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Determination of Insolvency in Bankruptcy Arising from Postponement of Debt Payment Obligations

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Abstract

The determination of insolvency status is a crucial stage in bankruptcy proceedings because it marks the transition from asset preservation to asset liquidation for the benefit of creditors. However, legal issues arise when debtors who have been declared insolvent continue to pursue legal remedies against secured creditors, raising questions regarding their legal standing and the extent of their rights after insolvency has been established. This study aims to analyze the legal implications of insolvency status on a debtor's capacity to undertake further legal actions and to examine how Indonesian Bankruptcy and Suspension of Debt Payment Obligations (PKPU) Law provides legal certainty in such circumstances. This research employs a normative juridical method using statutory and case approaches. The analysis focuses on the provisions of the Bankruptcy and PKPU Law and relevant court decisions, particularly Supreme Court Decision Number 726 K/Pdt.Sus-Pailit/2022 and Commercial Court Decision Number 26/Pdt.Sus-Gugatan Lain-lain/2022/PN Niaga Jkt.Pst. The results indicate that insolvency status significantly affects a debtor's legal standing because the management and disposition of the bankruptcy estate are transferred to the curator under judicial supervision. Furthermore, the study finds that legal certainty regarding insolvency status may be established through either a supervisory judge's determination or the minutes of a creditors' meeting declaring insolvency. These findings demonstrate the importance of a clear interpretation of insolvency provisions to ensure consistency, legal certainty, and the protection of creditors' rights within bankruptcy proceedings.

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INTRODUCTION

Economic activities in their implementation give rise to rights and obligations in the form of debts and credits for the parties involved. As long as the debts can be paid by the debtor, their activities can continue, but conversely, if the debtor is unable to pay their debts, issues arise regarding the sustainability of the debtor's business, and the debtor may have to cease their business activities due to bankruptcy or insolvency. Bankruptcy is a state of the debtor's inability

to pay debts to creditors, which is usually caused by a decline in the financial condition of the debtor's business activities. Whereas bankruptcy is a decision by the Commercial Court that results in a general seizure of all the bankrupt debtor's assets, both those that currently exist and those that will exist in the future.[1]

The declaration of bankruptcy will result in all of the debtor's assets at the time of the bankruptcy declaration, as well as those that will exist during the bankruptcy process, being subject to general seizure. The provision is regulated based on Article 21 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy and PKPU Law), which states as follows: "Bankruptcy includes all the debtor's assets at the time the bankruptcy declaration is pronounced and everything obtained during the bankruptcy." This provision emphasises that a debtor declared bankrupt will lose the capacity to manage their assets due to the imposed seizure, and the settlement of all the debtor's debts will be carried out by the Curator, who will use the proceeds from the sale of the debtor's assets to settle the debts.[2] Specifically, secured creditors (pledge holders) receive special protection. This special protection is stipulated by Article 1132 of the Civil Code, which states that a creditor may be granted the right to be prioritised over other creditors. The right of priority among creditors is based on privileges, pledges, and mortgages; separate creditors can sell the collateral and take repayment from the proceeds of the sale.[3]

The right to sell on one's own authority is based on the Explanation of Article 6 of Law Number 4 of 1996 concerning Mortgage Rights and Objects Related to Land (UUHT), which states as follows: "If the debtor defaults, the first mortgage holder has the right to sell the object of the mortgage on their own authority through a public auction and take repayment of their debt from the proceeds of the sale." The implementation of this provision is the auction conducted by the State Assets and Auction Service Office (KPKNL) based on a request from the auction applicant, in this case, the mortgage holder.[4]

However, the Bankruptcy Law and PKPU also provide a legal framework within the principle of debt forgiveness in the form of a debtor's debt moratorium, known as the Suspension of Debt Payment Obligations (PKPU), which serves as a countermeasure against bankruptcy.[5] In other words, PKPU is a means to avoid bankruptcy, at least for a predetermined period of time. If the PKPU still ends in bankruptcy, the next mechanism to be pursued is the liquidation of the bankrupt estate by the curator. However, the provisions of Article 55 of the Bankruptcy Law and PKPU grant special status to every creditor holding a pledge, fiduciary guarantee, mortgage, or

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[1] Lucky Omega Hasan, "Purifikasi Kewenangan Pengadilan Niaga dalam Menangani Perkara Kepailitan/PKPU," *Jurnal Syntax Transformation* 2, no. 12 (2021): 1754–64, https://doi.org/10.46799/jst.v2i12.471.

[2] Lambok Marisi Jakobus Sidabutar, "Hukum Kepailitan dalam Eksekusi Harta Benda Korporasi Sebagai Pembayaran Uang Pengganti," *Jurnal Antikorupsi Integritas* 05, no. 2 (2019), https://doi.org/https://doi.org/10.32697/integritas.v5i2.474.

[3] Magister Kenotariatan Fakultas Hukum Universitas Padjadjaran and Mohamad Akyas, "EKSEKUSI LELANG OLEH KREDITOR SEPARATIS PADA MASA PERDAMAIAN DALAM PKPU DALAM KAJIAN UNDANG-UNDANG NOMOR 37 TAHUN 2004 TENTANG KEPAILITAN DAN PKPU," *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan dan ke-PPAT-an* 5, no. 2 (2022), https://doi.org/10.23920/acta.v5i2.809.

