

Legal Certainty of Public Interest Criteria as The Basis for The Prosecutor's Authority in Filing Bankruptcy Applications to The Court

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ABSTRACT: Bankruptcy is defined as a condition in which a debtor is no longer able to repay their debts to creditors. This state of insolvency is generally caused by financial difficulties. Meanwhile, bankruptcy proceedings refer to a court decision that results in a general seizure of all assets belonging to the bankrupt debtor. Bankruptcy is regarded as a legal remedy for resolving debt-related issues that burden a debtor. Pursuant to Article 2(2) of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, the Public Prosecutor (Kejaksaan) is vested with the authority to file a petition for bankruptcy in the public interest. This authority is further regulated under Government Regulation No. 17 of 2000 concerning Bankruptcy Petitions in the Public Interest. However, this authority is subject to limitations set out in Article 2(2) of Government Regulation No. 17 of 2000, which stipulates that the Public Prosecutor may file a petition for a bankruptcy declaration in the interest of the public only if: The debtor has two or more creditors, the Debtor has failed to pay at least one debt that is due and payable; and no other party has submitted a bankruptcy petition. The notion of "public interest", as explained in the elucidation of Article 2(2) of Law No. 37 of 2004, is extremely broad and undefined. The term refers to the interests of the nation and state and/or the interests of the general public. Additionally, the law allows for discretion, as it includes examples stating: "in other circumstances, as deemed to be in the public interest by the Public Prosecutor." This article aims to analyze the criteria for determining what constitutes the public interest. In conducting this analysis, the article applies the theory of authority, the theory of justice, and the theory of legal certainty.

KEYWORDS: Bankruptcy, Public Prosecutor, Legal Certainty.

I. INTRODUCTION

Bankruptcy is defined as a situation in which the debtor is no longer able to pay debts to his creditors. The state of inability to pay is usually caused by financial difficulties. Meanwhile, bankruptcy is a court decision that causes a general confiscation of all assets of a bankrupt debtor. The existence of bankruptcy is a way out of the problem of debts and receivables that squeeze a debtor. According to Subekti and R. Tjitrosoedibio, bankruptcy is "a situation in which a debtor has stopped paying his debts. After such a person at the request of his creditors or at his own request by the court is declared bankrupt, the assets are controlled by the Heritage Property Center as the curatrice (guardian) in the bankruptcy matter to be used for all creditors."¹ It is often argued that what is meant by bankruptcy or bankruptcy is a general confiscation of all the debtor's property in order to achieve peace between the debtor and the creditors, or so that the assets can be divided fairly among the creditors.² The Bankruptcy Law is more used to force debtors to pay debts even though the debtor is in a healthy position.³ Bankruptcy is a commercial way out of the problem of debts and receivables that squeeze a debtor, where the debtor no longer has the ability to pay these debts to his creditors.⁴ Bankruptcy Regulations in Indonesia are currently regulated in Law No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, hereinafter referred to as the Bankruptcy Law. This Law replaces Law No. 4 of 1998 concerning amendments to Law No.1 of 1998 concerning Amendments to Bankruptcy Regulations. Article 1 number 1 of the Bankruptcy Law and PKPU provides the definition of Bankruptcy as follows:

"Bankruptcy is a general confiscation of all assets of a Bankruptcy Debtor whose management and settlement are carried out by the Curator under the supervision of the Supervisory Judge as stipulated in this law"

¹ Subekti dan Tjitrosoedibio, Kamus Hukum, Paramita, Jakarta, 1978 hlm. 89.

² Munir Fuady, Hukum Pailit dalam Teori dan Praktik, PT. Citra Aditya Bakti, Bandung, 2005 hlm. 8.

