

## REFLECTING THE HIGHEST VALUES OF ISLAM IN THE PROTECTION OF DEBTORS IN THE EXECUTION OF SEPARATIST CREDITORS

### (A DIMENSIONAL NARRATIVE ABOUT THE LEGALITY OF FINANCIAL SERVICE PRODUCTS IN INDONESIA)

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#### Abstract

*Implementation execution by creditor separatist without through aanmaning in court as set in Article 55 and Article 56 of the Law Number 37 of 2004 has been leave behind from Pancasila justice . The method used \_ is non- doctrinal method . Based on the data obtained seen that implementation execution bankruptcy as arranged \_ in Article 55 and Article 56 of the Law Number 37 of 2004 more prioritize interest from creditor separatist , hal this the more complicated with existense culture the law that shows that execution bankruptcy with thing guarantee right dependents without must through aanmaning in court , should be mean from insolvency debtor is examination in court or through aanmaning related ability debtor for pay off the debt , isn't it ? solely based on analysis and views creditor separatist only . This thing clear by implied based on Article 28D of the 1945 Constitution of the Republic of Indonesia and automatic contrary with Mark Justice social Pancasila. It means that in policy law execution bankruptcy must capable create balance protection right Among creditor nor debtor , according with view from appreciation on value humanity or human rights awards in the form of similarity in front of law so that capable realize execution just bankruptcy \_ able question \_ protect interest creditor separatist at a time protect debtor from loss consequence mailing . situation this clear far from teachings about Mark halal will something service finance .*

**Keywords :** ( *Debtor , Execution , Halal , Creditor* )

#### A. Background Behind

basic idea from PKPU basically is give chance for debtor for reorganize or arrange repeat his efforts . setting return something business naturally need quite a long time. The time given by Article 225 paragraph (4) of the Bankruptcy Law and PKPU above rated no enough give chance to debtor for arrange return his efforts . Remember for 45 days debtor must finalizing peace proposals , lobbying , and reorganizing effort . In short time the as if give profit to creditor .<sup>1</sup>

PKPU application is basically only is method debtor for avoid existense application bankruptcy filed by creditors . \_ Amount subject that can submit PKPU application to Court Commerce causing run away limit protection law for creditor . Remember PKPU 's efforts according to Article 229 paragraph (3) of the Bankruptcy Law and PKPU states that : that in Thing PKPU application and bankruptcy submitted at the same time in court Commerce so application for PKPU will checked and decided more first .<sup>2</sup>Therefore \_ base main PKPU application is faith well delivered \_ good by debtor or creditor .

Furthermore , the Bankruptcy Law and PKPU are seen as join as well as arrange about liquidation too prematurely . That thing impact on degradation investor confidence from at home and abroad who tend to hinder rate investment domestically . During this Supreme Court through Decision Cassation often cancel Decision

statement bankrupt with base Article 2 of the Bankruptcy Law and PKPU because : parties who can submit application bankrupt for State-Owned Enterprises (BUMN) no sync with the SOE Law. Besides that , Article 2 paragraph (3) to paragraph (5) of the Bankruptcy Law and PKPU also regulates the authority submit application bankruptcy by the attorney general's office , Bank Indonesia, the Financial Services Authority (OJK), and the Ministry of Finance Finances that are not Becomes creditor .<sup>3</sup>

issues that arise is regarding authority curator . In level practice , authority curator tend beyond limit because Act as if as advocate as a result curator difficult touched by law . Lack of function supervision implementation Duty curator To use supervise integrity curator , authority responsibility and reward service curator condition rated bankrupt \_ too easy as well as lack of protection to debtor . In Thing this debtor Becomes aggrieved party . \_ Besides add standards and supervision to curator save need conducted coordination between organization profession that covers curator that is Association Indonesian Curators and Administrators (AKPI), Ikatan Indonesian Curators and Administrators (IKAPI), and the Association of Indonesian Indonesian Curator and Administrator ( HKPI ). Difference pattern thought and interpretation from each performance organization curator above \_ tend influence professionalism performance curator in serve debtors and creditors .<sup>4</sup>