[4] Supriadi Jufri et al., "Pelaksanaan Lelang Eksekusi Hak Tanggungan Melalui Balai Lelang," *Jurnal Ilmiah Dunia Hukum* 4, no. 2 (2020): 95, https://doi.org/10.35973/jidh.v4i2.1379.

[5] Muhammad Hadi Subhan, *Hukum Kepailitan: Prinsip, Norma, Dan Praktik Di Peradilan* (Prenada Media Group, 2009). Hlm. 156.

other security rights (hereinafter referred to as a separatist creditor), allowing them to execute their rights as if bankruptcy had not occurred. These separatist creditors must immediately begin conducting an auction sale of the collateral they possess based on Article 59 paragraph (1) of the Bankruptcy and Suspension of Debt Payment Obligations Law, which states: "With due regard to the provisions of Article 56, Article 57, and Article 58, the creditor holding the rights as referred to in Article 55 paragraph (1) must exercise their rights within a maximum period of 2 (two) months after the onset of insolvency as referred to in Article 178 paragraph (1)."

If linked to the provisions of Article 178 paragraph (1) in conjunction with the Explanation of Article 292 of the Bankruptcy and Suspension of Debt Payment Obligations Law, the state of insolvency is definitively counted from the bankruptcy declaration decision. However, in practice, there is a document in the form of a Creditor Meeting Minutes that states the date of the onset of insolvency, which is different from the date of the bankruptcy declaration. This is the basis for the lawsuit number 26/Pdt.Sus-Gugatan Lain-Lain/2022/PN Niaga Jkt Pst registered at the Central Jakarta Commercial Court Clerk's Office, which raises the issue of when the insolvency status begins, providing legal certainty, as this insolvency status determines the authority of the execution auction applicant submitted to the State Assets and Auction Service Office (KPKNL). Based on the above issues, research is needed to determine and analyse the timing of the determination of insolvency that provides certainty in determining the authority of the separatist creditor as the execution auction applicant under Article 6 of the Mortgage Law.

RESEARCH METHODS

This research aims to analyse the theoretical application of legal principles and the harmonisation of the implementation of regulations in both administrative and civil law. Thus, this research will use normative legal research to conduct a study related to the determination of certainty in setting the insolvency period applicable to the implementation of auctions. Argumentative analysis in explaining legal issues using qualitative methods.[6] Considering that this research is a normative legal study that will focus on the analysis and processing of data based on the researcher's understanding of the data or information obtained, which will then be narrated to draw conclusions from the research inductively.[7] The results of this research will be prescriptive-analytical in nature,[8] that provides advice and guidance in the use of legal theory and legislation as an effort to resolve an issue.

ANALYSIS AND DISCUSSION

1. Determination of Insolvency in Bankruptcy Originating from PKPU (Case Study of Court Decision Number 26/Pdt.Sus-Gugatan Lain- Lain/2022/PN Niaga Jkt Pst Jo. Putusan No. 496 K/Pdt.Sus-Pailit/2023)

[6] Irwansyah, *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel*, 1 (Mirra Buana Media, 2020). Hlm. 22.

[7] Suratman and Philips Dillah, *Metode Penelitian Hukum:* (Alfabeta, 2014). Hlm. 88

[8] Sulistyo Irianto, *Metode Penelitian Hukum: Korelasi Dan Refleksi*, Shidarta (Yayasan Pustaka Obor Indonesia, 2011). Hlm. 143-146.

The Office of State Assets and Auction Services (KPKLN) is a government agency authorised to conduct execution auctions based on Article 6 of the UUHT. The authority to conduct auctions by KPKLN is required to comply with the provisions of the Minister of Finance Regulation (PMK) Number 213/PMK.06/2020 concerning Auction Implementation Guidelines. The clarification in Article 29 that "every execution auction request from a creditor holding a security right related to a bankruptcy declaration or Suspension of Debt Payment Obligations (PKPU) decision," the auction execution is carried out with due regard to the laws and regulations in the field of Bankruptcy and Suspension of Debt Payment Obligations (PKPU). Based on the law, the state of insolvency occurs by operation of law as regulated by Article 178 paragraph (1) of the Bankruptcy and Suspension of Debt Payment Obligations (PKPU) Law, which does not require a court ruling or other documents to be effective. The PMK regarding the implementation guidelines for the auction has also provided regulations on the requirements for auction documents with the type of execution under Article 6 of the UUHT for bankrupt debtors, which must include a bankruptcy decision and original and/or photocopied copies of the decision, decree, or written statement from the Chief Judge/ Supervisory Judge regarding the commencement of insolvency and/or a Meeting Minutes signed by the Curator and acknowledged by the Supervisory Judge stating the commencement of insolvency, for bankruptcies that do not originate from the PKPU process or settlement.

In other words, for the execution auction under Article 6 of the UUHT against the auction object of a bankrupt debtor whose bankruptcy originates from PKPU, there is no need for original documents and/or photocopies of the decision, decree, or written statement from the Chief Judge/Supervisory Judge regarding the commencement of insolvency and/or the Minutes of Meeting signed by the Curator and acknowledged by the Supervisory Judge stating the commencement of insolvency, as stated in Article 178 paragraph (1) of the Bankruptcy and PKPU Law: “(1) If in the debt verification meeting no peace plan is offered, the offered peace plan is not accepted, or the peace approval is rejected based on a decision that has obtained permanent legal force, by law the bankrupt estate is in a state of insolvency.” Thus, the period of insolvency begins from the declaration of bankruptcy.

