

Implementation of the Provisions of Laws and Regulations Concerning Bankruptcy in the PT Istaka Karya Case

Febriana Irma¹ Gunardi Lie² Moody Rizqy Syailendra Putra³

Faculty of Law, Universitas Tarumanagara, West Jakarta, Province of DKI Jakarta,
Indonesia^{1,2,3}

Email: febriirma0302@gmail.com¹ gunardi@fh.untar.ac.id² moodys@fh.untar.ac.id³

Abstract

Bankruptcy according to Article 1 point 1 of the Bankruptcy Law No. 37 of 2004 is a general confiscation of all the assets of the Bankrupt Debtor which management and settlement are carried out by the Curator under the supervision of the Supervisory Judge as stipulated in this Law. The Bankruptcy and PKPU Laws have a wider reach both in terms of norms, scope of material, and the process of settling debts. This wider reach is necessary due to the emergence of legal developments and needs in society. PT Istaka Karya has been declared bankrupt by the Central Jakarta District Court. The formulation of the problem in this study is how to implement Law No. 37 of 2004 concerning Bankruptcy and PKPU in the bankruptcy case of PT Istaka Karya and whose authority has the right to bankrupt a State-Owned Enterprise. The reason for the bankruptcy of PT Istaka Karya is because it is unable to fulfill its obligations due at the end of 2021 on the Peace Decision Number 23/PKPU/2012/PN Niaga Central Jakarta dated January 22 2013 in accordance with the cancellation of homologation.

Keywords: Bankruptcy law, BUMN, Istaka Karya, Debtors, Creditors



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INTRODUCTION

State life is governed by written and unwritten regulations. All citizens' activities are regulated by the laws and regulations that apply in each country. Indonesia itself has written and unwritten laws. What are the acts of regulating citizens who are involved in the life of society, nation and state. The phrase legislation and legal regulations comes from the word statute, which relates to the type or form of regulations made by a country. In the Dutch literature, the term *nass* is known which has two meanings, namely *nass* in the formulation of *zin* and *nass* in *materiel zin*, i.e. legal sense because of its content or substance.

In drafting regulations there is a standard level theory in relation to law. Hans Kelsen argues in his book "Allgemeine Rechtslehre" that according to Hans Kelsen's theory, state legal standards are always layered and multilevel. The norm which the Most High has called the basic norm. Based on this theory, Hans Nawiasky added that apart from the fact that standards are layered and tiered, legal standards also come in groups. Nawiasky divides it into four main groups, namely State Fundamental Law, State Basic Law, Formal Law, Ordinance and Autonomous Statute (Berry: 2018).

One of the laws proposed in Indonesia is the Bankruptcy Law. Bankruptcy law existed in Roman times in 188 BC. (BC) At that time, if the debtor could not pay his debts to the creditors, then the individual debtor had to be fully physically responsible for his debts to the creditors. Indonesian bankruptcy law is a legacy from the Dutch colonial government which followed the continental European legal system, but in Indonesia itself continental European law is not only applied in Indonesian bankruptcy law institutions (Yuhelson: 2019). Bankruptcy according to Article 1(1) of Bankruptcy Law No. 37 of 2004 is a general confiscation of all assets of a bankrupt debtor that is managed and regulated by a trustee under the supervision of a supervisory judge based on this Law (Law No 37: 2004). To protect the rights of creditors, it is

necessary not only to have an insolvent institution, but also to have some kind of responsibility on the part of the debtor when he pays off his debts. Debtors who can be bankrupt are individuals (people) and legal entities. Article 3 Paragraph 5 Bankruptcy Law No. 37 of 2004 says: "If the debtor is a legal entity, then the legal status must be in accordance with the articles of association". This article is the basis for debtors filing for bankruptcy.