³ Hikamahanto Juwana, "Politik Hukum Undang-Undang Bidang Ekonomi di Indonesia", Jurnal Hukum Program Magister Ilmu Hukum Pascasarjana Universitas Sumatera Utara, Vol. 01 No. 1 Tahun 2005, hlm. 45

⁴ Hadi Shubhan, Hukum Kepailitan (Prinsip, Norma, dan Praktik di Peradilan), Kencana Prenadamedia Group, Jakarta, 2008, hlm.2

Legal Certainty of Public Interest Criteria as The Basis for The Prosecutor's Authority in Filing Bankruptcy Applications to The Court

The Bankruptcy Law must be able to provide benefits, not only for creditors but also for the debtors. Correspondingly, the Bankruptcy Law must also provide balanced protection for creditors and debtors. The Bankruptcy Law was created to provide benefits and protection to creditors when the debtor does not pay the debt. With the Bankruptcy Law, it is hoped that creditors can gain access to the assets of debtors who are declared bankrupt because they are no longer able to pay their debts. The Bankruptcy Act, from a historical point of view, originally aimed to protect creditors by providing a clear and certain way to settle unpayable debts. In later developments, the Bankruptcy Law also aims to protect debtors by providing a way to settle their debts without paying in full, so that their business can bounce back without the burden of debt.⁵ The Bankruptcy Law has adopted the principle of balance by mentioning it as the principle of "fairness". The value of justice adopted by the Bankruptcy Law is a manifestation of soul reflection and a measuring point of the value of the 5th precept of Pancasila. Pancasila as the ideal of law (rectsidee or the idea of law) is based on the view of life of the Indonesian nation. Therefore, the role of the legal ideals of Pancasila is as a general principle that guides, underlies, critical norms (evaluation rules) and factors that motivate the implementation of the law of the formation, discovery and application of law as well as all legal behavior in Indonesia.⁶

The right given by law to creditors holding the right of guarantee, that collateral (collateral) encumbered with collateral rights (collateral) does not include bankruptcy assets.⁷ A quick solution to this bankruptcy problem will go a long way in overcoming the uncertain situation in the economic sector.⁸ Because the purpose of bankruptcy is to maximize the economic yield of existing assets for creditors as a group by increasing the value of the assets collected for which creditors' rights are exchanged.⁹ If after the action of settling the debtor's assets has been completed by the curator and it turns out that there are still outstanding debts, the debtor still has to settle his debts. After the settlement or liquidation action is completed by the curator, the debtor is again given the authority to take legal action related to the property, meaning that the debtor can return to carrying out business activities, but the debtor is still obliged to settle his debts that have not been paid off.¹⁰

Parties who can file for bankruptcy include debtors, creditors, Bank Indonesia, the Capital Market Supervisory Agency (Bapepam), the Minister of Finance, and finally the Prosecutor's Office. So according to Law No. 37 of 2004 concerning Bankruptcy Article 2 paragraph (2), that the Prosecutor's Office is authorized to file a bankruptcy application for the public interest. The duties and authorities of the Prosecutor's Office regarding bankruptcy can also be seen from:

- a. Article 30 paragraph (2) of Law No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia jo Law No. 11 of 2021 concerning Amendments to Law No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, namely: in the Civil and State Administration Sector, the Prosecutor's Office with special powers can act both inside and outside the court for and on behalf of the State or the government;
- b. Article 2 of Government Regulation No. 17 of 2000 concerning Bankruptcy Applications for Public Interest, namely: In the application for bankruptcy declaration, the Prosecutor's Office may carry it out on its own initiative or based on input from the public, institutions, government agencies and other bodies formed by the Government;
- c. Articles 24 and 25 letter (e) of Presidential Decree No. 55 of 1991 concerning the Organizational Structure and Work Procedures of the Attorney General's Office of the Republic of Indonesia, namely: The Deputy Attorney General for Civil and State Administration (JAM DATUN) has the duty and authority to provide assistance, consideration, and legal services to government and State agencies in the field of Civil and State Administration, to save the State's wealth and uphold the authority of the government, carrying out legal actions inside or outside the courts, representing the civil interests of the State, the government and the community, whether based on office or power of attorney at home or abroad;
- d. Article 24 of Presidential Regulation No. 38 of 2010 concerning the Organization and Work Procedures of the Prosecutor's Office of the Republic of Indonesia, namely; The Deputy Attorney General for Civil and State Administration (JAM DATUN) has the duties and authority of the Prosecutor's Office in the field of Civil and State Administration. The scope of the Civil and State Administration Sector as referred to includes: Law enforcement, legal considerations, and other legal actions to the State or the central and regional governments to save, restore the State's wealth, uphold the authority of the State government and provide legal services to the community;

⁵ Imran Nating, *Peranan dan Tanggung Jawab Kurator Dalam Pengurusan dan Pembersihan Harta Pailit*, PT Raja Grafindo Persada, Jakarta, 2004, hlm 34.

