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## PAPER

# “COMPANY BANKRUPTCY RELATIONS, LABOR RIGHTS, AND THE NATIONAL ECONOMY

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## FOREWORD

*Bismillahirrahmaanirrahim.*

Praise be to Allah SWT who has given His grace and blessing so that we can complete the task of making this paper entitled CORPORATE BANKRUPTCY RELATIONS, LABOR RIGHTS, AND THE NATIONAL ECONOMY properly and completed on time.

The purpose of this paper is to fulfill the duties of a lecturer in the field of study of Labor and Industrial Law. In addition, this paper also aims to add insight for readers and also for writers.

We thank Dr. Arief Budiono, SH, MH Lecturer in the course of Labor and Industrial Law who has given this assignment. We also thank all those who have shared some of their knowledge so that we can complete this paper.

We realize that the assignment that we have written is still far from perfect due to the limited experience and knowledge we have. Therefore, we expect suggestions and input and even constructive criticism from various parties for the perfection of this paper.

Sukoharjo, 12 April 2022

Writer

#### ABSTRACT

Bankruptcy is a condition or condition when the debtor, namely a person or business entity, is unable to settle the payment of the debt given by the creditor. This situation is actually a common thing in the business world.

In Indonesia, bankruptcy is regulated in Law Number 37 of 2004 concerning bankruptcy and postponement of debt repayment obligations or abbreviated as UUK 2004. Prior to the enactment of the 2004 UUK, the issue of bankruptcy was regulated in Staatsblad 1905:217 jo. Staatsblad 1906:348 concerning Faillissement Verordening (Law on bankruptcy) which was later regulated through Government Regulation in Lieu of Law Number 1 of 1998 and later ratified into Law Number 4 of 1998.

Generally, companies go bankrupt because they fail to compete in the market and experience a slow process of innovation. This can be caused by many factors. In addition, with the development of information technology today, new trends and products can appear at any time. All of these things will have an impact on the company's income, profits, financial capabilities and liabilities. Lack of observing competitors' movements can also cause a company to go bankrupt. Companies become less competitive and fall far behind.

( Keywords: Bankruptcy, bankruptcy law, company )

## CHAPTER I

### PRELIMINARY

#### 1.1 BACKGROUND

Bankruptcy is a condition or condition when the debtor, i.e. a person or business entity, is unable to settle the payment of the debt given by the creditor. This situation is actually a common thing in the business world. Meanwhile, the word bankruptcy comes from the Dutch language, namely *failliet* which means stuck in making payments. Usually companies that are declared bankrupt are companies that have ended up in bankruptcy or out of business. To settle debts in this matter, of course, requires a special field of law, namely Bankruptcy Law.

Bankruptcy Law is a field of legal science that is specifically designed as one of the legal means for settling debts. In Indonesia, bankruptcy is regulated in Law 37 of 2004 concerning Bankruptcy and PKPU (KPKPU). Law 37/2004 states that bankruptcy is a general confiscation of all assets of the Bankrupt Debtor whose management and settlement is carried out by the Curator under the supervision of the Supervisory Judge as regulated in this Law.

Bankruptcy law has existed since 2000 years ago and has experienced a long history. Bankruptcy Law dates back to Roman times in 118 BC (BC). At that time, if a debtor could not pay off his debt, then the personal debtor must physically be fully responsible for the debts to the creditor. In the 5th century BC, if a debtor could not pay off his debt to a creditor, the creditor had the right to sell the debtor into slavery. Even at that time, the consequences of not paying the debt by the debtor could be in the form of death of the debtor, dismemberment of limbs, imprisonment, or exile. Then Bankruptcy Law developed with the times.