However, in practice, the KPKNL, which is given the authority to conduct the execution auction under Article 6 of the UUHT, is faced with two different documents regarding the start of the insolvency period, namely:

1) The bankruptcy decision that states the date of the decision, which according to Article 178 of the Bankruptcy and Suspension of Debt Payment Obligations Law, is declared that the decision that has obtained permanent legal force indicates that the bankrupt estate is in a state of insolvency;
2) The Minutes of the Creditors' Meeting, which state the date the insolvency period began, differ from the date of the bankruptcy ruling.

The uncertainty became even more apparent for the Auction Officials/Auctioneers of KPKNL, where in 2022, there were contradictory court rulings between Decision 26/Pdt.Sus-Gugatan Lain-Lain/2022/PN Niaga Jkt Pst and the Supreme Court Decision Number 496 K/Pdt.Sus-Pailit/2023. In this case, KPKNL Palembang was a Co-Defendant in the lawsuit number 26/Pdt.Sus-Gugatan Lain-Lain/2022/PN Niaga Jkt Pst Jo. Number 378/Pdt.Sus-

PKPU/2021/PN Niaga Jkt Pst. Regarding the bankruptcy declaration request, the Commercial Court at the Central Jakarta District Court issued Decision Number 26/Pdt. Gugatan Lain-Lain /2022/PN Niaga Jkt Pst., dated January 25, 2023, which stated that PT Gading Cempaka Graha, the bankrupt debtor, was in a state of insolvency at the time the bankruptcy decision was read out since May 24, 2022. The decision also stated that the Minutes of the Creditors' Meeting Number 378/Pdt.SusPKPU/2021/PN.Niaga.Jkt.Pst, which had been used by the Auctioneer and KPKNL Palembang as the auction execution document, was invalid and had violated the law, and must be declared null and void by law.

Then PT Bank Raya as the separatist creditor and the other parties submitted a cassation memorandum which was received respectively on February 1, 2023 and a counter cassation memorandum which was received on February 15, 2023. In connection with the consideration of Judex Facti in this case the Commercial Court at the Central Jakarta District Court, it was stated that there was an error in applying the law, with the consideration that based on the Decree of the Chief Justice of the Supreme Court Number 109/KMA/SK/IV/2020 concerning the Implementation of the Guidelines for Settlement of Bankruptcy and PKPU Cases as referred to in Book II concerning the Process of Settlement of Bankruptcy and PKPU Cases. After the Bankruptcy Declaration Decision and PKPU Decision number 16 concerning Insolvency number 16.2, it was stated that the calculation of the start of the Debtor's assets in a state of insolvency must be stated expressly by the Supervisory Judge in the creditor meeting as stated in the Minutes, so that the calculation of the insolvency period as stipulated in the Minutes of the Creditor Meeting Number 378/Pdt.SusPKPU/2021/PN.Niaga Jkt Pst dated June 21, 2022 which stated that the bankrupt assets of PT Gading Cempaka Graha (In Bankrupt) in a state of insolvency since June 21, 202 is valid and does not conflict with the provisions of Article 292 Juncto Explanation of Article 292 and Article 178 paragraph (1) of the Bankruptcy and PKPU Law, so that the Defendant is authorized to conduct an auction of the 6 (six) collateral objects belonging to the Debtor (in bankruptcy) as objects of dispute in the a quo case which has been auctioned by the Co-Defendant based on the provisions of Article 6 Law Number 4 of 1996 concerning Mortgage Rights in conjunction with Regulation of the Minister of Finance Number 213/PMK.06/2020 concerning Auction Implementation Guidelines (Juklak), and as stated in the Circular Letter of the Supreme Court (SEMA) Number 4 of 2016 number 4 letter a, it explains that auction buyers who act in good faith must be protected (Article 1338 paragraph (3) of the Civil Code).

The two decisions above demonstrate that the same institution made different decisions regarding the determination of the insolvency period. At the first instance, the disputed Creditors' Meeting Minutes No. 378/Pdt.SusPKPU/2021/PN.Niaga Jkt Pst dated June 21, 2022, were declared invalid. However, at the cassation level, the judicial review (judex factie) held a different opinion, declaring the Creditors' Meeting Minutes valid and usable as a guideline for determining the insolvency period.

2. Determination of the State of Insolvency in Bankruptcy Originating from PKPU as the Basis for the Authority of Separatist Creditors in Submitting an Execution Auction of Article 6 of the Mortgage Rights Law

The regulation regarding insolvency conditions with bankruptcy conditions originating from PKPU is found in the provisions of Article 178 paragraph (1) of the Bankruptcy and PKPU Law, where the determination of the solvency of bankrupt assets is closely related to the peace plan (accord, composition plan) to pay debts. In principle, the Bankruptcy and PKPU Law prioritizes the payment of debtors' debts through peaceful payment channels by providing a delay in their obligations to pay debts rather than using the bankruptcy route.[9] Therefore, within a maximum of 3 (three) days since the PKPU was registered, the Commercial Court is obliged to grant and issue a temporary PKPU determination requested by the debtor. If the PKPU application is submitted by a creditor, the Commercial Court is also obliged to grant the temporary PKPU within a maximum of 20 (twenty) days since the PKPU application was registered, appoint a Supervisory Judge from the Court and appoint 1 (one) or more Administrators who together with the debtor manage the debtor's assets.[10] Immediately after the temporary PKPU is pronounced, the Commercial Court through the administrator is obliged to summon the debtor and creditor known by registered letter or via courier, to appear in a hearing held no later than the 45th (forty-fifth) day from the date the temporary PKPU decision was pronounced.[11] The next stage is the permanent PKPU process, namely whether the temporary PKPU can be continued into a permanent PKPU or whether the permanent PKPU is rejected, which will immediately declare the debtor bankrupt.[12]

