



Analysis Of Consideration Of The Judge's Decision The Process Of Management And Settlement Of The Debtor's Property After The Bankruptcy Of The Debtor In Bankruptcy (Case Study No. 1/Pdt.Sus-Renvoi Prosedur/2022/PN.Niaga.Mdn)

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ABSTRACT

Research known bankruptcy property management process done after being decided by a court judge and seized the debtor's property bankruptcy by the curator, in this management curator will call the creditors to match the bill of receivables by holding a meeting verification, peace meetings and other meetings while on settlement if there is no peace agreement then the curator will sell and divide the assets that have been collected is reduced by bankruptcy costs and the rest will be shared with creditors, while that if the bankruptcy estate is not enough then creditors can take the effort law through the procedure renvoi, while the curator will still perform their duties to perform the division in accordance with pari passu principle pro rata parte, while in the judge's decision on level of the Commercial Court, Cassation and judicial review has been reflect justice and balance for the parties because in the judge's decision still considers the portion of the creditor's position preferred greater than the settlement of bankruptcy assets later the rest is distributed to other creditors fairly.

INTRODUCTION

The Era of a special legal regime for bankruptcy in Indonesia is actually long gone, but it still inherits the Old Dutch bankruptcy law, which is more applicable to cases of simple business companies that are usually still individuals. So only the bankruptcy of traders is covered. The lack of development of corporate culture in Indonesia has an effect on bankruptcy settlement that uses a more personal approach.

The realization and action of the government to protect the rights of parties related to bankruptcy issues is to revise the bankruptcy law as stipulated in the Staatsblaad of 1905 No. 217 juncto Staatsblaad of 1906 No. 348 became a government regulation in lieu of law (Perpu) No. 1 of 1998 on amendments to the Bankruptcy Law issued on April 22, 1998. September 9, 1998 Regulation No. 1 of 1998 passed into law No. 4 of 1998 on amendments to the bankruptcy law into law, finally on October 18, 2004 Law No. 4 of 1998 was changed to law No.

37 of 2004 on bankruptcy and postponement of debt repayment obligations (hereinafter referred to as UUK PKPU). The main purpose of the above changes is to provide a balance between creditors and debtors facing bankruptcy problems, provide certainty of the process, both regarding time, procedures, responsibility for managing bankruptcy assets and facilitate settlement of debts and receivables quickly, fairly, openly and effectively (Bernadete Waluyo,1999)

Generally, bankruptcy law deals with debts of debtors and receivables or bills of creditors. In bankruptcy also has an institution. The Bankruptcy Law Institute is a device provided by law to settle debts between debtors and their creditors. As a result of the bankruptcy law against insolvent debtors resulting in the occurrence of a general seizure of the debtor's property, the nature of the general seizure that bankruptcy is to stop action against the seizure of bankruptcy assets by its creditors and stop the traffic of transactions against bankruptcy assets by the debtor that is likely to harm its creditors (Sutan Remy Syahdeini,2002).

After the bankruptcy decision is made, the debtor is no longer authorized to carry out any legal transactions related to the bankruptcy property and by law the management turns to the bankruptcy curator and by law the management turns to the curator. The curator is one of the parties who plays a role in a bankruptcy case process. The appointment of the curator is based on the decision on the declaration of bankruptcy, in the sense that in the decision on the declaration of bankruptcy, the appointment of the curator must be stated.

The curator determines the bankruptcy estate, which will be used as money to pay all debts of the insolvent debtor. Then the curator determines the level of creditors who can pay their receivables with bankruptcy assets and distributes them in accordance with the plan for the list of creditors who will receive payments from bankruptcy assets. UUK PKPU determines the order of priority of the right to obtain repayment of receivables to creditors (Jerry Hoff, 2001).

The party acting as the curator is the Heritage Hall or other curator, which is an individual domiciled in Indonesia, who has special skills needed in order to take care of and/or clean up the bankruptcy assets and has been registered with the ministry whose scope of duties and responsibilities in the field of law and legislation.

It is also expressly stated In Law No. 4 of 1998 that in the event of bankruptcy or PKPU is granted, a supervisory judge must be appointed who will supervise the implementation management

and settlement duties of the bankruptcy property by the curator and the supervision of the implementation of the management duties and transfer of the debtor's rights to the debtor.

The declaration of bankruptcy is carried out by a court decision while bankruptcy according to the PKPU Constitution in Article 2 Paragraph (1) determines that: "a debtor who has two or more creditors and does not pay off at least one debt that has been due and can be collected, is declared bankrupt by a court decision, either on his own application or on the application of one or more of his creditors"(Hadi Shubban,2009).