⁶ Arief Sidharta, *Ilmu Hukum Indonesia*, Fakultas Hukum Universitas Katolik Parahyangan (UNPAR), Bandung, 2010, hlm. 44.

⁷ Setiawan, "Hak Tanggungan dan Masalah Eksekusinya" dalam *Majalah Hukum Varia* peradiln, Tahun XI No. 131, 1996, hlm 145.

⁸ Ahmad Yani & Gunawan Widjaja, *Seri Hukum Bisnis Kepailitan*, PT. Raja Grafindo Persada, Jakarta, 1999, hlm.4

⁹ Sunarmi, *Prinsip Keseimbangan Dalam Hukum Kepailitan di Indonesia* edisi 2, PT. Sofmedia, Jakarta, 2010, hlm. 26.

¹⁰ Bernad Nainggolan, *Peranan Kurator Dalam Pembersihan Boedel Pailit*, PT. Alumni, Bandung, 2014, hlm. 7.

Legal Certainty of Public Interest Criteria as The Basis for The Prosecutor's Authority in Filing Bankruptcy Applications to The Court

The bankruptcy application was filed by the Prosecutor's Office in the public interest (Article 2 paragraph 2) of the Bankruptcy Law. The definition of public interest is the interest of the nation and the State and/or the interests of the wider community, for example:

1. Debtor flee;
2. The debtor embezzled part of the estate;
3. The debtor has debts to State-Owned Enterprises (SOEs) or other business entities that collect funds from the community;
4. The debtor has debts that come from collectors from the wider community;
5. The debtor is not in good faith or uncooperative in resolving the problem of overdue debts, or;
6. In other cases, according to the Prosecutor's Office, it is in the public interest.¹¹

The existence of the authority of the Prosecutor's Office to file for bankruptcy is also regulated in Government Regulation of the Republic of Indonesia No. 17 of 2000 concerning the Application for a Declaration of Bankruptcy in the Public Interest. It is explained in article 1, namely: "The Prosecutor's Office to file an application for a declaration of bankruptcy is for and in the name of the public interest". However, this authority is also limited by Article 2 paragraph (2) of Government Regulation No.17 of 2000, which states that the prosecutor's office can apply for a declaration of bankruptcy on grounds of public interest, if the debtor has 2 (two) or more creditors and does not pay at least 1 (one) debt that is due and collectible and no party submits an application for a declaration of bankruptcy. The definition of "public interest" as given in the explanation of article 2 paragraph (2) of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations is indeed very broad and unlimited.¹² The public interest as defined in this Law is the interest of the nation and state and/or the interests of the wider community, while in the examples it is stated "in other cases according to the prosecutor's office it is in the public interest"

The Prosecutor's Office is better known as the Public Prosecutor (JPU) in the enforcement of Criminal Law, but Law No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia gives the authority to the Prosecutor to carry out his duties and authority in the field of Civil and State Administration so that it is known as the State Attorney (JPN).¹³ The State Attorney is a Prosecutor with special power to act for and on behalf of the state or government in carrying out the duties and authorities of the Prosecutor's Office in the field of civil and state administrative cases.¹⁴

From the above background description, the author is interested in further researching the public interest criteria behind the Prosecutor's Office in submitting a Bankruptcy Application to the Debtor. Because in Law No. 37 of 2004 it is stated that the Prosecutor's Office can file a Bankruptcy Application based on the Public Interest. What are the criteria for determining the public interest? Therefore, this article is titled "Legal Certainty of Public Interest Limitations as the Basis for the Prosecutor's Authority in Filing a Bankruptcy Application to the Court."