If a debtor is declared bankrupt during the PKPU phase because a settlement cannot be reached and the debtor's business is stopped, then the debtor's bankruptcy is final. Consequently, by law the bankrupt's assets are under general confiscation and a state of insolvency applies immediately. According to J.B. Huizink, in bankruptcy law, the point of transition to the executorial stage is when the state of insolvency occurs: "The bankruptcy estate being in a state of insolvency means that by law the bankrupt's debts are certain and that they are not paid. This results in the bankruptcy moving to the executorial stage: the debtor's assets are sold and the proceeds are divided among the creditors."[13]

Based on the provisions of Article 292 of the Bankruptcy and PKPU Law, it is stated as follows: "In a bankruptcy declaration decision decided based on the provisions as referred to in Article 285, Article 286 or Article 291, no peace is offered." Then in the explanation of the article it is stated that the bankruptcy declaration decision results in the debtor's bankruptcy assets immediately being in an insolvent state. Bankruptcy assets becoming insolvent means that the

[9] Pasal 229 ayat (3) Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang, LN. 2004/No. 131, TLN No. 443.

[10] Pasal 225 ayat (2) dan (3) Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang, LN. 2004/No. 131, TLN No. 443.

[11] Pasal 225 ayat (4) Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang, LN. 2004/No. 131, TLN No. 443.

[12] Rai Mantili and Putu Eka Trisna Dewi, "PENUNDAAN KEWAJIBAN PEMBAYARAN UTANG (PKPU) TERKAIT PENYELESAIAN UTANG PIUTANG DALAM KEPAILITAN," *Jurnal Aktual Justice* 6, no. 1 (2021): 1–19, https://doi.org/10.47329/aktualjustice.v6i1.618.

[13] J.B. Huizink, *Insolventie* (Pusat Studi Hukum dan Ekonomi Fakultas Hukum Universitas Indonesia, 2004; repr., Jakarta, 2012). Hlm. 7.

debtor is unable to pay all of his debts so that payment of the debtor's debts must be taken by liquidating the bankruptcy assets.[14]

The bankrupt estate itself is declared insolvent (unable to pay) based on the conditions stated in the provisions of Article 178 paragraph (1) of the Bankruptcy and PKPU Law, namely as follows:

1) The debtor does not offer a peace proposal after the debt verification is completed; or
2) A peace proposal is offered by the bankrupt debtor but is rejected by the majority of concurrent creditors; or
3) The peace proposal was accepted by the majority of concurrent creditors, but the Commercial Court refused to ratify the peace.

The insolvent state as stated in the provisions of Article 178 paragraph (1) above, by law gives an executorial title to the bankrupt assets, so that the curator can carry out a general sale (auction) of the bankrupt assets without the permission and assistance of the debtor. Likewise, the separatist creditors are given time to carry out the auction application as stated in Article 59 of the Bankruptcy and PKPU Law which states: "With due regard to the provisions of Article 56, Article 57, and Article 58, creditors holding rights as referred to in Article 55 paragraph (1) must exercise their rights within a maximum period of 2 (two) months after the start of the insolvency state as referred to in Article 178 paragraph (1)."

It can be concluded that for bankruptcy that begins with the legal state of PKPU (either temporary PKPU or permanent PKPU) or peace, the state of insolvency by law occurs simultaneously with the issuance of the bankruptcy declaration decision (Article 246, Article 290 in conjunction with Article 178 paragraph (1) and the explanatory memorandum of Article 292 of the Bankruptcy and PKPU Law. Thus, the state of insolvency by law gives the title of executorial to the general seizure of bankrupt assets, because at that time the separatist creditor or curator has been able to submit an auction application to the State Assets and Auction Service Office (KPKNL) for bankrupt assets without the permission and assistance of the debtor. For separatist creditors, the provisions of Article 55 paragraph (1) of the Bankruptcy and PKPU Law apply, which states: "With due regard to the provisions as referred to in Article 56, Article 57, and Article 58, every Creditor holding a pledge, fiduciary guarantee, security right, mortgage, or collateral right on other property, can exercise his rights as if bankruptcy had not occurred."

In terms of fulfilling mortgage rights, the regulation of the rights of creditors holding mortgage rights as separatist creditors is also regulated in Article 21 of Law Number 4 of 1996 concerning Mortgage Rights, which states: "If the Mortgage Right provider is declared bankrupt, the mortgage right holder remains authorized to exercise all rights obtained according to this law." This provision strengthens the priority position of the mortgage right holder by excluding the effect of the bankruptcy of the mortgage right provider on the mortgage right object and the security right holder is authorized to exercise all rights obtained according to the provisions of

[14] Pasal 184 Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang, LN. 2004/No. 131, TLN No. 443.

the law.[15] What is meant by "exercising his rights" in this article is none other than carrying out a sale.[16]

A mortgage is a guarantee created by a written agreement between a debtor and a creditor. The written credit agreement aims to protect the rights of all parties involved and to ensure legal certainty by auctioning the collateral in the event of a default. The mortgage in question is the right to encumber the land and all matters related to the promised land to settle the debt.[17]