The main thing in the subject of creditor law is divided into 3 (three) namely preferred creditors, separatist creditors and concurrent creditors. Preferred creditors are creditors who, due to the nature of their debts, have a privileged position and have the right to obtain repayment in advance of the sale of insolvent property, the secessionist creditor is the creditor who holds the right to guarantee the material that can act alone while the concurrent creditor is also known as the concurrent creditor has the same position and the right to obtain the proceeds from the sale of the debtor's property after being reduced by the obligation to pay receivables to the creditors of the collateral holder and the creditors with privileges proportionally according to the ratio of the amount of receivables of each of the concurrent creditors (share in *pari passu prorata parte*) (Sutan Remy Sjahdein,2011).

In practice, in the management of bankruptcy property until the liquidation of bankruptcy property, there will be disputes regarding the division of property, especially by insolvent practitioners to resolve it, because the creditors consider that the debtor's property is not enough to cover all to meet his request, although they expect all debts of the debtor to be paid in full. On the one hand, the assets proposed by the debtor in the peace Proposal and stated in the bankruptcy decision will certainly not be sufficient to pay all the debtor's receivables to separatist creditors and concurrent creditors (Ivida Dewi Amrih,2011).

Further description in this thesis research is described in the case of postponement of debt payment obligations (PKPU) at the Commercial Court in Medan District Court against Ferry SP Sinamo, SH.,MH in decision Number 32/Rev.Sus-PKPU/2021 / PN Niaga Mdn.

This case stems from a creditor Daniel Maraja Hasudungan Manulang, who filed a lawsuit against the delay of debt payment obligations (PKPU) at the Commercial Court in Medan District Court against

Ferry SP Sinamo, SH.,MH. During the PKPU process between the creditor and the debtor did not find an agreement so that in the end the debtor Ferry SP Sinamo, SH.,MH was declared bankrupt by the court. Furthermore, there is dissatisfaction by the debtor over the bankruptcy decision so that the debtor submits a procedural Renvoi application with Number: 01 / Pdt.Procedural Sus-Renvoi/2022 / PN.Commerce.Mdn Jo No 32 / Pdt.Sus-PKPU/2021 / Fr.Commerce.Mdn, with the reason: the existence of losses of the debtor Ferry SP Sinamo, SH, MH (in PKPU) on the determination of the list of fixed bills submitted by the PKPU management to the debtor, as letter number 029/PKPU/FN/XII/2021 dated December 08, 2021 so that the debtor requests an improvement in the amount of bills (receivables) and the amount of receivables. Where in the list of bills submitted by the PKPU management team, the debtor's receivables amounted to Rp. 54,085,857,742.40 (fifty-four billion eighty-five million eight hundred and fifty-seven thousand seven hundred and sixty-two rupiah forty cents), while the remaining amount of the bill recognized by the debtor is only Rp. 29.072.366.000, - (twenty nine billion seventy million three hundred sixty six thousand rupiah).

Submission of procedural Renvoi by debtor Ferry SP Sinamo, SH.,MH was then decided by the panel of judges on March 2, 2022 with the verdict : 1. Rejecting the objection of the objector Ferry SP Sinamo, SH.,MH. 2. Charge case fees to the objector.

With the rejection of the procedural Renvoi application filed by the debtor Ferry SP Sinamo, SH.,MH (in PKPU) in accordance with the determination of the supervisory judge No. 32 / Pdt.Sus-PKPU / 2021 / PN Niaga Mdn dated November 30, 2021, the list of receivables of the debtor Ferry SP Sinamo, SH.,MH (in PKPU) recorded a total of 126 creditors with a total bill value of Rp. 54.085.857.742, 40 (fifty-four billion eighty-five million eight hundred and fifty-seven thousand seven hundred and sixty-two rupiah forty cents), the creditors will be worried about the guarantee of protection of the rights to the payment of all receivables of the insolvent debtor Ferry SP Sinomo, SH.If the assets / assets that are in the bankruptcy/bankruptcy estate are not enough to pay all of the receivables. The concern of the creditors in this case is very logical and reasonable, because in the peace Proposal in PKPU submitted by the debtor Ferry FS Sinamo, containing assets/assets submitted to the board/curator is very illogical and is not expected to be able to meet 100% pay the amount of the list of receivables of

the debtor Ferry SP Sinamo, SH.,MH (in PKPU) recorded a total of 126 creditors with a total bill value of Rp. 54,085,857,742. 40 (fifty-four billion eighty-five million eight hundred and fifty-seven thousand seven hundred and forty-two rupiah forty cents), where the number of creditors recorded as : a. Separatist creditors as much as: 1 Creditor (Pt. Bank Mandiri, Tbk) b. Concurrent creditors: 122 creditors.