The Indonesian currency crisis in mid-1997 had a negative, incomplete and detrimental impact on the national economy, making it difficult to resolve the large debt problem. Some of the most important professional studies that have just been regulated in this bankruptcy law are strict regulations regarding debt restrictions and provisions regarding requirements and procedures for filing for bankruptcy and filing for bankruptcy, including their arrangements. Bankruptcy and PKPU statements, so that bankruptcy law and PKPU remain valid because they meet the legal needs of society (Sutedi: 2009). Law No. 4 of 1998 concerning Implementation of Government Orders in lieu of the Bankruptcy Law does not specifically regulate the principles of bankruptcy law (Law No. 4: 1998), but the most recent bankruptcy law provisions, namely Law No. 37 of 2004 concerning Bankruptcy and PKPU, in the explanatory note states that the existence of this law is based on several principles of bankruptcy, namely:

1. The principle of balance, namely preventing debtors from abusing bankrupt institutions.
2. The principle of business continuity is a provision that enables the continuity of the debtor's business.
3. The principle of fairness means that the settlement of bankruptcy can reflect the parties' perception of fairness. This principle of justice prevents the arbitrariness of debt collection companies that do not care about other creditors.
4. The principle of honesty in bankruptcy requires the existence of a formal legal system and a civil law system as well as a national civil procedural law.

Postponement of Payment Obligations (PKPU) is regulated in Articles 222-294 of Bankruptcy and PKPU Law No. 37 of 2004. PKPU itself should not be equated with bankruptcy instruments. PKPU is a legal action or legal remedy that gives every debtor who cannot or is expected to be unable to continue paying his debts, because he is in debt, the right to request a suspension of his debt obligations in order to submit a comparative plan. involves an offer to pay all or part of a debt to a competing creditor (Article 222).

PKPU is divided into two stages, namely the transitional stage is planned no later than 45 days before the creditors' meeting, so that the debtor has the opportunity to present the mediation plan submitted according to article 225. The time limit according to the Bankruptcy Law and the fixed phase is a maximum of 270 days if unable to provide voting on the plan on the 45th day or in the PKPU creditors' meeting can be voluntarily left by the debtor who has predicted that the debtor will not or cannot pay his debts. This principle states that payments must be made in proportion to the debtor's debt (Article 228 of the Bankruptcy Act).

The purpose of bankruptcy is to distribute the debtor's wealth through bankruptcy practitioners. Bankruptcy is intended to prevent separate binding or separate coercion against creditors and replace it with ordinary binding so that the assets of the debtor can be distributed to all creditors according to their rights. From this it can be concluded that the purpose of bankruptcy law is to protect parallel creditors in order to obtain rights related to the application of the principle of guarantee and ensure that the debtor's property is distributed among creditors in a *pari passu* manner, in which the debtor's property is divided among competing creditors in proportion to the outstanding balance. each obligation. Guaranteed by KUH Section 1132. Civil Code. Before discussing the Implementation of the Bankruptcy Law, the researcher wants the reader to know a brief history of PT Istaka Karya. It was established in

1979 (Indonesian Construction Industry Consortium), after handling several projects, the well-known PT Istaka Karya working on the Bitung Manado reclamation project, the YIA airport train to Plaza Baramindoo. Istaka Karya is also known to have built flyovers at different locations several times.

Examples of parties to disputes regarding debt are JAIC (Japan Asia Investment Company) and PT Saeti Concretindo Wahana. The problem between PT JAIC and PT Istaka Karya has been going on for a long time, starting from negotiations to going to court. Debt to PT JAIC in the form of Commercial Paper (CP) is around 7.645 million US dollars or 69.072 billion rupiah. CP owes on behalf of, not on behalf of. CPs issued in December 1998 with a maturity date of January 1, 1999 are used CPs. The government appointed PT Istaka Karya as a state-owned company which was sick. This was because PT Istaka Karya continued to experience losses. Therefore, PT Istaka Karya has joined PT Perusahaan Pengelola Aset (Persero) since 2013. PT Istaka Karya worked on at least 4 development projects before being declared bankrupt. PT Istaka Karya was bankrupt based on the decision contained in decision number 26/Pdt. Sus-Cancellation of Peace/2022/PN Niaga Jkt. The reason for the bankruptcy of PT Istaka Karya is because it is unable to fulfill its obligations due at the end of 2021 on the Peace Decision Number 23/PKPU/2012/PN Niaga Central Jakarta dated January 22 2013 in accordance with the cancellation of homologation. Homologation itself is an endorsement with the agreement of the debtor and creditor to end bankruptcy. According to the law, if the creditors accept the settlement, the PKPU ends.