Another major problem today, can be seen in Article 2 (paragraph 1) of Law Number 37 of 2004 concerning irrational bankruptcy requirements because bankruptcy applications can be filed and a bankruptcy decision by the Commercial Court can be imposed on debtors who are still *solvent* , ( i.e. debtors whose total assets are greater than the total amount of their debts). With such bankruptcy conditions, it is very difficult to achieve legal certainty and the objective of implementing a just Bankruptcy Law. In addition, Law Number 37 of 2004 pays more attention to and protects the interests of bankrupt creditors than the interests of bankrupt debtors which should also be protected. This means that Law Number 37 of 2004 should pay attention to and provide balanced legal protection for the interests of creditors and debtors in accordance with the principle of bankruptcy in general, namely the principle of providing balanced legal benefits and protection between creditors and debtors and the principle of encouraging investment and business.<sup>5</sup>

The conditions for bankruptcy as referred to in Article 1 “Faillissements- *Verordening* ” (Bankruptcy Law), which took effect on November 1, 1906 even though only provided the possibility to file a bankruptcy petition against a debtor in disability ( *Van de voorziening in geval van onvermogen van kooplieden* ) or are not really capable ( *kennelijk onvermogen* ) so they are in a state of stopping paying back their debts. This means that the debtor is in a state of *insolvency* (larger liabilities than assets and receivables), <sup>6</sup>while for debtors who are still *solvent* (lower liabilities than assets and receivables) the Curator should ask the debtor to jointly find a solution to pay off his obligations by fixing the problem. management, for example the curator and the debtor conduct an independent audit to find out the problem of the debtor so that the curator does not directly settle the assets of the bankrupt debtor.<sup>7</sup>

Examples of cases that show the irrationality of the bankruptcy provisions in the Bankruptcy Law are the bankruptcy cases of PT Dirgantara Indonesia (PT. DI) and the bankruptcy of PT Telekomunikasi Selular Tbk. (PT. Telkomsel). In the case of bankruptcy (PT. DI) as the debtor, where as a BUMN engaged in the public interest, PT DI can only be filed for bankruptcy with the permission of the Minister of Finance. This is regulated in Article 2 paragraph (5) of the Bankruptcy Law, which reads:

In the event that the Debtor is an Insurance Company, Reinsurance Company, Pension Fund, or State-

3 Accessed through <https://bhpsemarang.com/berita-kepailitan-dan-pkpu.html> on 27 September 2018 at 10.00 WIB.

4 Accessed through <http://google.com/amp/amp.kontan.co.id/news/ruu-pailit-perketat-gerak-para-curator> accessed on 27 September 2018 at 10.15 WIB.

5 <https://www.Hukumonline.com/Pusatdata/detail/320/node/19/undangundang-nomor-4-tahun-1998/> , accessed on July 4, 2019.

6 Drs. contribution. R. Soejartin , *Commercial Law I and II*, Pradnya Paramita Publishers, p. 263.

7 *loc.cit*

Owned Enterprise operating in the field of public interest, the application for a declaration of bankruptcy can only be submitted by the Minister of Finance.

However, the explanation of the article regulates things in more detail, namely only BUMN that are not divided into shares that require the Minister of Finance's permission. In other words, in this context it is a state-owned enterprise whose entire capital is owned by the state. The regulation regarding BUMN which is divided or not divided into shares is contained in Law No. 19 of 2003 concerning BUMN. In that law, BUMN which is divided into shares is in the form of a Persero. Meanwhile, shares that are not divided into shares are in the form of Perum. PT DI is in the form of a Persero, meaning that it is divided into shares and does not require the Minister of Finance's permission to go bankrupt. This clearly does not provide legal protection for BUMN Persero because it can be bankrupt by anyone even though the BUMN Persero is an important State asset and affects the economy of the nation and the State.<sup>8</sup>

While in the bankruptcy of PT Telekomunikasi Selular Tbk. (PT. Telkomsel) according to Decision No. 48/Bankruptcy/2012/PN. Niaga.JKT.PST stated that PT. Telkomsel is proven to have a debt due which can be collected by PT Prima Jaya Informatika amounting to Rp. 5.3 billion and a number of other creditors, such as PT Extend Media Indonesia worth Rp21,031,561,274 and Rp19,294,652,520,-.<sup>9</sup>