II. RESEARCH METHOD

Research The research method used is a normative legal research method. Normative Law Research is research that conducts the study of regulations in a coherent legal order.¹⁵ The study material in this method is to actively examine the applicable norms or positive laws set by the competent government in a jurisdiction. So that the main study material is legal products and other positive legal sources. Normative research lays down law as a building system of norms, such as principles, norms, rules of laws and regulations, agreements and doctrines (sources of law).¹⁶

¹¹ Aco Nur, *Hukum Kepailitan Perbuatan Melawan Hukum Oleh Debitor*, PT. Pilar Yuris Ultima, Jakarta, 2015 hlm. 141.

¹² Sutan Remy Sjahdeini, *Hukum Kepailitan Memahami Undang-Undang No. 37 Tahun 2004 Tentang Kepailitan*, Pustaka Utama Grafiti, Jakarta, 2009, hlm 110.

¹³ Riska Wijayanti, *Implementasi Pengaturan Jaksa Pengacara Negara Dalam Penanganan Perkara Kepailitan*, Fakultas Hukum Universitas Wahid Hasyim, Semarang, 2014, hlm 1.

¹⁴ Yuzandre Musfalri, "Peran Jaksa Pengacara Negara Dalam Mewakili Pemerintah Kabupaten Kepulauan Mentawai Menghadapi Gugatan Perdata Menurut Undang- Undang Nomor 16 Tahun 2004 Tentang Kejaksaan", *Jurnal Pada Program Studi Ilmu Hukum Fakultas Hukum Universitas Tamansiswa*, 2015, Padang, hlm. 1.

¹⁵ Soetandyo Wignyo Subroto, *Sebuah Pengantar Ke Arah Perbincangan Tentang Pembinaan Penelitian Hukum dalam Pembangunan Jangka Panjang Tahap II*, (Jakarta: BPHN Departemen Kehakiman. 1999), hlm. 5.

¹⁶ Mukti Fajar N. D. dan Yulianto Achmad, *Dualisme Penelitian Hukum Normatif dan Empiris* (Yogyakarta: Pustaka Pelajar. 2010), hlm. 34.

¹⁷ Adrian, Sutedi, *Peralihan Hak Atas Tanah dan Pendaftarannya*, Sinar Grafika cet.3, Jakarta, 2007, hlm 69.

III. RESULT AND DISCUSSION

Public Interest Criteria as the Basis for the Prosecutor's Authority in Filing a Bankruptcy Application to the Court.

1. Definition of Public Interest.

Some can simply be interpreted as the public interest can be said to be for the needs, needs or interests of the public or broad social goals. Sumardjono in Sutedi stated that "the public interest, in addition to having to fulfill its designation", must also be able to feel its "benefits" (socially profitable or for public use or actual use by the public). The fulfillment of these elements of benefit so that it can be felt by the community as a whole and/or directly can be carried out through integrated research in the context of determining activities that are included in the public interest. In addition, it is also necessary to determine "who" can carry out development activities for the public interest and the "nature" of these public interest activities".¹⁷ This is done in order to prevent misappropriation in the implementation of the concept of public interest.

In terms of the etymology of linguistics literally, the phrase of public interest according to the Indonesian dictionary of importance (derived from the word important), contains the meaning of very necessary, very main (preferred), while the word general contains the overall meaning, for anyone, the human audience, the wider community, common.¹⁸ The meaning according to linguistics certainly cannot be used as a juridical definition of the word public interest, but it can be used as a reference to find the desired meaning. Because the science of law (juridische kunde) in the process of its formation cannot stand alone and run independently of other social sciences, but supports each other, runs together with other sciences, including linguistics (etymological). In simple terms, Thomas Dye states that Public Policy is whatever government chooses to do or not to do. Or there are also those who see this public policy concerning: Who gets what, when and how. Dye's simple definition illustrates how important the role of government is in setting public policy. Government institutions such as the legislative, executive and judiciary, as well as legitimate public institutions play a very vital role in making various policies. Theoretically, whatever these institutions decide that has gone through the due process of law is already a binding public policy. Although it is true that the policy formulation process itself and the actors who formulate the policy can be debated, whether they really understand the aspirations of the people represented and whether the procedures that prioritize the interests of their own groups or groups, do not prioritize pro bono publico, but rather prioritize momentary interests, money politics, and so on.