Problem Formulation: How is the implementation of Law Number 37 of 2004 concerning bankruptcy and PKPU based on the bankruptcy case of BUMN PT Istaka Karya? **Who has the right to file for bankruptcy over BUMN?** **Research Objectives:** To find out how the implementation of Law Number 37 of 2004 concerning bankruptcy and PKPU is based on the bankruptcy case of BUMN PT Istaka Karya. **To find out whose authority has the right to file for bankruptcy over BUMN.** **Research Benefits:** Practical Benefits, namely Providing ideas for bankrupt parties in implementing the Bankruptcy Law and PKPU. Expanding knowledge about bankruptcy law and PKPU for State-Owned Enterprises. Theoretical benefits are to provide a basis for other similar researchers in the form of the Implementation of the Bankruptcy Law and PKPU in the bankruptcy case of a State-Owned Enterprise.

RESEARCH METHODS

In this study, researchers used a type of library research, namely a series of activities related to library data collection methods (Kurniawan: 2017). This study uses a statutory approach that is in line with several concepts that assist discussion based on an understanding of the underlying legal concepts that play an important role in understanding the background in the practice of life, or solving the norms contained in the relevant laws in this research.

RESEARCH RESULTS AND DISCUSSION

Implementation of Law Number 37 of 2004 concerning bankruptcy and PKPU based on the case of the bankruptcy of BUMN PT Istaka Karya.

According to Joseph, bankruptcy has three principles, the main purpose of bankruptcy is to encourage business revival. The Bankruptcy Act gives companies plenty of time to develop. Second, there are no known effective bankruptcy laws, universal regulation and bankruptcy among actors, economic structure changes and historical developments have changed, but all bankruptcy laws aim at compensation. The goal is to protect stakeholders, especially employees.

The larger and more complex, bankruptcy requires legal regulations that are considered effective in resolving business debt and credit problems and useful in meeting the legal needs of entrepreneurs to resolve debt and credit problems. Bankruptcy requirements must also be considered in the event of bankruptcy of a legal entity, company or individual. Application requirements can be made by debtors, creditors and also lawyers. In implementing the law, it is necessary to assess whether there are any deficiencies in the law itself so that there are no legal defects when a case is in progress. Judging from the complicated history, it can be understood if the law has several weaknesses. The weakness in question is that the Law resulting from "refining" the forms of application causes interpretation.

Procedural problems in the application of bankruptcy law, the use of bankruptcy and PKPU have actually been regulated since 1905. Unfortunately, the applicants rarely use and use these provisions in practice. Matters related to bankruptcy proceedings include:

1. With respect to Article 10 Paragraph 1 of Law No. 37 of 2004, which predicts the possibility of requesting the confiscation of part or all of the debtor's assets during the trial, before the debtor's court. decision was declared bankrupt.
2. In summary, the provisions of Article 91 of the Bankruptcy Law, according to which the coercion of bankrupt assets remains legal and has the right to adjudicate even if it includes legal action which then overrides the bankruptcy declaration decision. As a result, the question arises who will be sued for losses incurred and what legal protection will be given to debtors whose decisions are canceled, even though their assets have been properly realized.

According to Article 228 (6) of the Bankruptcy Law, the debtor's maximum payment period is 270 days to defer or suspend debt payments. Time delays can be a barrier to rearranging efforts or other forms of effort. Distrust of the Commercial Court. The first problem is that there are no substantive and substantive provisions that can be resolved by the commercial court, so that they are interjudicial in nature. In addition, commercial court decisions often cannot be enforced because there are no clear laws and regulations regarding this matter. As a result of the bankruptcy, the debtor's assets are deemed to be general confiscation or the assets are transferred and the bankruptcy assets are realized (Article 16 (2) of the Bankruptcy Law and PKPU). However, many debtors do not care. Implementing a statutory regulation provides benefits whether the legislation is appropriate to be implemented in a legal case, in this case the implementation of Law No. 37 of 2004 concerning bankruptcy and PKPU for the bankruptcy of PT Istaka Karya needs to assess whether it is appropriate or not.