Meanwhile in Indonesia, bankruptcy law cannot be separated from the Dutch heritage. Initially, the rules regarding bankruptcy were contained in the *Wetboek Van Koophandel* or commonly called the Commercial Code (KUHD) and *Reglement op de Rechtsvoordering* (RV). Bankruptcy is specifically regulated in the KUHD, Chapter III with the title *Van de Voorzieningen in Geval van Onvormogen van Koopliden* or regulations regarding the inability of traders. Meanwhile, RV arranges it in the Third Book of the Seventh Chapter with the title *Van den Staat Von Kenneljk Onvermogen* or about the real state of being unable.

Then it was replaced with *Failistment Verordenning* which was in effect based on *Staatblaads* No. 276 of 1905 and *Staatsblaad* No. 348 of 1906 which lasted from 1905 to 1998. Furthermore, due to the monetary crisis (*Krismon*) that hit Indonesia in 1998 which resulted in the bankruptcy of a number of national and multinational companies in Indonesia, PERPU was issued no. 1 of 1998 concerning Amendments to the Bankruptcy Law.

PERPU Number 1 of 1998 was then officially enacted as law by Law Number 4 of 1998 which significantly changed the concept of regulation around bankruptcy, including the deadline for the settlement of bankruptcy cases, private curators, and of course the establishment of a commercial court.

The establishment of a commercial court is a milestone in the start of a new era of the bankruptcy case settlement system in Indonesia. As emphasized in PERPU Number 1 of 2004. Six years later, regulations in the field of bankruptcy have again experienced dynamics with the issuance of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (PKPU).

After going through a long historical process, Indonesia's bankruptcy law will again experience changes. Although not yet included in the national legislation program in the DPR, changes to the Bankruptcy Law and PKPU have begun to be discussed by several groups, especially practitioners in the field of bankruptcy law such as curators.

## 1.2 PROBLEM FORMULATION

1. What is the impact of bankruptcy on the Company??
2. What are the labor rights of workers after the company is declared bankrupt?
3. What is the impact of a company's bankruptcy on the Indonesian economy?
4. Why a company can go bankrupt??

## 1.3 PURPOSE

1. To find out what bankruptcy is
2. To know the basic history of bankruptcy law
3. To find out the impact of Bankruptcy
4. To find out the cause of Bankruptcy

## 1.4 BENEFITS

1. For Readers  
Provide a more detailed understanding of the impact of the company being declared bankrupt and related matters
2. For Students  
As a reference material for making a scientific paper on Labor or Industrial
3. For Writers  
Add insight and knowledge and be able to apply the knowledge that the author has obtained.

## 1.5 RESEARCH METHODS

The research method is a basic tool in the development of Science and Technology, as well as the Arts. Therefore, this study aims to obtain data and truth systematically.

The type of this research is library research, namely research conducted through data collection and scientific writings that aim as objects in a research or library data collection.

This research is descriptive in nature so that in a study it only focuses on a systematic explanation of the facts that have been obtained. Data collection methods are taken from

data sources, namely books, scientific works, research reports, journals, theses, theses and so on that discuss the same problem faced by the author.

After all the data is collected, the writer analyzes the data so that a conclusion can be drawn. This data collection uses content analysis techniques. Content analysis is research that is in-depth discussion of the contents of written or printed information in the mass media.

## CHAPTER II

### DISCUSSION

#### 2.1 WHAT IS THE IMPACT OF BANKRUPTCY ON THE COMPANY

Bankruptcy is regulated in Law Number 37 of 2004 concerning bankruptcy and suspension of debt payment obligations or abbreviated as UUK 2004. Prior to the enactment of the 2004 UUK, the issue of bankruptcy was regulated in Staatsblad 1905:217 jo. Staatsblad 1906:348 concerning Faillissement Verordening (Law on bankruptcy) which was later updated through Government Regulation in Lieu of Law Number 1 of 1998 and later ratified into Law Number 4 of 1998.

According to article 1 point 1 of the 2004 UUK, bankruptcy is a general confiscation of all assets of a bankrupt debtor whose management and extortion is carried out by a curator under the supervision of a supervisory judge as regulated in this law. It can be concluded from this understanding that the essence of bankruptcy is general confiscation (beslaag) of the debtor's assets.