The concept of public interest in Indonesia was initially influenced by the concept of internationalism which places the public interest as the interest of the nation and state and the common interest of the people (Article 18 of the UUPA).¹⁹ The same thing can also be seen in Law Number 20/1961 and Presidential Instruction Number 9/1973 which in their guidelines state that an activity in the context of the implementation of development has a public interest if the activity concerns the interests of the nation and state, and/or the interests of the wider community, and/or the interests of the many/common people, and/or the interests of development. The form of the guidelines is still accompanied by a list of development activities that have a nature of public interest, which includes the following fields: defense, public works, public services, religion, science and arts and culture, health, sports, public safety against natural disasters, social welfare, tombs/cemeteries, tourism and recreation as well as economic enterprises that are beneficial to the public interest. Other activities beyond those already mentioned may be determined by the president. The above interest arrangement also looks very broad and abstract because there is no specific definition that mentions what is meant by public interest. Even the interests of the nation and state mentioned in the article also do not provide clear boundaries even though there is a list of activities that are included in public interest activities, as well as the definition of development that is not explained further either in the next article or in the explanation. Law No. 20/1961 also shows the breadth of authority possessed by the executive in determining activities that are included in public interest activities outside the list that has been determined in Presidential Instruction No. 9/1973. Regulation of the Minister of Home Affairs No. 15 of 1975 concerning Provisions on Land Acquisition Procedures (Permendagri No. 15/1975) also does not provide clear limits on public interest, and based on the Regulation of the Minister of Home Affairs No. 2 of 1976 concerning the Use of Land Acquisition Methods for Government Purposes for Land Acquisition by Private Parties (Permendagri No. 2/1976) which was issued later, provisions regarding land acquisition events for the benefit of the government according to Permendagri Number 15/1975 are also enforced for private interests.

In the next development, with the birth of Presidential Decree Number 55/1993, the public interest is defined as the interest of all levels of society (Article 1 number 3). According to Sutedi, this definition is considered "still abstract so that it causes different interpretations in society and causes conflicts in society, because the government relinquishes the rights to community land for the sake of the public interest that is vague in accordance with the government's intentions and wills."²⁰ However, activities that are included in public interest activities in Article 5 number 1 of Presidential Decree Number 55/1993 are limited by the provision that these activities are owned and carried out by the government and are non-profit or non-profit. Presidential Decree Number 55/1993 includes a list of activities that are included in public interest activities. This means that activities that are included in the public interest cannot be owned by the private sector or individuals and that the process and management of these activities is carried out by the government without involving the private sector with no purpose to seek profit (non-profit) (Sunarno, 2007: 7). The involvement of private parties in public interest activities was initially allowed as an exception in Presidential Instruction Number 9/1973, Permendagri Number 15/1975 jo. Permendagri Number 2/1976 but again was not allowed by Presidential Decree Number

Legal Certainty of Public Interest Criteria as The Basis for The Prosecutor's Authority in Filing Bankruptcy Applications to The Court

55 /1993.²¹

The integralistic understanding of the concept of public interest then shifted with the change in the definition of public interest to the interests of the majority of the community by only providing restrictions on development activities that are included in public interest activities, namely can be carried out by the government and local governments and a list of 21 activities that are included in public interest activities (Presidential Decree Number 36/2005). This results in an increase in the involvement of the private sector in activities intended for the public interest, in the sense that the government can work together with the private sector in the work or management of these activities. This Presidential Regulation also does not provide non-profit-oriented restrictions so that as a result, the government or local governments may take advantage of the work or management in public interest activities. The amendment of Presidential Regulation No. 36/2005 with Presidential Regulation No. 65/2006 brought changes in the concept of public interest. Sumardjono stated that Presidential Regulation Number 65 of 2006 provides a limit on the public interest, namely that the development of the public interest is carried out by the government or local government, and subsequently owned or will be owned by the government or local government. This, according to Sumardjono, is mainly intended as a legal basis for partnerships that occur between the government and the private sector in the development of these public interest projects. The implementation of this can be done with BOT.²² How broad is the meaning contained in the public interest. If the public interest is the interest of the wider community, how wide? If the public interest is the interest of the people, how many? If the public interest is the interest of the Nation and State, is the public interest the same as the interest of the Government, and is every interest of the Government a public interest? So broad is the definition of public interest that all kinds of activities can be included in activities for the public interest.