PT Istaka Karya is owned by BUMN, which means that all of its shares are owned by the state, referring to the clause that "all capital belongs to the state and is not divided into shares". This clause was deleted because of a provision which emphasized that the State is a unitary entity, so that the State's share ownership is exclusive. In practice, on the contrary, ownership of state-owned companies is owned by the Minister of BUMN and the Minister of Finance, so that ownership of BUMN is not individual ownership. PT Istaka Karya still has Rp 1.1 trillion in debt to around 600 partners. Among other things, in the construction project of the Sedyatmo Toll Road as access to Soekarno Hatta International Airport which has not been paid for by Istaka Karya since 2011, construction of the Bawean - Semarang toll road and many other Istaka Karya projects. As of December 31, 2021, Istaka Karya still has debt and company shares of under IDR 570 billion. Meanwhile, the company's assets were reported to be only Rp 514 billion.

Before being declared bankrupt in 2022, it turns out that PT Istaka Karya was declared bankrupt through decision number 124 K/Pdt.Sus/2011 which was filed by PT JAIC Indonesia. Number.1799 K/PDT/2008 09 February 2009 In the case between PT JAIC Indonesia and PT Istaka Karya in relation to 6 (six) transferable bonds in the amount of USD 5,500,000 (five million five hundred thousand US dollars) issued by PT Istaka Work. PT Istaka's creditors' meeting resulted in a decision that 160 PT Istaka creditors approved the settlement by voting on December 9, 2011. Based on the results of the creditors' meeting on December 9, 2011, these conditions have been fulfilled. In addition, the results of the arbitration are submitted to the Chamber of Commerce to request a settlement determination, the approval decision must also state the end of bankruptcy.

Through the Supreme Court decision Number 80 K/Pdt.Sus/2012 on PT Istaka Karya as Petitioner I/Bankrupt Debtor against Concurrent Creditors represented by PT JAIC Indonesia, PT. Asuransi Jasa Indonesia and PT. Waskita Karya as Petitioner II. In short, PT Istaka Karya has submitted a Proposed Reconciliation Plan to pay its debts to Concurrent Creditors in accordance with Article 144 of Law No. 37 of 2004 concerning Bankruptcy and PKPU in the manner described and explained in the Settlement Agreement. This peace agreement prevented PT Istaka Karya from being declared bankrupt.

In bankruptcy law, debt is an important requirement or the main basis for the bankruptcy of a company, because without debt it is impossible for a bankruptcy case to be filed at the Commercial Court, because without debt, bankruptcy will lose its basic meaning. According to Setiawan, in his book entitled "Bankruptcy Ordinances and Current Applications, argues that debt should often be understood as an obligation to pay a certain amount of money arising from contractual obligations and obligations arising from contracts or other agreements to pay a certain amount of money that causes the debtor to pay, certain amount of money.

After the issuance of PT Istaka Karya's bankruptcy certificate, there are several settlement processes, the first of which is the first creditor meeting which will take place on Monday, July 25 2022 at 10.00 WIB at the Central Jakarta District Court. Then on August 9 2022 a meeting will take place to determine the deadline for filing bills. The last meeting for matching receivables and the deadline for tax verification was on August 23, 2022. Based on this, the implementation of Law No. 37 of 2004 concerning Bankruptcy and PKPU is in accordance with Article 15 of Law No. 37 of 2004 concerning Bankruptcy and PKPU. All of Istaka Karya's obligations will be settled after obtaining the proceeds from the sale of all company assets through an auction mechanism by the curator. However, as is well known, Istaka Karya's total assets are far smaller than the total debt or liabilities charged. Later, Istaka Karya's creditors, employees and retirees will not receive debt payments as stipulated in the initial agreement.