Bankruptcy of a business entity or company covers the entire assets of the debtor and also includes the union of assets, whether the husband or wife of the bankrupt debtor. The following are the effects of bankruptcy:

1. The debtor loses the right to control and manage the assets that are included in the bankruptcy estate legally. Loss of such juridical rights from the date the bankruptcy declaration decision is pronounced.
2. All debtor engagements issued after the bankruptcy declaration cannot be paid from the bankruptcy estate. However, if it benefits the bankruptcy estate, the engagement becomes an exception.
3. If there is a claim regarding rights and obligations relating to the bankruptcy estate, it must be submitted by or against the curator.
4. If the fulfillment of the engagement is obtained from the bankruptcy estate and during the course of the bankruptcy, this condition can only be submitted by registering it for verification.
5. If there is a lawsuit filed by the debtor and which is ongoing during the bankruptcy accompanied by the plaintiff's application, the case must be suspended. The purpose of the adjournment is to provide an opportunity for the defendant to call the curator to take over the case within the period determined by the judge.
6. If the purpose of the lawsuit in court filed against the debtor is to obtain the fulfillment of obligations from the bankruptcy estate and the case is ongoing, then it is null and void by law by pronouncing the decision on the bankruptcy statement against the debtor.
7. All court enforcement decisions on each part of the debtor's assets that have existed since before the bankruptcy must be stopped immediately and since then no decision can be implemented, even if the debtor is held hostage.
8. Debtors who have been declared bankrupt are not subject to forced money.

9. If there are assets from the sale of movable or immovable objects which were previously carried out by the debtor, while the process before the bankruptcy decision is pronounced is accompanied by the permission of the supervisory judge, the curator and curator can continue the sale at the expense of the bankruptcy estate.
10. If the bankruptcy decision has been pronounced, then the agreement with the intention of transferring land rights, transfer of ship name, imposition of mortgage rights, mortgages or fiduciary guarantees that have been agreed in advance cannot be implemented.
11. If there is a reciprocal agreement that has not or partially been fulfilled, the party who entered into the agreement with the debtor must submit it to the curator to provide certainty about the continuation of the implementation of the agreement within the period agreed upon by the curator and the party concerned.
12. The agreement on the delivery of goods by the debtor after the bankruptcy decision, then the agreement is deleted and the recipient of the goods submits himself as a concurrent creditor to obtain compensation.
13. The lease agreement that has been made by the debtor can be terminated
14. Workers who work for bankrupt debtors can terminate their employment.
15. Inheritance assets that fall to the bankrupt debtor during bankruptcy cannot be accepted by the curator unless it benefits the bankruptcy estate.
16. The court can be asked to cancel all legal actions of the debtor declared bankrupt
17. Grants made by debtors can be requested for cancellation to the court
18. Regarding the payment of collectible debts, it can only be canceled if it is proven that the recipient of the payment knows that the request for a statement is a conspiracy between the creditor and the debtor.

## 2.2 LABOR RIGHTS AFTER THE COMPANY IS DECLARED IN BANKRUPT

After being declared Bankrupt, the Company has several responsibilities, one of which is regarding the rights of workers who are laid off because of the bankruptcy.

In bankruptcy there is a division of creditors, namely:

a. Separatist creditors

Property guarantee rights holders

b. Preferred Creditors

Has rights granted by law so that his position is higher than other creditors/priorities.

c. Concurrent creditors

Does not have special rights and does not hold the right of material security, so that the payment of the debt is made after the preferred creditor and the separatist creditor.

In the Bankruptcy Law, workers are classified as concurrent creditors. However, after the decision of the Constitutional Court Number 67/PUU-XI/2013 has confirmed the position of workers' wage debts as preferred creditors, namely creditors with special rights.