In the peace Proposal offered by the debtor Ferry SP Sinamo, SH.,MH only delivered 13 items of assets, where the number of assets is very far from the list of assets owned by the debtor Ferry FS Sinamo, SH.,MH based on lhkpn jo report. Quarterly Report team curator Ferry SP Sinamo, SH.,MH (in bankruptcy) d / A Law Office Banuara & Partners. The concerns of these creditors are further strengthened by the reason : a. the existence of a list of assets/assets of Ferry SP Sinamo bankruptcy debtors contained in a statement letter willing to hand over assets to creditors, dated July 15, 2021. b. the existence of a marriage agreement between the debtor bankrupt Ferry SP Sinamo with his wife Mrs. Hennawati Saragih, which teruang in notarial deed No. 1 before notary Roy Victor Rahmad Dwisanta Purba, SH.,M.Kn.

When viewed from the amount of existing assets, plus the suspicion that the debtor is not voluntarily to pay all debts to creditors. This fact is quite reasonable because of the findings of the curator Team, and the application of procedural Renvoi from the debtor, it reinforces the assumption that the distribution of insolvent debtor's receivables in this case will not be able to pay the entire debt of the creditors. For this reason, it is predicted that the assets/assets handed over by the debtor Ferry SP Sinamo will not be sufficient to pay all creditors ' receivables.

METHOD

Research method approach used in analyzing and assessing the decision it uses the type of research methods in the form of research in normative form, what is meant by normative legal research is research that analyzes by collecting and analyzing data obtained indirectly, indirect data referred to above is secondary data Secondary Data in question are examples of legislation, opinion experts, journals, books, literature on the decision of the case and others (Ariman Sitompul, 2023). The Data obtained analyzed descriptively qualitative. How the preparation in question is a way of preparing these data systematically which then put forward the problems found in the decision of the case with the

number1/Pdt.SusRenvoiProsedur/2022/PN.Niaga.M dn and regulations related to the purpose in writing this study by considering all the basic considerations the laws and regulations that are in place to ensure legal certainty which ensures that law enforcers exercise their authority with the realization of such legal regulations.

RESULTS AND DISCUSSION

A. The position of preferred creditors and separatist creditors in the right Obtaining Bankruptcy Property

Preferred creditors are creditors who have the right to take precedence because of the nature of their receivables by law given a special position. Preferred creditors consist of special preferred creditors as provided for in Article 1139 of the Civil Code, and general preferred creditors as provided for in Article 1149 of the Civil Code.

In the case of bankruptcy, there are two preferred creditors that take priority or take precedence in the settlement of bankruptcy assets, namely labor wages and tax debts. The bill on the payment of labor wages is categorized as a general privilege (article 1149 of the Civil Code). The provision is also regulated in Article 95 paragraph (4) of Law No. 13 of 2003 on labor (labor law) which regulates: in the event that the company is declared bankrupt or liquidated based on applicable laws and regulations, the wages and other rights of workers/laborers are debts that take precedence over their payment (Imran Eka Saputra,2020).

Wages of workers or laborers are generally included in the privileges of all movable and immovable goods, so that the position is behind the privileges of certain goods. Such is the importance of wages in the life of workers, whose human rights are clearly spelled out in the country's Constitution. As in the United States, although including capitalist countries, but the position of wage labor is considered important and prioritized over tax debt, it can be seen from Case 11.U.S.C. (Supp. V, 1958) 104 (a) which has placed wage labour in second priority and tax debt in fourth priority.

The bill on payment of labor wages is categorized as a general privilege (article 1149 of the Civil Code) the provision is also regulated in Article 95 paragraph (4) of the labor law. PKPU'S constitution stipulates that from the date the bankruptcy declaration decision is pronounced, the wages owed before, or after the bankruptcy declaration decision is pronounced are the debts of the bankrupt's assets (article 39 paragraph 2). By itself, the curator is obliged to record, as well as list

the (preferential) nature of the payment of wages, which is the debt of the bankrupt's property in the list of debts and receivables of the bankrupt's property (Article 102 jo. 100 UUK PKPU). The list must be announced to the general public (Article 103 UUK PKPU) before finally being matched with bills submitted by creditors themselves (Article 116 UUK PKPU).

Related to tax debt has an important position so that its position also can not be eliminated, including in a state of bankruptcy. This has been emphasized in the PKPU Constitution which provides the main position of taxes as an obligation that must come first. In Article 21 paragraph (3) of Law No. 16 of 2009 concerning General Provisions and Tax Procedures (UU KUP) states that the position of tax debt is a precursor to other precedents except for case costs caused only by a judgment to auction a movable and/or immovable goods, costs incurred to save the goods; and/or case costs, which are only caused by the auction and settlement of an inheritance.