From a regulatory perspective, the economy of PT Istaka Karya is not public funds because it is not under the control of the State (Ministry of Finance). In a sense, PT Istaka Karya's finances are inseparable from the State Revenue and Expenditure Budget (APBN) and will be explained again. Net Assets/Financial Condition is the wealth of PT Istaka Karya as an independent legal entity which is under the control of the directors in the form of accountability to the GMS. In the event of bankruptcy, PT Istaka Karya's assets will be confiscated/confiscated because the wealth no longer belongs to the state. The Bankruptcy Law and PKPU do not apply automatic suspension or automatic suspension not from the date the bankruptcy decision is registered at the Commercial Court, but from the issuance of the bankruptcy decision at the Commercial Court. Thus, the creditor does not have legal protection for the debtor's ability to sell his assets during the process of filing for bankruptcy in court. To protect this, the Bankruptcy Law and Article 10(1) PKPU stipulate provisions under which.

Based on the explanation of Article 10 (1) of the Bankruptcy Law, the security measures regulated in this provision are preventive and temporary. This is to prevent the debtor from taking action on his assets that could be detrimental to the creditor's interests in connection with the replacement of his debt. The provisions of Article 10 of the Bankruptcy Law are referred to in the procedures or procedures for requesting and determining the confiscation of collateral in the event of bankruptcy. With all the problems that occur, bankruptcy institutions are increasingly not in demand by the public, institutions that are not rooted in the values and culture of the Indonesian people. The process of drafting and amending the bankruptcy law which is only carried out in response to major cases and economic crises forms the legal politics of the Bankruptcy Law which emphasizes protecting the interests of creditors. It can be concluded that the bankruptcy mechanism and process provide broad rights and authorities to creditors, which are manifested in simple bankruptcy filing requirements (Article 2 paragraph (1) of the Bankruptcy Law), a simple evidentiary system (Article 8 paragraph (4)) of the Bankruptcy Law), as well as debt in a broad sense (Article 1 point (6) of the Bankruptcy Law) which results in many parties being creditors in bankruptcy (Explanation of Article 2 point (1) of the Bankruptcy Law). The creditor still has the right to collect from the debtor even though the bankruptcy process has been completed as long as the loan has not been repaid (Article 204 of the Bankruptcy Law). The absence of the principle of debt forgiveness is the result of the absence of a bankruptcy test in Indonesian bankruptcy law. In fact, without a bankruptcy trial, the bankruptcy institution is only used as a coercive tool to collect debts, far from its main function as a special debt settlement mechanism.

The special nature of a bankruptcy institution is attached to its function as a procedure for settling certain debts. This special nature is based on the condition of the debtor who is in an unfavorable condition because all of his wealth is not enough to pay all his debts (bankrupt). In this situation, every creditor certainly has an interest in getting payment of his receivables. Settlement of bills from a creditor in this situation is certainly detrimental to other creditors (common pool problem). Collective mechanisms are needed in these circumstances to protect the interests of all creditors. For the sake of the effectiveness of the collective mechanism, the nature of *lex specialist* is given to bankruptcy law when dealing with other legal regimes that are enforced in normal situations, be it contract law, security law, company law and so on. According to Thomas H. Jackson and Robert E. Scott, all the unnatural attributes of bankruptcy institutions are a consequence of a collective process. All collective procedures require adjustment of the rights and interests of the parties involved for a common goal. Without these adjustments, the function of the bankruptcy institution as a joint process will not work as expected.

Bankruptcy institutions as a collective mechanism essentially contain two things, namely protecting the interests of creditors through the principle of *pari passu prorata parte* and on the other hand easing the debtor's burden through settlement. That is, this process is the final process that completes the engagement between debtors and existing creditors. After the debtor's assets are completely used up, the debtor must be released from the remaining debt that cannot be paid. If the process is not a process that resolves the relationship between the debtor and the creditor, then there is no relevance for imposing proportional profit sharing on creditors. Every creditor certainly wants his debt to be paid in full as promised rather than proportional payment through a collective mechanism which is clearly detrimental to him. So it can be concluded that the debtor's wealth which is insufficient to pay all of his debts (bankrupt) is the *raison d'être* of a bankrupt institution. only allowed if the debtor is in a state of bankruptcy. If the debtor is not bankrupt, it is not justified to impose collective distribution on the creditors.

