

OBJECTIVES OF BANKRUPTCY LAW

by

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OBJECTIVES OF BANKRUPTCY LAW

Bankruptcy

- Execution of Debtor's Asset
- Distribution of Debtor's Asset to Creditors

Suspension of Payment (PKPU)

- To give opportunity to Debtor to reorganize its business or to restructure its debts (maximum of 270 days) to enable the Debtor to pay its debts and avoid bankruptcy

Settlement

- If agreed by more than half of Secured Creditors representing more or equal to two third of the debt, Settlement can be made in which Bankrupted Debtor shall only settled part of its debts as agreed with Secured Creditors to lift up Bankruptcy (articles 141 & 265)

BANKRUPTCY PETITION

- Submitted by Creditor/Debtor/District Attorney/Bank Indonesia/Stock Exchange Supervisory Board (Bapepam) (article 1 (1), (2), (3), (4))
- Debtor shall have at least two creditors
- At least one of the debts has passed due and unpaid (article 1 (1))
- The debt is not paid and can simply be proved
- Submitted by licensed legal counselor (article 5)

IMPLICATION OF DECLARING BANKRUPTCY

- Attachment in general upon all Debtor's assets (articles 19, Bankruptcy Regulation [PK] of article 89 and 90)
- Act of Cancellation (articles 41, 43)
- Only Receiver which is allowed to assign Debtor's asset (articles 12, 56A (3), 67, 98 and 170)
- Bankrupted party still in its capacity to carry out legal action
- However bankrupted party's actions do not have legal implications on its assets, except the ones that profited bankruptcy estate (article 22, and article 23 PK)

Act of Cancellation

Receiver may cancel any agreement that

- a. Voluntarily made by Debtor
- b. Damages creditor
- c. The parties aware or supposedly know that such agreement damages creditors (article 41)

Principle of “supposedly know that such agreement damages creditor”

- ◆ should be made 1 (one) year prior to bankruptcy declaration
- ◆ Debtor’s obligation is far excessive of other party’s obligation in such agreement
- ◆ serves as payment upon, or as to provide guarantee for undue debts and unpayable.
- ◆ Being made with affiliated parties (articles 42, 44)

Receiver may also cancel agreement that is an obligation of Debtor, in which

- (a) the party receiving payment knows that bankruptcy declaration of Debtor has already been requested, or
- (b) the payment gives profit for the receiving party more than other Creditors (article 46 PK)

CREDITORS RIGHTS

Secured Creditor

- *Competing secured creditors:* all secured creditors have the same right upon payment of debt and proceeds of execution of Bankruptcy Estate shall be distributed proportionally to all Secured Creditors equal to value of receivable (article 175 (2) PK)
- Cost of bankruptcy shall also be borne proportionally (pro rata) (article 177 PK)

Creditor with Preferential Right

- Creditor with preferential right (articles 1139, 1149 Indonesian Civil Code [KUHPerdata])
- Parties having receivable due to bankruptcy process (such as Receiver’s fee) shall be given preference from Secured Creditor when distribute proceeds of Bankruptcy Estate execution (article 15 (3))
- Creditor holding money of Bankruptcy Debtor may compensate its receivable upon Bankruptcy Estate (article 56A(2))

CREDITOR WITH COLLATERAL

- May still execute guarantee at least 2 (two) months as from the beginning of insolvent condition (settlement fails) (article 57)
- Unless being delayed as per article 56A PK
- Does not bare cost bankruptcy cost (article 177 PK)

Delay of Execution Right of Creditor with Collateral (article 56A)

- Maximum delay of 90 days
- Permission from Receiver or Supervisory Judge shall be needed for execution

- Delay includes: right of third parties to claim their assets being held by Bankruptcy Debtor or Receiver (such as the right of FEO holder or Lessor to request goods being in the FEO or leased)
- Creditor may ask Receiver or Supervisory Judge to lift up or change terms of suspension
- Upon Supervisory Judge Decision, Contest can be brought to the Court, in which its judgement can not be encountered by cessation or judicial review
- Suspension shall only be granted if Creditors being their right of execution suspended, is given proper protection (such as being given interest upon Suspension and compensation upon depreciation of collateral due to suspension)

Objectives of Suspension

- The above mentioned collateral can be used to optimize other bankruptcy assets to get profit (add the value of) bankruptcy assets
- Collateral together with other bankruptcy assets can be sold “as a going concern” (Creditors with collateral are certainly entitle to be immediately paid fully upon the sale of their collateral by Receiver)

TERMINATION OF BANKRUPTCY

- Bankruptcy Judgement can be canceled by Cessation or Judicial Review (articles 10, 11)
- Bankruptcy Estate has been executed and distributed proportionally to Secured Creditors (doctrine)
- Creditors shall be paid fully upon their receivables (article 188 PK)
- Settlement (article 156 PK)
 - ◆ binds the whole Secured Creditors
 - ◆ agreed by more than half of Secured Creditors presented Creditors Meeting representing more or equal to two third of claims
 - ◆ writes off some of debts agreed by Creditors Meeting
- Having terminated the bankruptcy due to completed distribution of Bankruptcy Estate (not by settlement), Creditors which has not yet paid fully is entitled to sue Debtor (article 190 PK)