In Article 32 of the KUP law, which states that "in exercising rights and obligations under the provisions of laws and regulations, taxpayers are represented in terms of bodies in dissolution or bankruptcy, in this case curators, supervisory judges or heritage halls. For these taxpayers, it is necessary to determine who is their representative or proxy, since they cannot or cannot carry out the legal action themselves. Affirmation of the position of tax debt is also affirmed in Article 2 of Law No. 17 of 2003 on State Finance is also clearly said to include State Finance: a. the right of the state to collect taxes, issue and circulate money, and make loans; b. the obligation of the state to carry out the duties of the general service of the state administration and pay third-party bills; c. State Revenue; d. National Production; e. Regional Reception; f. District Production; g. state / regional assets managed by themselves or by other parties in the form of money, securities, receivables, goods, and other rights that can be valued with money, including assets that are separated from state / regional companies; h. the assets of other parties controlled by the government in the context of the implementation of government tasks and / or public interest.

Therefore, it can be concluded that the position of preferred creditors is included in the class of secured creditors because solely the nature of their receivables by law is privileged to take precedence over their payments. The privileged position to prioritize payment is reflected in one of them through the labor law and the KUP law. With this

privileged position, preferred creditors are placed at the top before concurrent creditors or other unsecured creditors. The debtor's debts to preferred creditors are not tied to material guarantees but the law gives them precedence in terms of payment.

Further about the preferred creditor can be seen in the Civil Code. The position of privileged creditor is subordinate to the holder of the lien and pledge. Article 1133 of the Civil Code says that the right to precedence among creditor persons arises from the privilege of the Pledge and mortgages. Preferred creditors do not have the right to initiate legal procedures to exercise their rights, they are only required to submit their bills to the curator to be matched so that the privileged creditors are charged as bankruptcy costs on a prorated part basis.

Under the provisions of Article 1134 of the Civil Code states that "a privilege is a right granted by law to a creditor that causes him to be of a higher position than others, solely by virtue of the nature of the receivable. Liens and mortgages are superior to privileges, except in cases where the law expressly specifies otherwise".

While the privileged creditor is not based on the law consists of the right to withhold goods, retention of title (retention of title), debt encounter (compensation) right of sale to reclaim the goods and the right to terminate an agreement. While the estate creditor is a creditor who has receivables for bankruptcy assets (debt of bankruptcy assets) such as curator wages, settlement costs of bankruptcy assets, employee wages since the date of bankruptcy.

In principle, bankruptcy or not, does not affect the guarantee of fulfillment of separatist creditor receivables. This is because the separatist creditor has pledged part of the debtor's property as collateral if the creditor defaults. With a special guarantee, the separatist creditors tried to save their receivables, although the property obtained from the sale of the collateral object was not necessarily enough to pay off the debt of the debtor.

In the event of bad debts, and the debtor is insolvent, the creditor of the material collateral holder or the separatist creditor can execute the debt guarantee. In this case, the separatist creditor can sell and take the proceeds from the sale of the debt guarantee as if there were no bankruptcy, even if it is estimated that the proceeds from the sale of the debt guarantee do not cover each of the entire debt, the separatist creditor can request that the shortfall be taken into account as a concurrent creditor. On the other hand, if the proceeds from

the sale of the asset exceed the debt, plus interest after the declaration of bankruptcy, fees and debts, the excess must be handed over to the debtor.

B. Analysis Of The Distribution Of Bankruptcy Assets

As previously described, the position of the preferred creditor and the separatist creditor have positions that have their own rights. However, when it comes to the division of bankruptcy property, the position of the preferred creditor has a permanent position that must take precedence in the division of his property. Based on this, sometimes there are obstacles in the division of the bankrupt's property. The obstacles faced by them are focused in this study there are 2 (two) IE bankruptcy assets to be divided is not sufficient to cover the receivables from each creditor and the bankruptcy assets are not enough to be divided.

Historically, bankruptcy law initially aimed to protect creditors by providing a clear and definite path to resolve debts that could not be paid. Intended to avoid the occurrence of separate encumbrances or separate execution by creditors and replace it by holding joint encumbrances so that the debtor's property can be distributed to all creditors in accordance with their respective rights. To determine who is entitled to a bill on the property of a bankrupt debtor includes a big problem in bankruptcy. Because in the bankruptcy process the most essential is actually the division of the bankrupt debtor's property to his creditors.