Furthermore, regarding the rights of workers affected by termination of employment (PHK) due to a bankrupt company, it is regulated in Article 81 point 42 of Law Number 11 of 2020 concerning Job Creation. The law inserts Article 154A in Article 154 of Law Number 13 of 2003 concerning Manpower. Article 154A paragraph 1 letter f stipulates that termination of employment can occur, one of which is due to the reason the company is bankrupt.

The rights of workers who are laid off due to a bankrupt company are regulated in Government Regulation Number 35 of 2021 concerning Work Agreements for Certain Time, Outsourcing, Working Time and Rest Time, and Termination of Employment.

Article 47 stipulates:

**a) Severance pay of 0.5 (zero point five) times the severance pay provisions;**

severance pay terms

*Based on article 40 paragraph 2 of PP 35 of 2021*

Years of service :

<1 year = 1 month wages

1 - 2 years = 2 months wages

2 – 3 years = 3 months wages

3 – 4 years = 4 months wages

4-5 years = 5 months wages

\*and so on up to > 8 years = 9 months wages

**b) The period of service award is 1 (one) time of the provisions of the period of service award; and**

TERMS OF WORKING AWARD MONEY

*Based on article 40 paragraph 3 PP 35 of 2021*

Years of service :

3 - 6 years = 2 months wages

6 - 9 years = 3 months wages

9 - 12 years = 4 months wages

12 - 15 years = 5 months wages

15 - 18 years = 6 months wages

\*and so on up to >24 years = 10 months wages

**c) Reimbursement of rights in accordance with the provisions of compensation of rights**

## 2.3 IMPACT OF A COMPANY'S BANKRUPTCY ON THE ECONOMY IN INDONESIA

- The Impact of Multinational Companies on the Indonesian Economy

The existence of a company for a country contributes to economic growth. Companies are very closely related to selling or buying that occurs in a trading market.

Changes in regulations regarding the free market that make it easier for companies to export goods or services abroad. Companies hold shares in a country's economy. The convenience



of companies in conducting business activities is not only with domestic companies but also for cooperating with international companies. The purpose of this is none other than to develop the company's business as capital in adding value to the company. Domestic companies in this case are given the freedom to sell goods or services to other countries. As a result, many companies have switched to multinational companies. The phenomenon of Multi-National Corporations (MNC) is an extraordinary thing where its existence in developing countries is like a king in other countries. So far,

- Multinational Company THEORY

There are two theories about the influence or impact of multinational companies on the economy of developing countries including Indonesia, namely the neoclassical view and the dependency theory.

1. The neoclassical view is a view that conceptualizes the economy as a unitary agent. In this case the market can be sufficient for its own country.

According to this theory, views MNCs as companies that have a positive impact on developing countries. Due to the large number of incoming MNC companies will contribute advanced technology, good management system, superior knowledge of foreign markets. All of these positive impacts can be realized if the role of the state in the process of realizing an advanced economy can be minimized.

2. The theory related to the existence of MNCs in the international economy is dependency theory. This theory views the existence of MNC companies as a negative thing in international trade.

Based on this theory, MNCs will distort the national economy by pushing local producers out of the domestic economy while continuing to suck in domestic capital. MNCs are also considered responsible for undermining national autonomy from developing countries, because MNCs are able to forge alliances with local elites and technocrats to then sue the government to realize their personal interests.

The superior capability of MNCs is also considered capable of giving MNCs a high bargaining position when dealing with local governments. As a result, developing country governments tend not to be able to negotiate on an equal footing with MNCs, and therefore local governments will tend to follow the interests of MNCs. So the negative impact of the presence of multinational companies in developing countries is quite significant.

Multi-National Corporations (MNC) are defined as companies that are involved in various forms of international business (Madura in (Maulana et al., 2014)). Initially, the company will export or import goods from other countries. Over time, the company saw an opportunity that gave rise to subsidiaries in foreign countries. In this case, the company located in a foreign country is wholly owned by the parent country. The goal is to maximize the overall value, both in the home country and subsidiaries in foreign countries.

