

IMPLEMENTATION OF GENERAL BANKRUPTCY SEIZURE

Andrie Gusti Ari Sarjono^{1*}, Muhammad Arifin², Ramlan³

^{*1,2,3}Universitas Muhammadiyah Sumatera Utara, Indonesia

^{*1}email: andriegusti013@gmail.com

Abstract: Based on the above understanding, bankruptcy is a seizure of assets. In these assets there is a legal relationship between creditors and debtors. Regarding seizures, it was initially placed in Article 1131 and Article 1132 of the Civil Code (KUHPerdara), with the intention of preventing creditors from carrying out seizures or executions themselves (eigenrichting). As long as the decision on the bankruptcy statement application has not been determined, each creditor and even the Attorney General can file a request to the court to place a security attachment on some or all of the debtor's assets. Or by appointing a temporary curator to carry out the settlement of the bankruptcy estate, including also playing a role in supervising the management of the debtor's business, payments to creditors, transfer or collateral of the debtor's assets in bankruptcy are the authority of the curator. Based on Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, hereinafter referred to as (Bankruptcy Law), specifically in Article 1 number 1, it explains that bankruptcy is a general seizure of all assets of a Bankrupt Debtor, the management and settlement of which is carried out by the Curator under the supervision of the Supervisory Judge as regulated in this Law.

Keywords: General, Bankruptcy, Seizure.

Introduction

According to E. Suherman, in essence, bankruptcy is a general confiscation of a conservatory nature and the party declared bankrupt loses control over his assets (Suherman, 1997). It is known that in bankruptcy law there is also a general seizure but from a different perspective from criminal law. Based on Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUK-PKPU) Article 1 number 1 bankruptcy is "General seizure of all assets of the bankrupt debtor, the management and settlement of which is carried out by the Curator under the supervision of the supervising judge".

Based on the above understanding, bankruptcy is a seizure of assets. In these assets there is a legal relationship between creditors and debtors. Regarding seizures, it was initially placed in Article 1131 and Article 1132 of the Civil Code (KUHPerdara), with the intention of preventing creditors from carrying out seizures or executions themselves (eigenrichting).

As long as the decision on the bankruptcy statement application has not been determined, each creditor and even the Attorney General can file a request to the court to place a security attachment on some or all of the debtor's assets. Or by appointing a temporary curator to carry out the settlement of the bankruptcy estate, including also playing a role in supervising the management of the debtor's business, payments to creditors, transfer or collateral of the debtor's assets in bankruptcy are the authority of the curator (Gunawan Widjaja, 2004).

The process of settling bankrupt assets is carried out through a general seizure mechanism due to a need regarding the settlement of the bankrupt assets. General seizure is one form of seizure known in civil law (private), especially bankruptcy law. While in public law in this case criminal law also recognizes the matter of seizure, in the Criminal Procedure Code (KUHP) it is called 'confiscation' in Dutch, the term seizure is referred to as "inbeslagneming".

Regarding seizure, the Criminal Procedure Code defines it in Article 1 number 16, namely "Confiscation is a series of actions by investigators to take over and/or keep under their control movable or immovable, tangible or intangible objects for the purposes of evidence in investigations, prosecutions and trials (M. Yahya Harahap, 2001)."

The confiscated objects are taken by investigators from the owner's authority to be used as evidence for the purposes of examination, prosecution, and trial. The confiscation is intended so that the objects are safe, cannot be removed or destroyed by the suspect or defendant.

Literature Review

1. General Seizure

Bankruptcy is a general seizure of all of the debtor's assets in order to achieve peace between the debtor and the creditors or so that the assets can be divided fairly among the creditors. This fair distribution is based on at least 3 principles in the realm of property law, namely the principle of *paritas creditorium*, the principle of *pari passu prorata parte* and the principle of structured creditors.

The purpose of bankruptcy is contained in the general explanation of the Bankruptcy Law. Its main purpose is to resolve debt cases fairly, quickly, openly and effectively. In addition, bankruptcy also aims to avoid confiscation and individual execution of the assets of debtors who are unable to pay off their debts. Individual executions carried out simultaneously certainly have the potential to cause conflict in the form of struggles between creditors. Another purpose of bankruptcy is to prevent creditors holding collateral rights from demanding their rights by selling the debtor's goods without considering the interests of the debtor or other creditors. Bankruptcy also aims to avoid fraud committed by creditors or debtors.