In the event that the bankruptcy assets are insufficient, the court may revoke the declaration of bankruptcy, as stipulated in Article 18 paragraph (1) of the PKPU Constitution. The panel of judges who ordered the lifting of bankruptcy determined the amount of bankruptcy fees and remuneration for the services of curators. According to Hadi Shubhan, in the process of clearing the property, it turned out that the bankruptcy property could not be sufficient to pay off the debtor's debts to his creditors, then :

- If the insolvent debtor is a legal entity, then for the sake of the law the legal entity becomes dissolved. With the dissolution of the legal entity, the debts of the legal entity that have not been paid become debts on paper without being able to collect because the legal entity has been dissolved. In the meantime, the insolvent legal entity is insufficient to pay all its debts to its creditors, it cannot file for bankruptcy revocation.
- meanwhile, if the insolvent debtor is a subject of human law, then the insolvency will be revoked from the court. Upon the revocation of the bankruptcy status to this insolvent debtor, the insolvent debtor becomes a perfect legal

subject without bankruptcy status. While the rest of the unpaid debt still follows this debtor, and even theoretically this debtor can still be applied for bankruptcy again. This kind of legal construction is because in the bankruptcy legal system in Indonesia, the principle of debt forgiveness is not known so that there is no known forgiveness of bankruptcy debtors.

The abolition of bankruptcy status is considered inappropriate because the abolition of bankruptcy status only makes the debtor himself bear the costs of bankruptcy, although the debtor does not always have the status of an insolvency applicant in the event of bankruptcy. This provision is contrary to the value of the second precept of Pancasila because it does not balance the responsibility of bankruptcy. In addition, it also violates the principle of social justice for all Indonesian people, because burdening debtors with bankruptcy costs means the failure of social welfare, the realization of justice between individuals and other individuals, and the realization of Justice. between private individuals and the state.

The bankruptcy decision is issued by the judge, in this case the judge has considered the state of the debtor's property with the debt to be paid by the debtor, considering the bankruptcy situation is sufficiently proven that the debtor is unable to pay the debt, there are at least two creditors, and one debt has been able to be collected. UUK PKPU has stipulated that if the bankruptcy application has been granted then after examining the bankruptcy assets very little to not be able to pay the management fee, then in the end the bankruptcy status can be revoked and the cost of bankruptcy becomes the responsibility of the debtor as previously described.

At the same time, of course, this subsection deals with situations in which the judge checks the position of the bankrupt and the judge checks whether the bankrupt's property is sufficient to distribute. The arrangement of receivables is often opposed by the fact that the creditors' receivables do not correspond to the assets of the insolvent debtor at the time of division by the insolvent administrator, which means that the assets of the insolvent debtor are insufficient because the receivables exceed the assets of the insolvent debtor. The debtor's wealth is intended to be distributed among the existing creditors. Debt in bankruptcy should be divided into bankruptcy debt, debt that can not be verified and debt treasure/boedel bankruptcy.

In conducting an inventory and verification of debts and receivables, the curator must classify the

debts of insolvent debtors into: 1. bankruptcy debt, namely debt that has existed at the time of the decision of bankruptcy including debt secured by collateral / special guarantee; 2. debts that cannot be verified, that is, debts that arise after the bankruptcy decision and therefore cannot be classified as bankruptcy debts, still have the right to collect but their position is backward from bankruptcy debts; 3. debt property / bankruptcy boedel, namely debt arising after the bankruptcy decision. This debt was made with the aim of facilitating the process of managing and clearing bankruptcy assets. Debt assets/boedel bankruptcy will be repaid from the property / boedel bankruptcy without the need to be verified and have precedence over debt bankruptcy (Sunarmi,2010).

The problem of insufficient bankruptcy property status arises during the inventory and verification of debts and receivables. If there is no agreement on the disputed receivables, it is resolved by renvoi procedure. Renvoi procedure is a creditor's rebuttal against the list of (provisional) bills of creditors recognized / denied by the curator. Renvoi procedure submitted at the meeting of matching receivables by creditors who do not receive receivables recognized by the curator. Renvoi's trial was held at the Commercial Court. In practice, the curator reads a list of bills in front of the supervisory judge, substitute clerks, creditors, and debtors along with notes in the form of legal grounds and facts from the evidence of the bill documents and company / individual documents given by the creditor in the form of reasons for accepting / rejecting the curator of the bill. After that each creditor and debtor sign an agreement on the bill recognized curator.

The party who objected to the bill list gave a rebuttal letter to the supervisory judge, then the supervisory judge made the minutes which were then outlined in the supervisory judge's report to the Commercial Court judge, then the Commercial Court judge determined when the date of the renvoi hearing was held. Renvoi's decision must have obtained a fixed legal decision counting seven days from the first hearing. In the renvoi session there are no replicas and duplicates, in the renvoi session it is enough to attach evidence and the legal basis for why to dispute the list compiled by the curator, likewise the curator is enough to make an answer to the creditor's objection accompanied by evidence.