Natural resources have an important role for human survival. Human life depends on nature which provides various needs that are needed both in terms of food and other needs. Natural resources for the community not only have aesthetic value but also have economic value. Therefore, many humans are not wise in using nature so that they exploit it for

personal needs and do not attach importance to the survival of nature for the future. Each form of natural resource has its own mastery. Open resources, ownership status is free and open for anyone to take advantage of. However, Commonly owned resources are resources that are expressly owned by a group of individuals or communities and other people cannot manage them and cannot enjoy their benefits without the community's permission. State-owned resources are expressly and based on regulations that have been regulated by the government, controlled and regulated by the state.

- **Legal Consequences for Bankrupt Debtors**

The rights of the debtor to take all legal actions regarding his wealth before the bankruptcy declaration must be respected. In this case, it must pay attention to the contractual rights and obligations of the debtor according to the laws and regulations (Imran Nating, 2002:39). Since the court pronounces the bankruptcy decision in a trial that is open to the general public against the debtor, the rights and obligations of the bankrupt person pass to the curator to manage and control the boedel. However, the bankrupt is still entitled to take actions on his assets, as long as the actions bring or are beneficial or beneficial to his boedel. On the other hand, actions that do not provide benefits to the boedel do not affect the existence of the boedel.

In general, the consequences of a declaration of bankruptcy are as follows:

The assets of the bankrupt debtor that enter the bankruptcy estate is a general confiscation of the debtor's assets declared bankrupt according to article 19 of the Bankruptcy Law, the bankruptcy estate includes all the assets of the debtor at the time the bankruptcy decision is pronounced as well as all assets obtained by the bankrupt debtor during the bankruptcy.

1. Bankruptcy is only about the assets of the bankrupt and not about the personal self of the bankrupt debtor. For example, a person can continue to marry even though he has been declared bankrupt.
2. The bankrupt debtor by law loses the right to manage and control his wealth which is included in the bankruptcy estate, starting from the date of bankruptcy (Article 22 of the UUK).
3. The engagements that have been made by the debtor that arise after the bankruptcy decision is pronounced cannot be paid from the bankruptcy estate unless it benefits the bankruptcy estate (Article 23 UUK).
4. Bankruptcy assets are managed and controlled by the curator for the benefit of all creditors and debtors and the supervisory judge leads and supervises the implementation of the bankruptcy process.
5. Claims and claims regarding the rights and obligations of bankrupt assets must be filed by or against the curator (Article 24 Paragraph (1) of the UUK).

6. All claims or those aimed at obtaining settlement of an engagement from the bankruptcy estate, and from the debtor's own property during bankruptcy must be filed by reporting it for verification (Article 25 of the UUK).
7. By taking into account the provisions of Article 56 .A of the Law, creditors who are guaranteed by liens, fiduciary guarantees, mortgages or mortgages can exercise their collateral rights as if there was no bankruptcy (Article 56 Paragraph (1) UK). The creditor who has the right to hold the debtor's property until the creditor's bill is paid (retention rights), does not lose the right to hold the goods even though there is a bankruptcy decision (Article 59 of the UUK).
8. The executive rights of the guaranteed creditor as referred to in Article 56 Paragraph (1) of the UUK, and third parties for \*) while the assets are in the control of the bankrupt debtor or the curator who are in the control of the bankrupt debtor or curator, are suspended for a maximum of 90 days after the bankruptcy decision is pronounced ( Article 56 A Paragraph (1) UUK).