However, the process of confirming a debtor is insolvent based on a balance sheet test is not easy and takes a long time. Valuing assets when the debtor experiences financial problems is not as easy as when the debtor's financial condition is normal. Valuation of debtor assets is not an exact science. The value of the debtor's assets depends on the market situation and the subjectivity of the buyer. This will be even more complicated if faced with the problem of the amount and total value of the debtor's obligations which are also uncertain. These problems are certainly not in line with several bankruptcy systems that intend to speed up the process in order to maximize the value of the debtor's assets. Another impact is that the debtor will be less serious in seeking income and or hiding his income. Although it is not easy, the debtor's bankruptcy is a prerequisite so that without it there is no bankruptcy institution. It is this solvency test that distinguishes bankrupt institutions from debt collection mechanisms in general.

Article 1 point 1 stipulates that the Debtor must at least have the authority, either at his own request or at the request of one or more of his creditors. The state of being unable to pay as a criterion is omitted, even if there is only one unpaid debt, the debtor can be declared bankrupt. Debtors in bankruptcy condition based on balance sheet testing are not adopted in Indonesian bankruptcy law. This is due to the legal politics of the Bankruptcy Law which favors the interests of creditors. If the concept of bankruptcy as referred to in Article 1 paragraph (1) *Faillissements-Verordening* is maintained, it will be difficult for creditors (especially foreign investors) to bankrupt their debtors in Indonesia. In addition, efforts to prove a debtor's bankruptcy require a complicated and lengthy verification process that is considered inconsistent with the Indonesian bankruptcy system, which adheres to accelerated processes.

The special nature of a bankruptcy institution is attached to its function as a special debt settlement procedure for bankrupt debtors. Its use can only be justified if the debtor is in a state of bankruptcy. This distinction is based on the difference in consequences between the bankruptcy process and the settlement of default cases in general. Without a bankrupt state, the function of the bankruptcy institution is limited to pressing debtors to carry out their obligations. All demands for payment will be filed through the bankruptcy mechanism because it is more effective with a faster and simpler process than the process in a public court. This can interfere with the jurisdiction of each type of court. On the other hand, bankruptcy institutions have deviated from their philosophy and are prone to abuse. Based on these reasons, the solvency test needs to be reintegrated into Indonesian bankruptcy law. Most of the bankruptcy cases, where the debtor is really bankrupt, will not be able to be resolved in the Commercial Court if the simple system of proof is still applied. On the other hand, improving the simple evidentiary system can actually lead to injustice due to the judge's mistakes caused by the sloppy process of proof.

Indonesian bankruptcy law states that this is reasonable considering that bankruptcy institutions are essentially private institutions because they are related between creditors and debtors. The passive position of judges in civil procedural law and the limited access of creditors to find out the debtor's financial condition make the verification process more difficult. To overcome this problem, judges can adjust the burden of proof. Both in voluntary and forced applications, the burden of proof is borne by the debtor to prove that he is not in a state of bankruptcy.

Who has the right to apply for bankruptcy over SOEs

Bankruptcy does not distinguish between bankruptcy for private legal entities and public legal entities. Mentioned in Article 2 paragraph (5) of Law No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, it only briefly regulates the

bankruptcy of BUMNs. Based on this statement, the law does not contain a detailed description because the form of BUMN is based on Law Number 19 of 2003 concerning Public Corporations.

The desired BUMN is a BUMN in the form of a Perum in accordance with Article 1 paragraph (4) BUMN which states that "limited company, hereinafter referred to as a Perum, is a BUMN whose entire capital is owned by the State and is not divided into shares which aim for mutual benefit in the form of the provision of goods and/or services quality while aiming to gain profits in accordance with the principles of corporate governance. Based on article 5 of Law no. 37 of 2004 states that the Minister of Finance can only file for bankruptcy if the debtor is a public company for the public interest.