In practice, the renvoi trial consists of an opening hearing, an evidentiary hearing, and a verdict hearing. In its implementation, the division of creditors in bankruptcy in accordance with the principle of structured creditors or the principle of

structured prorated which is interpreted as a principle that classifies or groups various creditors according to their respective classes, including separatist, preferred, and concrete creditors. The distribution of the proceeds from the sale of bankruptcy assets is carried out based on the order of priority in which creditors with higher positions get a distribution first from other creditors with lower positions, and between creditors who have the same level get payment on a prorated basis (*pari passu prorated parte*).

In principle, the bankruptcy decision is immediate and can be executed first even though a further legal remedy is still being made against the decision. The consequences of the bankruptcy decision are *mutatis mutandis* in force even though further legal remedies are being pursued. The curator, accompanied by the supervisory judge, can directly carry out his functions to carry out the management and settlement of bankruptcy. Meanwhile, if the bankruptcy decision is canceled as a result of the legal remedy, all actions that have been carried out by the curator before or on the date the curator receives notification of the cancellation decision will remain valid and binding for the debtor.

The principle applied in the implementation of the division of bankruptcy assets is the principle of *pari passu pro rata parte* and *parity creditorium*. The application of these two principles when connected with the situation of insufficient bankruptcy assets from the claims of insolvent creditors, it is more appropriate to use the *pari passu pro rata parte* principle and this is in line with the provisions of Article 1132 of the Civil Code which reads: "the material becomes a guarantee together for all those who lend to it, the income from the sale of the objects is divided according to the balance according to the size of each receivable, unless among the creditors there are valid reasons for precedence".

So when examining from the point of view of the sentence "the revenue from the sale of the objects is divided according to the balance according to the size of each receivable", it means that when associated with the debtor's goods that can be cashed from the sale of the debtor's objects, it will be divided according to the position of preferred and separatist creditors according to the size and size of the receivables that have been verified by the curator. So it can be concluded that the principle of *pari passu pro rata parte* views the position of creditors not based on the demands of creditors but based on the debtor's assets that can be divided. Meanwhile, examining the side of the

sentence in Article 1132 of the Civil Code, there is the sentence "unless among the creditors there are valid reasons for precedence". This can lead to 2 (two) different interpretations because the sentence "valid reasons for precedence" is not explained its meaning in the explanation of the Civil Code so that this will be the consideration of the judge in interpreting the sentence "valid reasons for precedence".

Judges are officials who carry out the duties of judicial power. In Indonesia, the principle of freedom of judges is fully guaranteed in Law No. 48 of 2009 on Judicial Power, where it is formulated that the judicial power is the power of an independent state to administer justice in order to uphold law and Justice. The principle of freedom of judges also includes freedom for judges in formulating legal considerations known as legal reasoning carried out by a judge in deciding a case on trial.

According to the law of judicial power, the consideration of the judge is the thoughts or opinions of the judge in passing a verdict by looking at things that can alleviate or incriminate the perpetrator. Each judge is obliged to convey a written consideration or opinion on the case being examined and become an integral part of the verdict.

The judge is the personification of the judiciary, in making a decision on a case other than being required to have intellectual ability, also a judge must have high morals and integrity so that it is expected to reflect a sense of Justice, ensure legal certainty and can provide benefits to the community. Based on the law of judicial power Article 53, reads: (1) in examining and deciding the case, the judge is responsible for the determination and decision he makes. (2) the determination and decision as meant in Paragraph (1) shall contain the judge's legal consideration which is based on the right and correct reason and legal basis.

This is the legal basis for a judge in carrying out his duties to decide a case, that must be based on various considerations that are acceptable to all parties and do not deviate from the rules of existing law, which is called legal consideration or legal reasoning.

To avoid the determination of bankruptcy by the court with a decision of a permanent judge, it will be done a legal remedy that can balance the existence and function of the bankruptcy law itself, namely by postponing debt payment obligations (PKPU). In the PKPU process, the creditor is obliged to submit a bill of debt to the debtor submitted through the management, in accordance with Article

270 paragraph (1) of the PKPU law. Furthermore, the board is obliged to match it with the debtor's record, as stated in Article 271 of the PKPU Constitution. In the PKPU stage process, sometimes the bills that have been submitted by creditors are denied by the debtor because they are different from the debtor's records, this is what happened in case No. 32/Pdt.Sus-PKPU/2021/ Fr.Commerce.Mdn.

Based on the description of the case trial and legal considerations above, it can be briefly explained that the PKPU application from the debtor was registered at the Medan District Court Civil Registry Office on August 30, 2021 with register Number No. 32 / Rev.Sus-PKPU / 2021 / Fr.Trade.Mdn, and has been granted an application for postponement of the temporary debt payment obligation (PKPU-S) which ends on September 20, 2021. That in the pre-verification meeting conducted, there is a difference in the amount of bills between those submitted by creditors and debtors.