If a bankruptcy declaration decision is pronounced there are:

- a. A reciprocal agreement that has not been or has only been partially implemented, then the party with whom the debtor makes an agreement can ask the curator for certainty regarding the continuation of the implementation can claim compensation and be treated as a concurrent creditor. However, if the curator undertakes to fulfill the agreement, the counterparty may ask the curator to provide a guarantee for that. The foregoing does not apply to agreements that require the bankrupt debtor to carry out the agreed actions themselves (Article 36 of the UUK).
- b. An agreement with a promise for future trading, the time of which will fall after the declaration of bankruptcy or during the bankruptcy, then the agreement will be annulled and the party who feels aggrieved.

## 2.4 WHY A COMPANY COULD GO BROWN

Generally, companies go bankrupt because they fail to compete in the market and experience a slow process of innovation. This can be caused by many factors. In addition, with the current development of information technology, new trends and products can emerge at any time. All of these things will have an impact on the company's income, profit, financial capability and liabilities. Lack of observing competitors' movements can also cause a company to go bankrupt. Companies become less competitive and fall far behind.

Based on the source, bankruptcy occurs because the company does not pay off its debts due to various factors. These factors may come from internal to the company, for example, the significant decrease in income due to capital expenditures is not proportional to the results received by the company. As a result, the capital reserves experienced an imbalance and over time the grace period for paying debts became increasingly unpaid and officially declared bankrupt. A company can be said to be bankrupt if it has an unhealthy financial condition and ultimately suffers a very large loss. Unable to cover losses, bankrupt

companies usually close their businesses. Meanwhile, a company that is declared bankrupt is if it is unable to carry out its obligations to pay debts to certain parties.

The following are some of the factors that cause a company to go bankrupt:

1. Experiencing excessive fear, such as fear of bankruptcy, fear of loss, fear of not being able to serve customers, fear of inability to solve problems, and others. This condition must be watched out for because it will hamper the company's performance and bring destruction.
2. Stop to innovate in business. Innovation is important for every entrepreneur or businessman. Because without innovating, the products being sold will eventually become boring for the people who are the target market.
3. Lack of observing the movement of competitors or competitors, so that it will cause a company to lose competition and lag far behind.
4. Setting a price that is too high. The pricing of the product is too high or the value of the price is not proportional to the quality, so that the product is not used as the first choice by consumers. Consumers will definitely compare prices, it's an absolute law. Products with the same quality but at different prices, of course the cheapest price will bind market interest
5. Uncontrolled capital expenditures are caused by the emergence of actions to expand (expansion) the business, but are not matched by the right strategy and cause failures and large capital expenditures that affect the company's performance.
6. Too focused on development. The company's development is indeed good, it can be used as a source of additional income for the company. It's possible that thinking about development ideas becomes very difficult, so developers focus more on the developments that are being made, and ignore the products they already have.
7. Being in debt and borrowing money does not only happen to individuals, but also companies. Sadly, indeed many companies are in debt to several large companies, to sustain the life of the company.
8. Excessive expansion. Overspending of money will be a factor in the company's bankruptcy problems. For example, in creating new markets, expanding facilities, recruiting employees, increasing economic activity, and growing the business world.



### CHAPTER III CLOSING

#### CONCLUSION

From the paper "COMPANY DECLARED IN BANKRUPT", several things can be concluded, including:

- Studying the scope of bankruptcy law.
- With the bankruptcy of the company, it means that the company stops all its activities and thus can no longer enter into transactions with other parties.
- Bankruptcy law is a field of science that is specifically held to be one of the legal means for the settlement of debts and receivables.
- The legal consequence of a court decision against a debtor who is declared bankrupt is that since the date of the bankruptcy declaration decision, the debtor loses the right to manage and control his assets.
- When a company is declared bankrupt, there are many corporate responsibilities that must be carried out starting from fulfilling labor rights and many others.
- Labor rights must be prioritized and prioritized after the company is declared bankrupt
- The agreement on the delivery of goods by the debtor after the bankruptcy decision, then the agreement is deleted and the recipient of the goods submits himself as a concurrent creditor to obtain compensation.
- Many add insight and benefits that can be gained from studying bankruptcy law.

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