To achieve the bankruptcy goal, of course, the bankrupt debtor's assets must be secured, and one way to secure them is by confiscating them. Another term for confiscation is seizure, which comes from the terminology *beslag*, which is Dutch. Both confiscation and civil confiscation have the same meaning, namely the act of forcibly placing the defendant's assets in a state of custody, which is carried out officially based on a court or judge's order. The goods placed in custody are in the form of disputed goods, but may also be goods that will be used as a means of payment for the debtor's or defendant's debt, by selling the confiscated goods at auction. Determination and custody of confiscated goods take place during the examination process, until there is a court decision that has permanent legal force, which states whether or not the confiscation is valid.

There is a different concept between ordinary civil seizure and general seizure in bankruptcy, namely in civil seizure, seizure is based on a judge's decision while general seizure is based on a bankruptcy decision. In addition, civil seizure is usually carried out before a court decision while general seizure is carried out since a bankruptcy decision from the court. This concept can be seen from Article 1 number 1 of the Bankruptcy Law which regulates the definition of bankruptcy.

According to Article 10 of the Bankruptcy Law, a security seizure is a seizure carried out on part or all of a debtor's assets in order to protect the interests of creditors. A request for a security seizure can be submitted to the court by any creditor, the prosecutor's office, Bank Indonesia, the Capital Market Supervisory Agency, or the Minister of Finance. A security seizure in a bankruptcy case is requested before the bankruptcy is decided.

Method

A study cannot be said to be research if it does not have a research method (Koto & Faisal 2021). The research method is a process of collecting and analyzing data that is carried out

systematically, to achieve certain goals. Data collection and analysis is carried out naturally, both quantitatively and qualitatively, experimentally and non-experimentally, interactively and non-interactively (Koto, 2020). The research method used is normative juridical research, namely legal research conducted by examining literature or secondary data (Koto & Zainuddin 2022). In qualitative research, the process of obtaining data is in accordance with the research objectives or problems, studied in depth and with a holistic approach (Rahimah & Koto, 2022).

Result and Discussion

General seizure in bankruptcy is stated in the definition of bankruptcy based on Article 1 number 1 of Law Number 37 of 2004 concerning Bankruptcy and PKPU, where general seizure includes all the assets of the bankrupt Debtor when the bankruptcy decision is pronounced. Based on Article 31 paragraph (1) and paragraph (2) of the Bankruptcy Law, it is stipulated that all seizures that have been determined on the debtor's assets are cancelled since the bankruptcy decision is pronounced and since then the only thing that applies is the general seizure. Article 31 paragraph (1) and paragraph (2) of the Bankruptcy Law emphasizes that the position of the general seizure is higher compared to other seizures because with the existence of a general seizure all seizures are cancelled and if forced, the supervising judge can even delete seizures outside of the general seizure.

Based on Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, hereinafter referred to as (Bankruptcy Law), specifically in Article 1 number 1, it explains that bankruptcy is a general seizure of all assets of a Bankrupt Debtor, the management and settlement of which is carried out by the Curator under the supervision of the Supervisory Judge as regulated in this Law.

Article 2 of the Bankruptcy Law states that:

1. A debtor who has 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 of his creditors;
2. The application as referred to in paragraph (1) may also be submitted by the prosecutor's office for the public interest.
3. In the case where the debtor is a bank, a bankruptcy statement application may only be submitted by Bank Indonesia.
4. In the case where the debtor is a securities company, stock exchange, clearing and guarantee institution, storage and settlement institution, a bankruptcy statement application may only be submitted by the Capital Market Supervisory Agency.
5. In the case where the debtor is an insurance company, reinsurance company, pension fund, or state-owned enterprise engaged in the public interest, a bankruptcy statement application may only be submitted by the Minister of Finance.

Decisions on applications for declaration of bankruptcy and other matters related to and/or regulated in this Law, are decided by the Court whose jurisdiction covers the area where the Debtor is legally domiciled. The flow of applications for declaration of bankruptcy is regulated in Article 6 of the Bankruptcy Law as follows:

1. Applications for declaration of bankruptcy are submitted to the Chief Justice.
2. The Clerk registers the application for declaration of bankruptcy on the date the application in question is submitted, and the applicant is given a written receipt signed by an authorized official with the same date as the registration date.
3. The Clerk is required to reject the registration of applications for declaration of bankruptcy for institutions as referred to in Article 2 paragraph (3), paragraph (4), and paragraph (5) if it is not carried out in accordance with the provisions in these paragraphs.