As stated above, after the bankruptcy estate is insolvent, the secured creditors can exercise their rights as if there was no bankruptcy, they are given the opportunity for 2 (two) months from the start of the insolvency state, namely the time of the bankruptcy declaration decision, to sell the collateral themselves and take fulfillment of their claims that have been verified and the amount agreed upon from the proceeds of the sale of the collateral.[18] However, in practice, there is a document in the form of Minutes of the Creditor Meeting which includes a statement from the supervising judge regarding the date by law that the bankruptcy estate is in a state of insolvency attached by the auction applicant (the holder of the Mortgage Right/separated creditor). Then there is also a letter issued by the Registrar of the Commercial Court to fulfill the request of an agency that requires insolvency information. The statement refers to the Minutes of the Creditor Meeting. The document in the form of Minutes of the Creditor Meeting contains the date of determination of the state of insolvency which is different from the date the debtor was declared bankrupt.

On the one hand, the existence of the Minutes of the Creditors' Meeting extends the time for mortgage holders as separatist creditors to exercise their rights, because the start date of the insolvency state stated in the Minutes of the Creditors' Meeting contains a later date than the date of the bankruptcy declaration decision. If referring to the provisions of the Minister of Finance Regulation Number 122 of 2023 concerning Auction Implementation Guidelines, a period of 1 (one) month is required only to prepare the auction implementation documents, the auction announcement until the auction is carried out, not to mention the time to submit the appraisal report to the Public Appraisal Services Office (KJPP) or process the Land Registration Certificate (SKPT) which is also a document required for the auction. The Minutes of the Creditors' Meeting also provide legal protection for the parties because it presents a definite date regarding the start of the insolvency state because it is the basis for determining the authority of the auction applicant, while in the Bankruptcy Decision there is no statement of insolvency either in the legal considerations or in the decision.

Referring to the above conditions, it can be concluded that there is a dualism in determining the insolvency status of a bankrupt debtor's assets relative to the bankruptcy arising from a PKPU (Deferred Payment Order). There should be an agreement in the form of statutory provisions specifying the mechanism and procedures for determining insolvency status.

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[15] Ivida Dewi Amrih Suci and Herowati Poesoko, *Hukum Kepailitan, Kedudukan, Dan Hak Kreditor Separatis Atas Benda Jaminan Debitor Pailit* (Laksbang Pressindo, 2016). Hlm. 95.

[16] A.S.V Nierop dalam J. Satrio, *Hukum Jaminan, Hak Jaminan Kebendaan, Hak Tanggungan* (Citra Aditya Bakti, 2008). Hlm. 286

[17] Luh Putu Ari Tiarna Dewi, "Eksekusi Hak Tanggungan Yang Dipailitkan," *Acta Comitas* 5, no. 1 (2020): 100, https://doi.org/10.24843/AC.2020.v05.i01.p09.

[18] Pasal 59 ayat (1) Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang, LN. 2004/No. 131, TLN No. 443.

3. Review Court Decision Number 26/Pdt.Sus-Gugatan Lain-Lain/2022/PN NIaga Jkt Pst Jo. Court Decision Number 496 K/Pdt.Sus-Pailit/2023

As stated in Article 178 paragraph (1) in conjunction with the Explanation of Article 292 of the Bankruptcy and PKPU Law, there are several conditions that result in the bankrupt assets being in a state of insolvency by law so that the date the debtor is declared bankrupt is the date the insolvency state begins. However, in practice, not all bankruptcy declaration decision dates originating from the PKPU can be used as a reference as a sign of the start of the insolvency period. There are other provisions in the form of the Decree of the Chief Justice of the Republic of Indonesia Number 109/KMA/SK/V/2020 dated April 29, 2020 concerning the Implementation of the Guidelines for Settlement of Bankruptcy Cases and Suspension of Debt Payment Obligations, where in Book I concerning the Process of Settlement of Bankruptcy Cases and Suspension of Debt Payment Obligations (PKPU) after the Bankruptcy Decree and the Suspension of Debt Payment Obligations Decision (PKPU) Letter A concerning insolvency Numbers 16.2, 16.3. mentioned as follows:

> "16.2 The legal statement that the bankrupt estate is in a state of insolvency is stated expressly by the Supervisory Judge in the Creditor Meeting and is stated in the Minutes, no Stipulation is required (Article 178 of the PKPU Bankruptcy Law);
>
> 16.3 If there is an agency that requires insolvency information, the Registrar will issue an insolvency statement referring to the Minutes of the Creditors' Meeting."

The existence of provisions that are inconsistent with the practices that occur in the bankruptcy process regarding the determination of the insolvency period will certainly have an impact on legal uncertainty regarding who is authorized to request the implementation of an auction in order to settle bankrupt assets and when this authority can be exercised. One case of differences in determining the insolvency period can be seen from lawsuit number 26/Pdt.Sus-Gugatan Lain-Lain/2022/PN Jkt Pst where in the main case, the Curator Team as the Plaintiff stated that the minutes of insolvency used as a document requiring the implementation of the auction constituted an unlawful act because the calculation of the insolvency period was contrary to the provisions in Article 292 and its Explanation and Article 178 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and PKPU and the minutes were invalid and unlawful which were made only to accommodate the interests of the only secured creditor and ignore the protection of the rights of concurrent creditors. The above lawsuit was filed by the Curator Team of PT Gading Cempaka Graha (in bankruptcy) against PT Bank Raya Indonesia Tbk (formerly PT Bank BRI Agro Tbk) as Defendant and KPKNL Palembang as Co-Defendant.