Looking at the description above, the government's actions must pay attention to the public interest, while in society there are interests, there must be interests that must take precedence over other interests. How does determining that importance be more important than others? Those interests must be considered proportionately and still respect other interests. So the public interest is an interest that must take precedence over other interests while still paying attention to the proportion of its importance and still respecting other interests. In this case, it does not mean that there is a fixed hierarchy between interests that include the public interest and other interests. In theory, the public interest is the result of weighing many interests in society by applying the main public interest. Practically, it is finally left to the judge to consider which interests take precedence over other interests proportionally while respecting the interests of others. It is not easy, but on the contrary, it should not be to give absolute concrete limits or definitions of the public interest, because human interests develop and so do the public interest, However, there needs to be a general formulation as a guideline on the definition of public interest that can be used especially by judges in deciding disputes related to the public interest, which is dynamic and does not depend on time and place. Each case must be seen in a cassistic manner. It is appropriate that the judge or the law based on the general formulation is the judge or the law.

2. Public Interest Regulations in Various Laws and Regulations in Indonesia

In Indonesia, there are several formulations regarding the public interest in laws and regulations. Ideally, the formulation of the public interest in a law and regulation is complete and clear, so that it no longer needs to be interpreted. The concept that arises when starting legal purpose talks is in the public interest. Thus, the public interest as a concept must go hand in hand with the realization of the state. The state is formed for the public interest and law is the main means to realize the public interest. The law has no other choice except to guarantee the public interest and also protect the interests of individuals so that justice can be carried out. It means that it can be explained that the law itself cannot be separated from the norms of circumstances because the law is the embodiment of the principles of justice.²³ When values concerning the public interest have been abandoned and personal or group interests are highlighted, friction of dispute and upheaval is inevitable. The understanding of the state of law that is sourced from Pancasila puts the interests of individuals and the interests of society in balance. The state does not function passively but must actively strive for public order while supporting the welfare of the community. The precept of Social Justice for All Indonesian People contained in Pancasila is a fundamental affirmation that government apparatus carries out important duties related to welfare and public interest.²⁴

In Indonesia itself, the concept of Public Interest is found in many laws and regulations, even though there is no single law and regulation in Indonesia that specifically regulates the public interest. However, there are words "Public Interest" in many laws and regulations in Indonesia. The concept of Public Interest contained in various laws and regulations in Indonesia include:

¹⁸ Departemen Pendidikan Nasional, Kamus Besar Bahasa Indonesia, Balai Pustaka, Jakarta, 2001.

¹⁹ Faizah Lilis Nur, *Perkembangan Konsep Kepentingan Umum dalam Pengambilalihan Hak Atas Tanah di Indonesia (1961-2006)*, skripsi, Yogyakarta, 2010, hlm 202.

²⁰ Adrian, Sutedi, op.cit. hlm 156.

²¹ Faizah Lilis Nur, loc.cit

Legal Certainty of Public Interest Criteria as The Basis for The Prosecutor's Authority in Filing Bankruptcy Applications to The Court

a) Explanation of Law Number 7 of 1983 concerning Income Tax

In Article 4 Paragraph 3 Letter i of Law No. 7 of 1983 it is stated that businesses that are solely intended for the public interest are business activities that must meet the following conditions:

1. It is purely social in the fields of religion, education, health, and culture.
 2. Solely aimed at helping to improve the welfare of the general public
 3. Has no purpose of making a profit. If a businessman opens a transportation business (which clearly earns/seeks profits) that connects a remote area with a big city, so that the remote area becomes prosperous and prosperous, is it not for the public interest?
- Explanation of Article 49 letter b of Law No. 5 of 1986 concerning the State Administrative Court In the Explanation of Article 49 letter b of Law No. 5 of 1986 concerning the State Administrative Court, it is stated that the public interest is "the interest of the Nation and State and/or the interests of the common community and/or the interests of development, in accordance with the applicable laws and regulations."

b) Explanation of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia

The Public Interest in Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia in Article 18 Paragraph (2) states: "The Attorney General with special power or because of his position and office acts as the State Attorney, in the field of civil and state administration as well as constitutional in all judicial environments, both inside and outside the court for and on behalf of the state or government, or the public interest."