In fact, as is known, the impact of bankruptcy (PT. Telkomsel) which concerns the fate of users of its products and thousands of employees who are threatened with losing their jobs just because it is so easy to go bankrupt as intended by Article 2 (paragraph) of the UUKPKPU. This makes the conditions for bankruptcy are irrational which do not provide legal protection for creditors and debtors in a balanced way. Telkomsel (as Debtor) which has assets and profits of trillions of rupiah as a company that is still very solvent must go bankrupt even though at the Cassation level, the Judge of the Supreme Court annulled the decision of the commercial court.<sup>10</sup>

With the bankruptcy decision, the Curator has the authority to manage and settle bankruptcy assets starting from the date of the bankruptcy declaration decision, which is effective starting at 00.00 local time (article 24 paragraph 2) even though an appeal or judicial review is filed against the decision (Article 24 paragraph 2). 16 verse 1). In the event that the decision on the declaration of bankruptcy is canceled by the court as a result of an cassation or judicial review, all actions taken by the curator are still valid and binding on the debtor (article 16 paragraph 2). The first task that must be carried out by a curator from the start of his appointment, according to article 98, is to carry out all efforts to secure the bankruptcy estate and to keep all letters, documents, money, jewelry, securities, and other securities by providing a receipt.<sup>11</sup>

## B. Method Study

Type study the law used is non doctrinal . In study non- doctrinal law this law conceptualized sociologically as an empirical phenomenon that can be observed in life.

## C. Discussion

### 1. Implementation Debtor Legal Protection for Bankruptcy Performed by Creditors \_ Separatist Moment This

The implementation of bankruptcy in Indonesia in its development has neglected justice for debtors. This can be seen in the provisions of Article 55 and Article 56 of the Law Number 37 of 2004

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8 <https://www.hlplawoffice.com/perlindungan-law-seimbang-pada-kreditur-dan-debitur-bankrupt/>, accessed on July 4, 2019.

9 Journal of Law dated September 14, 2013, Subject: Juridical Review of PT.Telkomsel Bankruptcy Decision (Case Study of Decision No. 48/Pailit/2012/PN.Niaga.JKT.PST by: Robby Andrian, SH)

10 <https://www.hlplawoffice.com/perlindungan-law-seimbang-pada-kreditur-dan-debitur-bankrupt/>, accessed on July 4, 2019.

11 *loc.cit.*

concerning Bankruptcy and Insurers Obligation Debt Payment . As a result of the provisions referred to in Article 55 and Article 56 of the Law Number 37 of 2004 concerning Bankruptcy and Insurers Obligation Payment of these debts , in fact there are many cases of debtors who are actually still able to pay their receivables, must be unilaterally bankrupted by the private creditor. This is shown in the case number 21/Pdt.Sus-Pailit/2019/PN Niaga SMg.<sup>12</sup>

In the case with case number 21/Pdt.Sus-Pailit/2019/PN Niaga SMG, the judge decided that PT. Mulya Jaya Perkasa Cemerlang and Yohanes Setiawan were declared bankrupt. The judge's consideration is PT. Mulya Jaya Perkasa Cemerlang and Yohanes Setiawan were insolvent because they could not pay the debt to Joseph Chan Fook Onn one time in arrears. If you see this consideration, it is very unfair considering that PT. Mulya Jaya Perkasa Cemerlang still has good ethics by making requests for debt payments in the next period, because in this period there is no budget for debt payments, meanwhile PT. Mulya Jaya Perkasa Cemerlang has never been in arrears in paying debts to Joseph Chan Fook Onn.<sup>13</sup>In addition, this can also be seen in the decision of the commercial court regarding the issue of bankruptcy in the bankruptcy case that occurred in Medan with the decision Number 267/ Pdt.Sus -PHI/2019/PN Mdn 2025 . In this decision, the judge prioritized the plaintiff's view and focused more on the debt agreement, which was clear that most of the debt agreements prioritized the interests of creditors.<sup>14</sup>

This is clearly contrary to the mandate of Pancasila which requires legal justice for all groups of Indonesian society, so that the provisions of Article 55 and Article 56 of the Law Number 37 of 2004 also contradicts the Fourth Paragraph of the 1945 Constitution of the Republic of Indonesia and Article 28D of the 1945 Constitution of the Republic of Indonesia which states that “ everyone has the right to on recognition , guarantee , protection , and certainty fair law \_ as well as same treatment \_ in front of law “. This clearly also contradicts the preamble to Law Number 37 of 2004 .