However, in the case of PT Istaka Karya in the form of "persero" where the definition is a Persero is a BUMN in the form of a limited liability company whose capital is divided into shares of which all or at least 51% (fifty one percent) of the shares are owned by the Republic of Indonesia whose main objective is to pursue profit. . For shares owned, which can be wholly owned by the state or mostly owned by the state, not in the form of a public company whose capital is wholly owned by the state, the applicant for one or more creditors can apply for bankruptcy against the company. Thus, because PT Istaka Karya is not operating in the public interest, it is not included in the BUMN which can be bankrupted by the Minister of Finance in Article 2 paragraph (5) of Law No. 37 of 2004.

Unfortunately, in practice, BUMN (Persero) Bankruptcy trials are often declared bankrupt on the grounds that only the Minister of Finance can declare BUMN (Persero) bankrupt. This is because BUMN bankruptcy regulations still overlap, giving rise to conflicts in judge decisions in examining and resolving BUMN bankruptcy cases. PT Istaka Karya has been bankrupt several times in the past by its creditors, PT Istaka Karya is one example of a BUMN (Persero) case that succeeded in preventing future bankruptcy with one of the judge's words mentioning legalizing the BUMN bankruptcy filing what the Minister of Finance should have done.

The requirement for a creditor to file for bankruptcy is that the debtor has two or more debts or is unable to pay debts that are due and billed. The bankruptcy law easily allows the stage that a judge can only grant a bankruptcy petition if the request is accepted by several creditors (a majority). Unfortunately, the bankruptcy law does not provide that the court can decide on the bankruptcy of the debtor, but rather that this decision can be accepted with the approval of a majority of creditors. According to Article 6 (1) (a) of the Bankruptcy Act, a court can only prosecute a debtor if a bankruptcy application is filed by a creditor or a lawyer. In fact, pursuant to Article 6 (1) (b), the court may (but does not need to) sue the debtor if the debtor has filed for bankruptcy and there is doubt that the debtor will file for bankruptcy. Article 1 point 1 is fulfilled.

That the state must be present in solving private problems, in this case debt, namely by facilitating the formation of a legal institution in solving problems in the field of trade, and the state must continue to strive to make improvements to statutory regulations. Whereas as one of the legal means of settlement of debts and receivables, the Bankruptcy Law in Indonesia, starting from Faillissements Verordening, Staablad 1905:217 juncto Staatsblaad 1906:348) most of its material is no longer in accordance with the developments and legal needs of society so that it has been amended by Government Regulation in Lieu of Law Number 1 of 1998 concerning Amendments to the Bankruptcy Law which was later stipulated to become Law Number 4 of 1998, but these changes have not kept up with the times. and the legal needs of society.

The quote above is taken from the preamble to Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt (hereinafter referred to as "Bankruptcy Law and PKPU"), which describes the history of the development of Bankruptcy

Laws in Indonesia. In an effort to improve legal institutions in the field of trade, especially regarding legal certainty in terms of Bankruptcy and Postponement of Debt Payment Obligations, the Bankruptcy Law and PKPU Law were born which are still valid today. Meanwhile, the application of the Bankruptcy and PKPU Laws has its own uniqueness, because the formal process does not recognize the principle of *nebis in idem*. This jurisprudence strictly means that only differences in claims are not *nebis in idem*, while the case being filed is either a petition (*declaratoir/volunteer*) or a claim for both (*contentious jurisdictie*), then the *nebis in idem* principle must be applied. . The principle of *nebis in idem*, if applied, can prevent judges from making decisions that are inconsistent or contrary to previous decisions, or avoid applying the same legal principles from the point of view of the previous panel of judges, with the later panel. the judges.