The main problem between the two parties is:

1) Is the calculation of the insolvency period as stipulated in the Minutes of the Creditor Meeting Number 378/Pdt. Sus-PKPU/2021/PN..Jkt.Pst dated June 21, 2022 in conflict with the provisions of Article 292 and its Explanation and Article 178 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and PKPU?;
2) Does the Defendant still have the authority to auction the 6 (six) collateral objects belonging to the Debtor;

Then in the first instance decision, the Panel of Judges stated its consideration that to know when the bankrupt debtor's assets are in a state of insolvency is to refer to Article 292 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations and its explanation, stating that the Minutes of the Creditor Meeting Number 378/Pdt.Sus-PKPU/2021/PN Jkt Pst, dated June 21, 2022 and stating that the bankrupt assets of PT Gading Cempaka Graha (in Bankruptcy) are in a state of insolvency since June 21, 2022 is contrary to the provisions of Article 292 in conjunction with the explanation of Article 292 of Law Number 37 of 2004 concerning Bankruptcy and PKPU. And based on the above considerations, the Plaintiff's petition requesting to declare PT Gading Cempaka Graha in a state of insolvency at the time the Bankruptcy Decision was read out on May 24, 2022, was granted.

Then in his answer the Defendant stated that the matters stated in the Minutes of the Creditor Meeting Number 378/Pdt.Sus-PKPU/2021/PN Jkt Pst including the determination of the commencement of the state of insolvency of PT Gading Cempaka Graha (in Bankruptcy) are the absolute authority of the Supervisory Judge and are in line with the Decree of the Chief Justice of the Republic of Indonesia Number 109/KMA/SK/V/2020 dated April 29, 2020 concerning the Implementation of the Guidelines for Settlement of Bankruptcy Cases and Postponement of Debt Payment Obligations Book I concerning the Process of Settlement of Bankruptcy Cases and PKPU after the Bankruptcy Declaration Decision and PKPU Decision Letter A concerning insolvency Numbers 16.2 and 16.3.

Regarding the objection, the Panel of Judges considered that it is true that a statement of a debtor in a state of insolvency must be stated by the Supervisory Judge in a creditor meeting, but the determination of when the bankrupt assets are in a state of insolvency is since the debtor was declared bankrupt as explained in Article 292 of Law Number 37 of 2004 concerning Bankruptcy and PKPU, thus the statement of the debtor by law in a state of insolvency since the date of the bankruptcy decision must be stated in a Creditor meeting. Regarding the consideration of the Panel of Judges above, Member Judge I Yusuf Pranowo, had a different opinion with the consideration in principle that the calculation of the start of the debtor's assets in a state of insolvency must be stated expressly in a creditor meeting as stated in the Decree of the Chief Justice Number 109 / KMA / SK / IV / 2020 concerning the Implementation of the Guidelines for Settlement of Bankruptcy and PKPU Cases, so that the statement of the debtor's assets in a state of insolvency, Member Judge I agreed with the Defendant, namely starting from the time it was stated by the Supervisory Judge in a Creditor Meeting.

The existence of different opinions on legal considerations and different opinions from member judges or the chairman of the panel (dissenting opinion) also shows the inconsistency in the use of legal provisions in the legal considerations of Commercial Court judges. According to Bagir Manan, a dissenting opinion is an institution that justifies the difference of opinion of judges (minorities) on court decisions.[19] This difference of opinion in the Judge's legal considerations occurred in the decision making No. 26 / Pdt.Sus-Gugatan Lain- Lain / 2022 / PN Niaga Jkt Pst, even though all judges should have been guided by the Decree of the Chief Justice Number 109 / KMA / SK / IV / 2020 concerning the Implementation of the Guidelines for the

[19] Bagir Manan, *Dissenting Opinion Dalam Sistem Peradilan Indonesia* (Varia Peradilan, 2006). Hlm. 13.

Settlement of Bankruptcy Cases and Suspension of Debt Payment Obligations which aims to instruct all Judges, Supervisory Judges and all civil clerk staff to implement the Guidelines for the Settlement of Bankruptcy Cases and Suspension of Debt Payment Obligations.

The background to the other lawsuits from the Curator Team of PT. Gading Cempaka Graha (in bankruptcy) is regarding the Minutes of the Creditor Meeting No. 378/Pdt.Sus-PKPU/2021/PN..Jkt.Pst issued by the Court which contains the date of commencement of the insolvency, namely June 21, 2022. The Minutes of the Creditor Meeting state the insolvency date which is different from the date of the bankruptcy decision, namely April 24, 2022. According to the Curator Team of PT. Gading Cempaka Graha (in bankruptcy), the issuance of the document is an unlawful act because the calculation of the insolvency period is contrary to the Provisions in Article 292 and its Explanation and Article 178 paragraph (1) of Law No. 37 of 2004 concerning Bankruptcy and PKPU.