Furthermore, on November 5, 2021, the panel of judges extended the PKPU for 45 days, from PKPU-S to PKPU-T (postponement of fixed debt payment obligations). At the time of the debt verification, the results still found differences in the amount of bills between those submitted by creditors and debtors, so it required a vote and asked the debtor to make a peace proposal and the debtor had submitted the peace proposal on December 13, 2021 to the management.

Furthermore, on December 23, 2021, the panel of judges again extended the PKPU for 60 days in a permanent PKPU. Because there is a discrepancy between the amount of bills submitted by creditors and those submitted by the debtor, the debtor is dissatisfied with the bankruptcy decision and submits a procedural Renvoi application with Number : 01/Pdt.Procedural Sus-Renvoi/2022 / PN.Commerce.Mdn, then it was decided by the panel of judges on March 2, 2022 with the verdict: a. Rejecting the objection of the objector Ferry SP Sinamo, SH.,MH. b. Charge case fees to the objector.

In this case, it can be concluded that the main problem is the lack of assets of the insolvent debtor to pay the debts of the creditors and the problem of discrepancy in the amount of bills claimed by each debtor and creditors in addition to the peace efforts proposed by the debtor are also rejected by the creditors. With the rejection of the objection from the objector Ferry SP Sinamo, SH.,MH is by the judge, then the debtor must receive the results of matching the debtor's overall debt bill value of Rp. 54,085,857,742.40 (fifty-four billion eighty-five

million eight hundred and fifty-seven thousand seven hundred and sixty-two rupiah forty cents) which has been determined by the supervisory judge. However, even if the property of the insolvent debtor is not sufficient to pay all these bills, the total value of the bill becomes unfulfilled. If the distribution of the creditors' debt payments is insufficient from the debtor's existing strained property, this also does not provide a balance for the creditors (Sri Redjeki Hartono,1999).

In addition, there is also a lack of good faith on the part of the debtor who denies and compares the amount of interest agreed in the agreement made between the debtor and the creditor with the interest specified in the State Gazette of 1848 No. 22, which is equal to 6% / year and states the amount of interest of 5 % / month agreed upon in the agreement made between the debtor and the previous creditor contrary to that stipulated in the statute book of 1848 No. 22 that. This is one of the considerations of the judge in rejecting the transfer evidence submitted by the debtor in his objection (Wantu,2007).

In UUK PKPU not found a definition of the procedure renvoi. Renvoi procedure is a creditor's rebuttal against a list of bills while the creditor is recognized or denied curator. Renvoi procedure submitted at the meeting of matching receivables by creditors who do not receive receivables recognized by the curator. The curator reads a list of bills (in front of the supervisory judge, debtor, other creditors) along with notes in the form of legal basis and facts from the evidence of the bill documents and company/ individual documents given by the creditor in the form of reasons for accepting or rejecting the curator of the bill.

Renvoi is applied in certain cases, namely if the creditors' bills are denied by The Heritage Hall/curator and one or more creditors (in the verification meeting), while the supervisory judge does not succeed in resolving the disagreement, the supervisory judge will order both parties to resolve the disagreement to the court judge he determines in a simple procedure. Based on this, it means that the efforts of the renvoi procedure are only intended for creditors whose bills are denied by the curator of the supervisory judge who has not succeeded in resolving the difference of opinion.

It is understood that the attempt to revoke the procedure carried out by the debtor because there is no legal remedy that can be done by the debtor (in PKPU) when the peace proposal he made was rejected by the creditor, as stipulated in Psal 235 paragraph (1) of the PKPU law, which states: "against the decision to delay the debt repayment

obligation, no legal remedy can be filed" in conjunction with Article 293 paragraph (1) of the PKPU law states that a court decision based on the provisions in Chapter III of the PKPU is not open to legal remedies, unless otherwise specified in the PKPU law. So that in this case, the debtor has no way out and legal certainty to avoid bankruptcy.

