the court with authority to decide on a petition for declaration of bankruptcy is a court whose jurisdiction includes the debtor's last legal domicile. If the debtor is not domiciled in the last jurisdiction of the debtor, also if the debtor is not domiciled in the territory of the Republic

of Indonesia but carries out his profession or business within the territory of the Republic of Indonesia, the court that has the authority to decide is a court whose jurisdiction includes the legal position of the debtor's office running the profession or his business.

The arrangement as mentioned above appears to be only intended for debtors in the form of individuals not legal entities. For the legal debtors, the link point regarding the court's authority is regulated separately in Article 2 paragraph (5) of the Bankruptcy Law, where all debtors (non- legal entities) will be able to decide on the issue of bankruptcy by the Indonesian court, even though he is domiciled abroad as long as he carries out his profession or business in Indonesia, also for debtors who are domiciled in Indonesia but leave the territory of Indonesia when the bankruptcy is processed.

The base error is contained in Article 2 paragraph (5) of the Bankruptcy Law, which regulates the debtor in the form of a legal entity because it identifies the domicile of legal entities and the authority of the court by following the principle of *siege statutaire*; namely that the court's authority is permanent following the place of domicile. As stated in the articles of association, if this provision is implemented, it will create challenging problems for the courts when dealing with legal entities established abroad.

Indonesian courts will lose their competence to adjudicate legal entities established abroad because the authority will be with the courts if the company is established following its articles of association so that it can give rise to foreign legal entities that are "owned" by foreign parties or that are "owned by foreign parties". Indonesian people who are established abroad but carry out their main business or profession in Indonesia cannot be declared bankrupt by the Indonesian courts because there is no authority to do so.

The relative authority (jurisdiction) of the commercial court can be described as follows:

- a. The legal domicile of the debtor;
- b. The last legal domicile of the debtor, if the debtor has left the territory of the Republic of Indonesia;
- c. The legal domicile of the firm, if the debtor is a partner of a firm;
- d. The legal domicile of the debtor's office running his profession or business if the debtor is not domiciled in the territory of the Republic of Indonesia but carries out his profession or business in the Republic of Indonesia; and
- e. The legal domicile is regulated in the articles of association if the debtor is a legal entity.

The commercial court is not only authorized to examine cases of the petition for a declaration of bankruptcy and suspension of debt payment obligations (PKPU). The commercial court can also settle other disputes determined by government regulations. The dispute was manifested by law in the field of Intellectual Property Rights concerning Industrial Designs, Layout

Designs of Integrated Circuits, Patents and Marks. The five disputes are the authority of the commercial court.

In addition to handling bankruptcy cases, suspension of debt payment obligations, and other commercial matters, the commercial court is also authorized to handle cases of bankruptcy declaration requests from parties bound by an agreement containing an arbitration clause.

Case Analysis of the Position of Commercial Court Decisions at the Central Jakarta District Court Number 04/Pdt.Sus-Pailit/2016/PN.Niaga.Jkt. Pst.

The legal provisions governing the requirements when a debtor can be bankrupt by the commercial court are found in Article 1 paragraph (1) jo. Article 6 paragraph (3) of the Bankruptcy Law. A debtor can be declared bankrupt if it is simply (shortly) proven that the debtor is unable to pay his debts to:

- a. At least two creditors; and
- b. At least one debt has matured and is collectable.

The above provisions are standard from the state of being unable to pay. To be determined from the bankruptcy regulations prior to the amendment to the Bankruptcy Law (the debtor is in a state of stopping paying his debts).

This is as stipulated in Article 2 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, namely:

"Debtors who have two or more Creditors and do not pay off at least one debt that has matured and can be collected is declared bankrupt by a court decision, either at his request or at the request of one or more of his creditors."

Article 2 paragraph (1) of the Bankruptcy Law and PKPU is also mentioned at the request of one or more creditors. Although one creditor can submit it, this provision does not eliminate the primary requirement that a debtor can be declared bankrupt by at least two creditors.

If the applicant for bankruptcy is one of the creditors, then in the application he submits, it is necessary to explain the existence of other creditors who have receivables against the debtor. In addition, in the evidentiary process, creditors who are applicants for bankruptcy must be able to submit evidence related to existing receivables.

It starts from evidence related to receivables owned by the bankruptcy applicant to receivables owned by other creditors, which will be included in the bankruptcy application. This is because when the bankruptcy petition is registered, it must be accompanied by supporting evidence. The procedure differs from filing a regular civil suit, where new evidence is presented at the evidentiary stage.

The evidences that need to be prepared include:

- a. Evidence of a legal relationship (transactions/cooperation and others) between creditors (bankruptcy applicants) and debtors (bankruptcy applicants). It can be in the form of an agreement or contract, Purchase Order (PO), and others;
- b. Evidence of the existence of debts between creditors and debtors, which can be in the form of invoices or invoices in other forms;

- c. Correspondence evidence which there has been an attempt to collect from the creditor to the debtor, may be in the form of a billing letter, a warning letter or a summons; and
- d. Evidence of the existence of debts owed by the debtor to other creditors.

Basically, bankruptcy cases adhere to a simple proof principle. Namely the fact that the debtor has two or more creditors, as well as the fact that the debt has matured and has not been paid. Meanwhile, the dispute regarding the nominal value of the debt does not make the bankruptcy petition rejected by the court.

In the Decision of the Commercial Court at the Central Jakarta District Court Number 04/Pdt.Sus-Pailit/2016/PN.Niaga.Jkt.Pst, the petition for the bankruptcy was rejected by the Central Jakarta Commercial Court as a result of the exception made by the Respondent regarding the legal standing of the Petitioner in performing the bankruptcy petition and the absolute competence of the Central Jakarta Commercial Court in adjudicating the bankruptcy petition filed by the applicant.