4. The Clerk submits the application for declaration of bankruptcy to the Chief Justice no later than 2 (two) days after the date the application is registered.
5. Within a period of no later than 3 (three) days after the date the application for declaration of bankruptcy is registered, the Court studies the application and determines the trial date.
6. The hearing for examining a petition for a declaration of bankruptcy shall be held within a maximum period of 20 (twenty) days after the date the petition is registered.
7. Upon the request of the Debtor and based on sufficient reasons, the Court may postpone the holding of the hearing as referred to in paragraph (5) until a maximum of 25 (twenty five) days after the date the petition is registered.

In a bankruptcy decision, the curator acts as the person responsible for the settlement of the bankrupt's assets. Article 16 of the Bankruptcy Law states that the Curator is authorized to carry out the task of managing and/or settling the bankrupt's assets from the date the bankruptcy decision is pronounced even though an appeal or judicial review is filed against the decision. The Court Clerk is required to maintain a general register to record each bankruptcy case separately. The general register must contain sequentially:

1. summary of bankruptcy decision or decision to cancel bankruptcy statement;
2. brief content of the peace and its ratification decision;
3. cancellation of peace;
4. amount of distribution in settlement;
5. revocation of bankruptcy as referred to in Article 18; and
6. rehabilitation; by stating the date of each.

Bankruptcy includes all of the debtor's assets at the time the bankruptcy declaration decision is pronounced as well as everything obtained during bankruptcy, however the Bankruptcy Law excludes several matters relating to the debtor's assets in relation to bankruptcy in Article 22 of the Bankruptcy Law that:

1. objects, including animals that are really needed by the Debtor in connection with his work, his equipment, medical devices used for health, beds and equipment used by the Debtor and his family, and food for 30 (thirty) days for the Debtor and his family, which are in that place;
2. everything that the Debtor obtains from his own work as salary from a position or service, as wages, pension, waiting money or allowances, to the extent determined by the Supervisory Judge; or
3. money given to the Debtor to fulfill an obligation to provide a living according to the law.

Bankruptcy seizure is the seizure of all the debtor's assets, to be settled by the Curator for the benefit of the creditors. General seized assets in bankruptcy are under the authority of the Curator to be settled, in contrast to criminal cases where seized assets are under the authority of the state. By declaring bankruptcy, by law the debtor loses his right to control and manage his assets included in the bankruptcy estate (Article 24 of the Bankruptcy Law). And the main function of the Bankruptcy Law is a legal means for settling debts, either by force or coercion. Then in Article 31 paragraph (2) of the Bankruptcy Law it is stipulated that with the existence of a bankruptcy declaration decision, all seizures of the bankrupt's assets are removed, meaning that it becomes the authority of the Curator in the context of the process of settling the bankrupt's assets.

Conclusion

Based on Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, hereinafter referred to as (Bankruptcy Law), specifically in Article 1 number 1, it explains that bankruptcy is a general seizure of all assets of a Bankrupt Debtor, the

management and settlement of which is carried out by the Curator under the supervision of the Supervisory Judge as regulated in this Law.

Bibliography

E.Suherman. (1997). *Failissement*, Jakarta: Bina Cipta.

Gunawan Widjaja. (2004). *Pedomana Menangani Perkara Kepailitan*, Jakarta: PT Raja Grafindo Perkasa.

Koto, I., & Faisal, F. (2021). Penerapan Eksekusi Jaminan Fidusia Pada Benda Bergerak Terhadap Debitur Wanprestasi. *Journal of Education, Humaniora and Social Sciences (JEHSS)*, 4(2), 774-781.

M. Yahya Harahap. (2001). *Pembahasan Permasalahan Dan Penerapan KUHAP Penyidikan dan Penuntutan*, Edisi Kedua, Jakarta: Sinar Grafika.

Rahimah, R., & Koto, I. (2022). Implications of Parenting Patterns in the Development of Early Childhood Social Attitudes. *International Journal Reglement & Society (IJRS)*, 3(2), 129-133.

Zainuddin, Z. (2022). Implementation Of The Change Of The Chairman Of The Labuhan Batu Selatan Regional People's Representative Council. *International Journal Reglement & Society (IJRS)*, 3(1), 11-18.