The purpose of law is to regulate Order in society in a peaceful and fair manner. To create legal Peace a just society must be created by striking a balance between interests that conflict with each other, and everyone must obtain (as far as possible) what is due to him. Legal certainty as one of the purposes of law in addition to justice and expediency implies consistency in the implementation of the law. This consistency is needed as a reference for daily human behavior with other humans. The law must be enforced and enforced. Everyone expects the establishment of law in the event of concrete events. How the law that should apply, and basically should not deviate from the so-called fiat justitia et pereat mundus (Rusli, 2006)

Expediency is also the most important thing in a legal purpose. Bentham interpreted usefulness or usefulness (utility) as something that can be owned and can bring benefit, profit, pleasure, and happiness, or something that can prevent damage, pleasure, evil, or happiness. In contrast, John Stuart Mill argued that although the standard of justice must be based on its usefulness, the essence of justice must come from two feelings, namely the urge to defend oneself and feelings of sympathy. Legal justice and expediency are solely fulfilled to create and provide fulfillment of rights for creditors when the debtor is decided bankrupt by the court. Likewise with the position of each party, especially concurrent creditors and separatist creditors. As is known, bankruptcy is an institution of civil law as the realization of two basic principles contained in Article 1131 and Article 1132 of the Civil Code.

The distribution of bankruptcy property to the position of creditors in this case can also be understood from the side of distributive justice from Aristotle where distributive justice is justice given to everyone according to their respective services or according to their respective rights. Here Justice does not demand an equal division for everyone, but is based on comparison.

The judge's decision that reflects justice is not easy to find a benchmark for the parties to the dispute, because justice for one party is not necessarily dil for the other party. The duty of the judge is to enforce the rules in accordance with the titles made in the head of the decision, namely "for

the sake of justice based on the Almighty God". Justice meant in the judge's decision is impartial towards one of the litigants, recognizing the equality of rights and obligations of both parties. In passing a verdict, the judge must be in accordance with the justice desired by the community. The party who can claim or get what is rightfully his and the losing party must fulfill what is his obligation.

In order to uphold justice, the judge's decision in court must be in accordance with its true purpose, which is to provide equal opportunities for litigants in court. The value of justice can also be obtained when the process of resolving cases is done quickly, simply and at low cost, because delaying the settlement of cases is also a form of injustice.

A judge's decision that reflects expediency is when the judge not only applies the law textually, but the decision can be executed in real terms, thus providing benefits for the interests of the litigants and benefits for the community in general. The decision issued by the judge is a law which must maintain balance in society, so that people return to have confidence in law enforcement officials as a whole. The judge in his legal consideration with good reason can decide a case by placing the verdict when it is closer to justice and when it is closer to legal certainty (Sutan Remy, 2002).

Basically, the principle of expediency is located between justice and legal certainty, where the judge judges the purpose or usefulness of the law in the interests of society. The emphasis on the principle of expediency is more likely to be economic nuances. The rationale is that the law is for society or the people, therefore the purpose of life must be useful to man.

Thus, the researcher can conclude, that the bankruptcy decision, brings some consequences or consequences, among others, related to the position of creditors in relation to the distribution of creditors' rights to the assets of Insolvent Debtors (boedel bankruptcy) fairly, whether it is fair for the debtor and for creditors in proportion, and this is clearly stated in the judge's decision. Although in the end if the property is not sufficient, debt payments also can not be met entirely. To find legal certainty, justice and expediency, not only rests on the judge. But in taking a judge's policy also requires a clear legal basis. Seeing the case that occurred, because the debtor could not take any legal action in his PKPU status, he filed an attempt to renvoi a procedure that was not intended for the debtor. So here, a clear rule is needed, in order to provide a sense of Justice, expediency and legal certainty for the debtor, when the debtor wants to make a

rebuttal in the PKPU process that he is undergoing in the hope of avoiding bankruptcy as much as possible, namely a clear legal effort and has a legal basis that can provide a sense of Justice, expediency and legal certainty for the debtor himself.

CONCLUSION

Analysis of the consideration of the judge's decision according to the principle of justice in the Commercial Court Case Number: 32 / Pdt.Sus.PKPU/2021 / FR.Commerce.Mdn Jo 1 / Pdt.Sus-Renvoi procedure/2022 / PN.Commerce. Mdn is based on various considerations that are acceptable to all parties and does not deviate from existing legal rules. In order to establish justice, the judge's decision in court must be in accordance with its true purpose, which is to provide equal opportunities for litigants in court. The value of justice can also be obtained when the process of resolving cases is done quickly, simply and at low cost, because delaying the settlement of cases is also a form of injustice. A judge's decision that reflects expediency is when the judge not only applies the law textually, but the decision can be executed in real terms, thus providing benefits for the interests of the litigants and benefits for the community in general. The judge in his legal consideration with good reason can decide a case by placing the verdict when it is closer to justice and when it is closer to legal certainty. Basically, the principle of expediency is located between justice and legal certainty, where the judge judges the purpose or usefulness of the law in the interests of society. Bankruptcy decision, bringing some consequences or consequences, among others, related to the position of the creditors in relation to the distribution of creditors' rights to the assets of the insolvent debtor (boedel bankruptcy) fairly, whether it is fair to the debtor and to the creditors in proportion, and this is clearly stated in the judge's decision.

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