PARTIES INVOLVING IN BANKRUPTCY

RECEIVER

- ◆ Individual/private partnership with expertise having domiciled in Indonesia, having registered in the Department of Justice (article 67A(2))
- ◆ Responsible in administering/settling Bankruptcy Estate (articles 12, 67)
- ◆ Responsible privately upon his errors in administering/settling Bankruptcy Estate (article 67C)

- ◆ Having authority to cut off any agreements entered into prior to bankruptcy (article 36) and entering new agreements after Debtor being declared bankrupt (article 67 (2b))
- ◆ Having obligation to verify Creditors receivables (article 107 PK)
- ◆ Shall continue the business of the bankrupt party, if the prospect is good (article 95)

Supervisory Judge

- ◆ To supervise the works of Receiver (article 63 PK)
- ◆ His approval shall be needed for Receiver to carry out certain legal acts (articles 67 (3), (5); 95 (2); 98 (1))

Creditor's Committee

- ◆ To give advise Receiver (article 71 PK)

SUSPENSION OF PAYMENT (PKPU)

Petitioner

- ◆ Debtor only (article 212)
- ◆ Submitted by licensed legal representative (article 213 (1))
- ◆ Attached with Composition Plan (article 213 (2))

Reasons

- ◆ Needs time to be able to settle debts which are already due (article 212)
- ◆ To avoid Bankruptcy (article 217 (6))

Temporary Suspension (article 214)

- ◆ Must be given by Court for a period not more than 45 days
- ◆ Appointment of Administrator and Supervisory Judge
- ◆ Within this period and as long as the Suspension (including Permanent Suspension) has not yet been lifted up, Debtor may still administer its asset together with Administrator; but it can not assign its asset without Administrative assistance

Temporary Suspension

- ◆ Right of execution of (i) Creditor having its receivable being secured with collateral (Separatist Creditor), (ii) Creditor with Preferential Right and third parties claiming their assets being in the control of Debtor, shall be suspended within the period of Suspension (article 231A)

Permanent Suspension

- ◆ If approved:
 - Suspension will be for maximum of 270 days as of judgement of Temporary Suspension (article 217 (4))
 - Debtor can not be forced to pay its debts (article 228 (1))
 - All execution that have already been commenced shall be suspended (article 228 (1))
 - All attachment shall ended (article 228 (2))
 - Debtor can not fire its employees (article 237)
- ◆ If refused: Bankruptcy (article 217A)
- ◆ If approved but Settlement can not be reached within 270 days: Bankruptcy (article 217A)
- ◆ Voting (more than half of Secured Creditors present the meeting representing equal or more than two third of receivables)

Legal Action (Elucidation of Figure 57)

Cessation is no longer possible:

- ◆ For Debtor having its petition for (Permanent) Suspension is refused
- ◆ For Debtor having been declared bankrupt since its petition for (Permanent) Suspension is refused
- ◆ For Secured Creditors which are not approving Suspension that previously already been approved by other Secured Creditors through voting

TERMINATION OF SUSPENSION

Permanent Suspension shall terminate due to:

- Legalization of Settlement (article 273) since debt payment is done in accordance with the Settlement
- Refusal upon Composition Plan, Debtor being declared Bankrupt (article 274), and Debtor can not take up cessation or even Judicial Review (article 275)
- Refusal of Court to legalize Settlement due to reasons as mentioned in article 269 (2), so Debtor is declared bankrupt (article 269 (3)), but Debtor can still lodge cessation (article 269 (4))
- Upon request of Supervisory Judge or Administrator or Creditor or Court under the reasons as mentioned in article 240 (1), Debtor is declared Bankrupt (article 240 (5)), but Debtor can still lodge Cessation and Judicial Review (article 241)

PARTIS INVOLVING IN SUSPENSION OF PAYMENT

Administrator (article 217E)

- Individual/private partnership having expertise and domiciled in Indonesia, having registered in the Department of Justice
- Responsible privately upon error or failure which may resulted in damages of Debtor's assets

Creditor's Committee (article 217B)

- Being appointed by Court upon request of Secured Creditors representing equal or more than half of receivables
- To give suggestion to Administrator

Supervisory Judge

- To supervise or giving approval upon Administrator and Debtor's actions (breakdown details on its task is spread in articles concerning Suspension)
- In the event of Suspension, Supervisory Judge is previously unknown in PK

Expert (article 224)

- Appointed by Supervisory Judge
- To examine and prepare report on the condition of Debtor's asset

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BANKRUPCY PROCESS

Bankruptcy Petition (article 4)	Bankruptcy Judgement (article 6 (4))	Insolvency (article 168 PK)	Rehabilitation – Individual (Chapter I Part 11 PK)
Security Attachment or	General Attachment	Execution	Creditor's claim that
temporary receiver (art.7) or Suspension (article 217 (6))	Verification (Chapter I Part 5 PK) Settlement (Chapter I Part 6 PK)	Administration (Chapter I Part 7 PK)	hasn't been settled (art. 190 PK)
	Uitvoerbaar Bij voorraad (Immediate Executable) (article 6 (5))		Dissolution of Limited Liability Company (article 117 (1c) UUPT)