Then in his explanation he stated "What is meant by "public interest" is the interests of the nation and state and/or the interests of the wider community." However, this explanation does not explain the definitions and limitations of "the interests of the nation and state", and "the interests of the wider community", thus inviting diverse interpretations both among legal practitioners, legal academics, and in society.

c) Public Interest According to Law Number 28 of 2004 concerning Foundations

The term Public Interest is also contained in Article 34 Paragraph (2) of Law Number 28 of 2004 concerning foundations which states:

"In the event that the appointment, dismissal, and replacement of the Management is carried out in accordance with the provisions of the Articles of Association, upon an application of interest or at the request of the Prosecutor's Office in the case of representing the public interest, the Court may cancel the appointment, dismissal, or replacement within a period of no later than 30 (thirty) days from the date the application for cancellation is submitted".

Then it is also contained in Article 46 Paragraph (2) which states: "In the event that the appointment, dismissal and replacement of the Supervisor is carried out in accordance with the provisions of the Articles of Association, upon an interested request or at the request of the Prosecutor's Office in the case of representing the public interest, the Court may cancel the appointment, dismissal, or replacement of the Supervisor within a period of no later than 30 (thirty) days from the date of the cancellation request Filed".²⁵

d) Public Interest According to Law Number 40 of 2007 concerning Limited Liability Companies

Didalam Undang-undang ini juga didapatkan istilah mengenai Kepentingan Umum. Yang mana Kepentingan Umum dalam Undang-This law is related to the authority of the Prosecutor's Office in conducting an Application for Examination of the Company in the public interest and conducting an Application for the Dissolution of a Limited Liability Company that violates the public interest. This is regulated in Article 138 Paragraph (2) and Paragraph (3) Letter C and Article 146 Paragraph (1) Letter a which are complete as follows:

Article 138 Paragraph (2):

"The examination as intended in paragraph (1) is carried out by submitting a written application and the reasons to the district court whose jurisdiction includes the Company's domicile."

Article 138 Paragraph (3) C:

Applications as intended in paragraph (2) may be submitted by: The Public Prosecutor's Office."

Article 146 Paragraph (1) Letter a: the prosecutor's application based on the grounds that the Company violates the public interest or the Company commits an act that violates laws and regulations."

²² Soemardjono, Maria SW, op.cit, hlm 111.

²³ Noto Hamidjoyo, Demi Kemanusiaan dan Keadilan, tanpa tahun, dalam Adrian Sutedi, Implementasi Prinsip Kepentingan Umum dalam Pengadaan Tanah Untuk Pembangunan, Sinar Grafika, Jakarta, 2006, hlm 70-71.

²⁴ Maria S.W. Soemardjono, Kebijakan Pertanahan antara Regulasi dan Implementasi, Kompas, Jakarta, 2001, hlm 12.

Legal Certainty of Public Interest Criteria as The Basis for The Prosecutor's Authority in Filing Bankruptcy Applications to The Court

e) Public Interest in Law of the Republic of Indonesia Number 2 of 2012 concerning Land Acquisition for Development for Public Interest

The term Public Interest in the Law is contained in Article 1 Letter 6 which states: "Public Interest is the interest of the nation, state, and society that must be realized by the government and used as much as possible for the prosperity of the people." Then in Article 2 it also states "Land Acquisition for the Public Interest is carried out based on the principle:

1. Humanity;
2. Justice;
3. Benefits;
4. Certainty;
5. Openness;
6. Deal;
7. keikutsertan;
8. Welfare;
9. sustainability; and
10. harmony.