Whereas even though the Bankruptcy and PKPU Laws do not regulate or recognize the principle of *nebis in idem*, because the lawsuit is in the form of a petition (*declaratoir/voluntair jurisdictie*) and not a lawsuit in the form of a lawsuit (*contentiosa*), the principle of *nebis in idem* does not apply. Therefore, it is possible to make repeated requests for one object of the case, both the Respondent and the same (identical) object of dispute. However, if the parties are the same and the object of the case is the same, and there is no *novum*, then even if it is applied repeatedly, the result of the decision of the Panel of Judges must still be the same as the first decision. (judgment on previous application), albeit with a different panel of judges. Therefore, in order to prevent conflicting, overlapping and conflicting judge decisions that have the potential to create legal uncertainty, the Supreme Court of the Republic of Indonesia has issued a Supreme Court Circular Number: 03 of 2002 concerning Case Handling.

As a result of not applying the principle of *nebis in idem* in the application of the Bankruptcy Law and PKPU, PKPU applications can be submitted repeatedly by the same Petitioner against the Respondent and the same Object of Case. However, as long as the decision of the Panel of Judges is not contradictory, it certainly will not cause problems. Contradictory decisions in identical cases have the potential to create legal uncertainty, and can undermine public trust in justice seekers. Therefore, the justice system should pay as much attention as possible to avoid creating bad precedents for judge decisions that have legal implications, which have the potential to cause chaos.

CONCLUSION

Bankruptcy law as part of commercial law, of course, cannot stand alone, it needs to refer to several other areas of law. This is because the bankruptcy law is a legal institution specifically established to regulate procedures for debt repayment between debtors and creditors. Law Number 37 of 2004 concerning Bankruptcy and Delays in Payment (PKPU) was promulgated with the aim of protecting the rights of creditors who have bills from bankrupt parties, bearing in mind that the assets left behind by bankrupt parties are usually smaller than the fault. Thus, this condition can harm more than one creditor, because each of them competes with each other to control the remaining funds to compensate for the settlement of their receivables. In the PT Istaka Karya case, researchers assessed that the application of Law No. 37 of 2004 concerning Bankruptcy and PKPU was appropriate and correct. PT Istaka Karya has fulfilled the elements in the Bankruptcy Law and PKPU in Article 2 paragraph (1) which refer to the bankruptcy requirements of a company. Before being declared bankrupt, PT Istaka Karya as the debtor had offered a peace agreement to pay off his debts to all of his creditors as stated in Article 144 of Law No. 37 of 2004 concerning Bankruptcy and PKPU stated "Bankrupt Debtors have the right to offer peace to all Creditors." BUMN bankruptcy is considered as an ordinary legal entity bankruptcy. Pursuant to Article 2 Paragraph 5 of the Bankruptcy Law Number 37 of 2004 which

states that a BUMN engaged in public interest is a BUMN whose capital is wholly owned by the state and is not divided into shares. The Ministry of Finance is authorized to file bankruptcy cases with the agencies under its supervision. Between bankruptcy and PKPU, both creditors and debtors are trying to make a profit by submitting PKPU applications at the commercial court. There is no detailed information regarding the remaining assets of PT Istaka Karya at this time, the liquidation procedure for liquidating PT Istaka Karya will be carried out in accordance with the provisions of the Law on State-Owned Enterprises. In addition, the procedure is also in accordance with the Law on Suspension of Bankruptcy and Obligation for Payment of Debt, the Law on Limited Liability Companies. Implementation of Law no. 37 of 2004 concerning Bankruptcy and PKPU in the case of PT Istaka Karya's bankruptcy is considered sufficient, although the Bankruptcy Law itself still has several weaknesses. Before changes to the Bankruptcy Law, such as Law no. 37 of 2004 concerning Bankruptcy and PKPU, which does not provide a bankruptcy test for the application of protection for debtors who have commercial ability to pay off their debts to creditors in the short term or long term solvability judges consider the debtor bankrupt before the debtor is declared bankrupt. That is, the judge will declare a debtor bankrupt even though the debtor meets the requirements to collect debts that are still outstanding and has two or more creditors. The judge may consider circumstances other than those specified in Article 2 (1) of the Bankruptcy Law. Other considerations include the debtor's ability to pay and the debtor's sincerity not to pay his debts. Bankruptcy decisions are fundamental.

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