Then, PT Bank Raya Indonesia Tbk. and KPKNL Palembang filed a cassation appeal because they did not feel that the judge's decision was fair with register Number 496.K/Pdt.Sus-Pailit/2023. The purpose of the cassation appeal, especially by PT. Bank Raya Indonesia Tbk. as a separatist creditor, is to correct any errors that may have occurred in the decision-making and to ensure whether a legal regulation has been applied correctly (in this case the application of the Decree of the Chief Justice Number 109/KMA/SK/IV/2020 concerning the Implementation of the Guidelines for Settlement of Bankruptcy Cases and Suspension of Debt Payment Obligations Numbers 16.2. and 16.3.). Another purpose of submitting the cassation appeal is to find out whether the calculation of the insolvency period as stipulated in the Minutes of the Creditor Meeting Number 378/Pdt. Sus- PKPU/2021/PN..Jkt.Pst dated June 21, 2022, is indeed contrary to the provisions of Article 292 and its Explanation and Article 178 paragraph (1) of the Bankruptcy and PKPU Law, so that in fact PT. Bank Raya Indonesia as a separatist creditor is not authorized to conduct an auction of the debtor's collateral object. Even though the insolvency period is the "last breath" for PT. Bank Raya Indonesia to sell the collateral object as mandated in Article 6 of the UUHT, namely: "If the debtor defaults, the first mortgage holder has the right to sell the Mortgage Right object at his own power through a public auction and take payment of his receivables from the proceeds of the sale."

Regarding the cassation request, it was decided in a deliberation meeting of the Panel of Judges on Thursday, May 11, 2023 by Dr. H. Hamdi, S.H., M.Hum., Supreme Court Justice, who was appointed by the Chief Justice of the Supreme Court as Chair of the Panel, Dr. Rahmi Mulyati, S.H., M.H., and Dr. H. Haswandi, S.H., S.E., M.Hum., M.M., Supreme Court Justices as Member Judges, an in-depth study and analysis of the cassation memorandum and counter-cassation memorandum were carried out. The panel of judges is of the opinion that there was an error in the application of the law carried out by the Commercial Court at the Central Jakarta District Court. The considerations given by the panel are as follows:

> "Based on the Decree of the Chief Justice of the Supreme Court Number 109/KMA/SK/IV/2020 concerning the Implementation of the Bankruptcy and PKPU Case Settlement Guidelines as referred to in Book II concerning the Bankruptcy and PKPU Case Settlement Process After the Bankruptcy Declaration Decision and PKPU Decision number 16 concerning Insolvency number 16.2, it is stated that the calculation of the start of the debtor's assets in a state of insolvency must be stated expressly by the

> Supervisory Judge in a creditor meeting as stated in the Minutes, so that the calculation of the insolvency period as stipulated in the Minutes of the Creditor Meeting Number 378/Pdt.Sus-PKPU/2021/PN. Jkt Pst dated June 21, 2022 which stated that the bankrupt assets of PT Gading Cempaka Graha (in Bankruptcy) in a state of insolvency since June 21, 2022 are valid and do not conflict with the provisions of Article 292 Juncto Explanation of Article 292 and Article 178 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and PKPU, so that the Defendant is authorized to conduct an auction of the 6 (six) collateral objects belonging to the debtor (in bankruptcy) as objects of dispute in the a quo case which has been auctioned by the Co-Defendant based on the provisions of Article 6 of Law Number 4 of 1996 concerning Mortgage Rights Juncto Regulation of the Minister of Finance Number 213/PMK.06/2020 concerning Auction Implementation Instructions (Juklak), and as Circular Letter of the Supreme Court (SEMA) Number 4 of 2016 number 4 letter a explains that auction buyers who have good intentions must be protected (Article 1338 paragraph (3) of the Civil Code)."

Based on the above considerations, the Judex Facti decision in the a quo case can no longer be maintained and must be canceled by granting the cassation and adjudicating it itself as per the ruling that the Supreme Court is of the opinion that there are sufficient reasons to grant the cassation application filed by the Applicant for Cassation I, namely PT Bank Raya Indonesia formerly PT Bank BRI Agro Tbk. and the Applicant for Cassation II, namely the Palembang State Assets and Auction Service Office (KPKNL) and cancel the Court Decision at the Central Jakarta District Court Number 26/Pdt.Sus-Gugatan Lain-Lain/2022/PN Jkt Pst., dated on January 25, 2023.

The existence of a decision that has permanent legal force as mentioned above and several other similar cases spread throughout Indonesia, is used as a reference by the Ministry of Finance by then including it in the amendment to the Regulation of the Minister of Finance (PMK) Number PMK 122 of 2023 concerning the Implementation of Auctions, which is a replacement for PMK Number 213 / PMK.06 / 2020 concerning Instructions for the Implementation of Auctions, documents are required for the execution auction of Article 6 of the UUHT against bankrupt debtors and their bankruptcy originates from the PKPU and / or peace process, namely:

> "In the event that there is a written document from the court handling the bankruptcy case which contains the substance of the date of commencement of the state of insolvency which is different from the date of commencement of the state of insolvency based on the date of the bankruptcy decision, a statement from the court must be attached regarding the truth of the substance in the written document."

This represents a significant change made to the auction implementation guidelines, which is not regulated in the provisions of PMK Number 213/PMK.06/2020 concerning Auction Implementation Guidelines. This change was made to provide certainty for Auction Officials throughout Indonesia, so that if there are documents other than the Court Decision that state the date of insolvency, then the document can be used provided that the document must be accompanied by a statement from the Commercial Court regarding the truth of the substance in the written document.