Based on the various kinds of deviations in justice that exist, it is clear that Article 2, Article 55 and Article 56 of Law Number 37 of 2004 have contradicted their preamble, and are also contrary to Pancasila and the 1945 Constitution of the Republic of Indonesia. This shows that Article 2, Article 55 and Article 56 of Law Number 37 of 2004 has no legal basis and is not based on the existing basic law, it is clear that it has violated the first point which states that “the system law must contain the rules it means he no can contain just decisions that are *ad hoc* “. state thereby Becomes the more complicated with the ratification of the Supreme Court Decree Number 109/KMA/SK/IV/2020 concerning Enforcement Book Guidelines Solution Case Bankruptcy And Delay Debt Payment . This thing because authority to creditor separatist for submit Bankruptcy and Delay Debt Payment as meant Article 222 of the Law Number 37 of 2004. This is clear add discrimination for position debtor .

Based on description in advance so could understood that in norms organized law \_ tiered and layered , as well as group , show something line political law . That thing because norm base containing \_ ambition social and appraisal ethical public elaborated and concretized to in norms more law \_ low . That thing show that existence something demands public good that ambition social nor evaluation ethical public want to realized in something life social through norms created law . \_ Norms \_ organized law \_ tiered and layered \_\_ also shows \_ something line synchronization Among norm more law \_ height and norm more law \_ low . That thing because norm more law \_ low valid , sourced , based , and therefore no can contrary with on the norm more law \_ high .

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12 Decision Data Case Bankruptcy From Court Commerce Semarang, obtained on June 12 , 2020.

13 Richardus Helmy H., *Decision of the Bankruptcy Case Obtained from the Registrar of the Semarang Commercial Court*, Retrieved on June 12, 2020.

14 Obtained through verdict.mahkamahagung.go.id, on June 12, 2020.



## 2. Relevance Pancasila Justice Within Protection Debtor On Execution Creditors Separatist

Based on the opinion of Kelsen and Nawiasky as well as the description above, it is also clear that Article 2, Article 55 and Article 56 of Law Number 37 of 2004 as *Formell Gezets* ( Formal Law ) is contrary to the 1945 Constitution of the Republic of Indonesia which is the *Staatsgrundgesetz* ( Basic State Rules / Rules Principles of the State ) , and automatically also contradicts Pancasila which is the *Staatsfundamentalnorm* ( State Fundamental Norms ). Then automatically Article 2, Article 55 and Article 56 of Law Number 37 of 2004 also contradict legal principles, which include:

### 1. Principle Balance

Constitution this arrange a number of provisions which are embodiment principle balance , i.e put together party , there is conditions that can prevent happening abuse institutions and institutions bankruptcy by debtors who do not Honestly , on the other hand , there are conditions that can prevent happening abuse institutions and institutions bankruptcy by creditors who do not intend good . According to Adrian Sutedi convey that :<sup>15</sup>

Constitution bankruptcy must give balanced protection \_ for creditors and debtors , upholding justice and care interest both , include aspects important assessed \_ need for realize solution debt problems \_ by fast , fair , open and effective .

### 2. Principle Business Continuity

In Constitution this , there is conditions that allow company prospective debtor \_ permanent was held . because of that application statement bankrupt should only could submitted to insolvent debtors , namely those who do not pay his debts to creditor majority .<sup>16</sup>

### 3. Principle Justice

In bankruptcy principle Justice contain understanding , that provision about bankruptcy could fulfill the sense of justice for interested parties . \_\_ Principle Justice this for prevent happening arbitrariness party collector who seeks payment on bill each to debtor , with no care creditor other .

### 4. Integration Principle

Principle integration in Constitution this contain definition that the legal system formal and legal the material is one unified whole \_ of the legal system civil and civil procedural law national .