Regarding the legal standing of the applicant, in the argument of exception and answer, which is accompanied by evidence from the respondent, it is proven that PT. Merpati Nusantara Airlines (PT. MNA) is State-owned and joined in a State-Owned Enterprise (BUMN), and by taking into account the aims and objectives of the establishment of PT. Merpati Nusantara Airlines (PT. MNA) can be concluded PT. Merpati Nusantara Airlines (PT. MNA) is a BUMN that serves the public interest. So that based on Article 2 paragraph (5) of the UUK and PKPU, if a BUMN that is engaged in the field of public interest is entitled to file a PKPU, it is the Minister of Finance that in this case, Sudiarto and Jafar Tambunan as employees of PT. Merpati Nusantara Airlines (PT. MNA), not the minister of finance.

Next, regarding the authority of the Central Jakarta Commercial Court in adjudicating bankruptcy petitions, in theory the judicial power can be divided into attributional judicial power (*attributie van rechtsmacht*) and distribution judicial power (*distributie van rechtsmacht*). Attribution of judicial power is absolute authority or absolute competence is the authority of court bodies in examining certain types of cases and absolutely cannot be examined by other court bodies, in this case the exception arguments and answers from the respondent regarding the authority of the Central Jakarta Commercial Court postulate:

"That Petitioner I have been an employee of the Respondent since August 1996 and was honorably dismissed by the Respondent since July 2004, and the claim that the petition should have submitted for payment of labor rights in the form of payment of salaries, salary fines, severance pay, Jamsostek contributions, which are therefore included in industrial relations disputes."

In this regard, the Assembly opinion is taking into account the provisions of Law Number 13 of 2003 concerning Manpower in Article 1 number 22 which contains:

"An industrial relation dispute is a difference of opinion which results in a conflict between an entrepreneur or a combination of employers and

workers/labor or a trade/labor union. workers due to disputes regarding rights, conflicts of interest, and disputes over termination of employment as well as disputes between trade unions/labor unions in only one company.”

Based on Article 1 number 22 of Law Number 13 of 2003 concerning Manpower by looking at the evidence submitted as well as the petitioner for bankruptcy and the response of the respondent for bankruptcy, it is true that the applicant is an employee (labor) while the respondent is an employer that thus the relationship between the applicant and the respondent is industrial relations or relations between employers and workers or workers or labor unions.

Taking into account the dispute between the applicant and the respondent who questioned the dismissal of the applicant in which the applicant's rights were not paid salary, salary fines, Jamsostek contributions and others. So, if there is a dispute, the relationship should be resolved by the industrial relations court.

The commercial court is a special court under the general court environment which is authorized to decide disputes regarding intellectual property rights, including copyrights, trademarks and patents. The commercial court is also authorized to examine and decide on bankruptcy disputes as stipulated in Article 3 jo. Article 1 point 7 of the UUK and PKPU, the dispute between the Petitioner and the Respondent which questioned the dismissal of the applicant in which the applicant's rights were not paid salary, salary fines, Jamsostek contributions and others. It is a legal relationship regulated in Law no. 13 of 2003 concerning Manpower.

Because wages are included in the rights of workers, disputes between employers and workers regarding wages include disputes over rights. Disputes over rights include types of industrial relations disputes. Regarding the settlement of industrial relations disputes, it is regulated in Law no. 2 of 2004 concerning Settlement of Industrial Relations Disputes. Every industrial relations dispute must be resolved first through bipartite negotiations by deliberation to reach consensus.

If bipartite negotiations do not resolve the dispute, then one or both parties shall record to the local manpower agency that bipartite negotiations have been carried out but to no avail.

The Industrial Relations Court is a special court within the general court environment. For cases of disputes over rights, the Industrial Relations Court has the authority to examine and decide at the first instance. The industrial relations dispute lawsuit shall be submitted to the Industrial Relations Court at the District Court whose jurisdiction covers the place where the worker/ laborer works. If the lawsuit involves more than one plaintiff, it can be filed collectively by giving special power of attorney.

4. Conclusion

The authority of the commercial court in resolving bankruptcy disputes in the decision of the commercial court at the Central Jakarta District Court Number 04/Pdt.Sus-Pailit/2016/PN.Niaga.Jkt. Pst can be broken by the respondent in

the arguments of the answer and the replica, and strengthened by the evidence it submits, which makes the tribunal legally and convincingly reject the bankruptcy petition. The reasons for the refusal of the panel in the decision of the commercial court at the Central Jakarta District Court Number 04/Pdt.Sus-Pailit/2016/PN.Niaga.Jkt. Pst, related:

Legal standing of the Petitioner is not in accordance with Article 2 paragraph (5) of the UUK and PKPU which mandates that if a BUMN that is engaged in the public interest has the right to file a PKPU, it is the minister of finance that in this case the petitioners for bankruptcy are Sudiyarto and Jafar Tambunan as employees of PT . Merpati Nusantara Airlines (PT. MNA), not the minister of finance.

Whereas the question in the application is related to the dismissal of the applicant by the respondent, in which the applicant's rights are not paid salaries, salary fines, Jamsostek contributions and others. By looking at the evidence submitted and the petitioner for bankruptcy and the response of the respondent to bankruptcy, it is true that the applicant is an employee (labor) while the respondent is an employer that thus the relationship between the applicant and the respondent is an industrial relationship or the relationship between the entrepreneur and the worker or the worker or labor union based on Article 1 number 22 of Law Number 13 of 2003 concerning Manpower, then the relationship if there is a dispute should be resolved by the Industrial Relations Court, not the authority of the Central Jakarta Commercial Court.

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