What should be enforced is the need to firmly add rules at a higher level of legal regulations regarding the definition and method of determining the insolvency period, which provides legal certainty and justice for the parties involved. This policy is necessary because

determining the insolvency period impacts the certainty of the authority of the auction applicant in submitting the auction, in addition to avoiding demands on auction officials that could slow down or even hinder their performance, not to mention cases of auction officials being prosecuted for exceeding their authority. Synchronization of laws and regulations is necessary in an effort to guarantee certainty, benefit, and justice for the parties.[20]

CONCLUSION

The law aims for justice, certainty, and benefit, thus there is a hope for justice and law to go hand in hand. The existence of different perspectives causes the application of the law to be in accordance with the applicable laws and regulations in addition to conflicting norms between laws, so that the secured creditors feel there is injustice. One wise and prudent step is for the Indonesian government to encourage changes and improvements and improvements to the Bankruptcy and PKPU Laws so that existing legal imbalances can be resolved through a clear and detailed revision that the rights of secured creditors are prioritizing and cannot be reduced from other creditors except for auction costs, curator fees and bankruptcy costs whose expenses are indeed unavoidable, as well as tax debt bills which are in the interests of the state. When linked to the legal issues in this research, it is necessary to have a single perception in the Commercial Court in terms of explaining the time of the start of the state of insolvency, which can then be used with certainty and provide legal certainty and provide a security impact for the related parties which can be done by providing legal provisions in the form of laws, as a form of recommendation that is proposed, it is necessary to revise the Bankruptcy and PKPU Law which was born in 1999.

REFERENCES

Bagir Manan. *Dissenting Opinion Dalam Sistem Peradilan Indonesia*. Varia Peradilan, 2006.

Dewi, Luh Putu Ari Tiarna. "Eksekusi Hak Tanggungan Yang Dipailitkan." *Acta Comitas* 5, no. 1 (2020): 100. https://doi.org/10.24843/AC.2020.v05.i01.p09.

Irwansyah. *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel*. 1. Mirra Buana Media, 2020.

Ivida Dewi Amrih Suci and Herowati Poesoko. *Hukum Kepailitan, Kedudukan, Dan Hak Kreditor Separatis Atas Benda Jaminan Debitor Pailit*. Laksbang Pressindo, 2016.

J. Satrio. *Hukum Jaminan, Hak Jaminan Kebendaan, Hak Tanggungan*. Citra Aditya Bakti, 2008.

J.B. Huizink. *Insolventie*. Pusat Studi Hukum dan Ekonomi Fakultas Hukum Universitas Indonesia, 2004. Reprint, Jakarta, 2012.

[20] Mario Julyano and Aditya Yuli Sulistyawan, "PEMAHAMAN TERHADAP ASAS KEPASTIAN HUKUM MELALUI KONSTRUKSI PENALARAN POSITIVISME HUKUM," *CREPIDO* 1, no. 1 (2019): 13–22, https://doi.org/10.14710/crepido.1.1.13-22.

Jufri, Supriadi, Anwar Borahima, and Nurfaidah Said. "Pelaksanaan Lelang Eksekusi Hak Tanggungan Melalui Balai Lelang." *Jurnal Ilmiah Dunia Hukum* 4, no. 2 (2020): 95. https://doi.org/10.35973/jidh.v4i2.1379.

Julyano, Mario, and Aditya Yuli Sulistyawan. "PEMAHAMAN TERHADAP ASAS KEPASTIAN HUKUM MELALUI KONSTRUKSI PENALARAN POSITIVISME HUKUM." *CREPIDO* 1, no. 1 (2019): 13–22. https://doi.org/10.14710/crepido.1.1.13-22.

Lambok Marisi Jakobus Sidabutar. "Hukum Kepailitan dalam Eksekusi Harta Benda Korporasi Sebagai Pembayaran Uang Pengganti." *Jurnal Antikorupsi Integritas* 05, no. 2 (2019). https://doi.org/https://doi.org/10.32697/integritas.v5i2.474.

Magister Kenotariatan Fakultas Hukum Universitas Padjadjaran, and Mohamad Akyas. "EKSEKUSI LELANG OLEH KREDITOR SEPARATIS PADA MASA PERDAMAIAN DALAM PKPU DALAM KAJIAN UNDANG-UNDANG NOMOR 37 TAHUN 2004 TENTANG KEPAILITAN DAN PKPU." *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan dan ke-PPAT-an* 5, no. 2 (2022). https://doi.org/10.23920/acta.v5i2.809.

Mantili, Rai, and Putu Eka Trisna Dewi. "PENUNDAAN KEWAJIBAN PEMBAYARAN UTANG (PKPU) TERKAIT PENYELESAIAN UTANG PIUTANG DALAM KEPAILITAN." *Jurnal Aktual Justice* 6, no. 1 (2021): 1–19. https://doi.org/10.47329/aktualjustice.v6i1.618.

Omega Hasan, Lucky. "Purifikasi Kewenangan Pengadilan Niaga dalam Menangani Perkara Kepailitan/PKPU." *Jurnal Syntax Transformation* 2, no. 12 (2021): 1754–64. https://doi.org/10.46799/jst.v2i12.471.

Sulistyo Irianto. *Metode Penelitian Hukum: Korelasi Dan Refleksi*. Shidarta. Yayasan Pustaka Obor Indonesia, 2011.

Suratman and Philips Dillah. *Metode Penelitian Hukum:* Alfabeta, 2014.