This is clearly contrary to the mandate of Pancasila which requires legal justice for all groups of Indonesian society, so that the provisions of Article 55 and Article 56 of the Law Number 37 of 2004 also contradicts the Fourth Paragraph of the 1945 Constitution of the Republic of Indonesia and Article 28D of the 1945 Constitution of the Republic of Indonesia which states that “ everyone has the right to on recognition , guarantee , protection , and certainty fair law \_ as well as same treatment \_ in front of law “. This clearly also contradicts the preamble to Law Number 37 of 2004 . This is in line with the opinion of Hikmahanto Juwana which states that:<sup>17</sup>

Amendments to the Bankruptcy Law are very dominant with the protection of creditors. This can be seen by the existence of a condition for the existence of a debt that is past due, but in the provisions of the Bankruptcy Law there is no explicit provision which requires that it is clear and based on law that the debtor has been proven unable to pay the debt or is *insolvent*. This is clearly not in accordance with the philosophy of the Bankruptcy Law which is a bridge in the problem of the

15 Adrian Sutedi , 2009, *Bankruptcy Law* , Ghalia Indonesia , Bogor, p . 30

16 *Ibid*.

17 Hikmahanto Juwana, *Law as a Political Instrument: Intervention of Sovereignty in the Legislation Process in Indonesia*, Delivered in a scientific oration at the 50th Anniversary of the Faculty of Law, University of North Sumatra, on 12 January 2014.

inability of debtors to pay their debts to creditors.

Thus, the implementation of bankruptcy law in the community has clearly harmed debtors, this can be seen in various cases and court decisions related to bankruptcy as described above.

### 3. **Revealing the Halal Value in Nature Perspective Protection Debtors on Bankruptcy Law in Indonesia**

In Mulla Sadra 's thesis , he explain that every moment man always move , both at the level of accident nor substantial . motion that as described by Aristotle aims going to to mover that alone . deep one draft theological called God . Back to Mulla Sadra , he thinks motion man character evolutionary start from soul mine , soul plant , soul animal until to soul human . Human soul is achieved quality \_ only if in his life always life behave ethical / moral . Humans who live only limited to fulfillment satisfaction eat drinking and sex by Mulla Sadra called only have soul animal . Mulla Sadra 's explanation this in line with hadith that says that in the afterlife later when man resurrected , condition man will many kinds of shape , something resembles \_ monkeys , pigs , dogs , snakes and others. human model when resurrected depends to soul what is actual in herself when man the live in the world. Humans who live full cunning and deceit power , then in the afterlife later will resurrected resembling snake venomous , too human who lives only for pleasure ( hedonic ) then he will resurrected with resembling pig . From Mulla Sadra . 's thesis that , we interesting conclusion that must ber ethics no only because man is Caliph God on Earth , but juh more in from it . Ethics/ morals is road going to perfection human . For that ethics is a must \_ practiced by every human . here location importance institution sharia Islam Like Indonesian Ulema Council (MUI). This institute should no only limited publish Halal regulations and certification . But institution this must down hand educate society will the importance application ethics in life everyday . Possibility application ethics based on Halal regulations and certification , Ethics is also not only based on the rules but more to internalization . Because if only limited rules , man no feel the importance ethics the in life practically . In study Psychology , as explained by Jalaludin \_ Grace in the book psychology Communication . There are three compliance models . That is obedience because existence rules , like obey subordinate to boss , second obedience because existence awareness that there is benefit when he obey . Like obey a patient to the doctor who suggested for drink drug although he no like . However \_ patient the aware that drug the beneficial for his health .<sup>18</sup>

Based on explanation above \_ seen clear that it is halal and not haram only related with law but also related with the meters will something deed could said worth and not so that capable create an orderly society . \_ The existence of MUI and its internalization understanding of halal and haram will something product service including in Thing service finance through education economy islam very urgent To use controlling realization law bankruptcy that does not only protect creditor but also debtors by balanced , apart that capable give good ethics \_ \_ \_ debtors and creditors in agreement receivables which at the end capable realize growth healthy capital and in the end capable realize wheel healthy economy too .

## D. **Conclusion**

Implementation protection law to debtor in execution bankruptcy committed by creditors \_ separatist not yet capable realize Justice for debtor , as a result existence provision Article 55 and Article 56 of the Law Number

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18 An Ras Try Astuti and Rukiah , Halal Business in Islamic Ethical Perspective : Theoretical Studies , *AL MA' ARIEF: JOURNAL OF SOCIAL EDUCATION*, Volume 1, No. 2, 2019, p . 99.

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37 of 2004 which requires did execution bankruptcy by unilaterally by the creditor with no must through court .  
This thing clear far from mandate will existence organization service Halal finances as meant by Islam.

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