Based on the explanation above, the Public Interest can be interpreted as the Interest of the Nation, State, and Community, but in this case there are still no restrictions related to the interests of the nation, state, and society. So that it still gives rise to diverse interpretations.

f) In Presidential Regulation of the Republic of Indonesia No. 36 of 2005 concerning Land Acquisition for the Implementation of Development for the Benefit of the Benefit of the Republic of Indonesia

In this Presidential Regulation, the Public Interest is formulated as the Interest of the Community. As stated in full in Article 1 Number 5 which states: "The Public Interest is the interest of the majority of the community." Then in Article 5 it also states that development for the public interest carried out by the Government or local governments includes:

1. public roads, public road networks, toll roads, railways (aboveground, aboveground, or basement), drinking water/clean water lines, sewerage and sanitation;
2. reservoirs, dams, dams, dams, irrigation and other irrigation buildings;
3. public hospitals and public health centers;
4. ports, airports, railway stations and terminals;
5. worship;
6. education or school;
7. general market;
8. public funeral facilities;
9. public safety facilities;
10. postal and telecommunications;
11. sports equipment; radio, television broadcasting stations and their supporting facilities;
12. Government offices, local governments, representatives of foreign countries, the United Nations, and/or international institutions under the auspices of the United Nations;
13. facilities of the Indonesian National Army and the National Police of the Republic of Indonesia in accordance with their main duties and functions; correctional institutions and detention centers;
14. simple flats;
15. garbage dumps;
16. nature reserves and cultural heritage;
17. Gardening;
18. social institutions;
19. Generation, Transmission, Distribution of Electricity.

From the above explanation regarding the definition of the public interest according to the information of experts and according to several laws and regulations in Indonesia, it can be assumed that the public interest can apply as long as the interest does not conflict with positive laws or laws that grow and develop in a society whose application is casuistic.

²⁵ Undang-Undang No. 28 Tahun 2004 Tentang Yayasan

Legal Certainty of Public Interest Criteria as The Basis for The Prosecutor's Authority in Filing Bankruptcy Applications to The Court

Public Interest Criteria in Filing for Bankruptcy

In Article 1 Paragraph (2) of Law Number 37 of 2004 states that bankruptcy applications can be submitted by the prosecutor's office for the Public Interest, both in the provisions of the article and the explanation does not explain what is meant by "public interest" at all, while in other laws and regulations there is also a definition related to the public interest, but this definition cannot be used here either. Example: public interest, for example, is mentioned in Article 1 of Law No. 20 of 1961 concerning the Revocation of Rights to Land and Objects on It. For the public interest, including the interests of the nation and the State as well as the common interests of the people, as well as the interests of development, the President in compelling circumstances after hearing the Minister of Agrarian Affairs, the Minister of Justice and the Minister concerned may revoke the rights to the land and objects thereon.

Another regulation that also regulates public interest is Presidential Decree No. 55 of 1993 concerning Land Acquisition for the Implementation of Development for the Public Interest. In Article 1 number 3 of the regulation, it is stated that the public interest is the interest of all levels of society. From this explanation, it is very clear that the meaning of public interest is still very broad. Obviously, this definition is still not helpful in explaining the criteria of public interest in filing for bankruptcy. Then based on the Explanation of Article 4 paragraph (3) letter i of Law No. 7 of 1983 concerning Income Tax, it also mentions "public interest": The definition of a business that is solely intended for the public interest is a business activity that must meet the following conditions:

1. Business activities must be purely social in the fields of religion, education, health and culture.
2. Business activities must be solely aimed at improving public welfare.
3. This business activity has no purpose of receiving profit.

However, this definition is only suitable for the article, which is limiting, thus, the meaning of "public interest" is only determined on a case-by-case basis by the judge in each case that must be tried.

Furthermore, in the Explanation of Article 49 of Law No. 5 of 1986 concerning the State Administrative Court, where it is stated: What is meant by "public interest" is the interests of the nation and the State and/or the interests of the community together and/or the interests of development in accordance with applicable laws and regulations". Then the Definition of Public Interest in Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia in Article 18 Paragraph (2) states: "The Attorney General with special power or because of his position and office acts as a State Attorney, in the field of civil and state administration as well as constitutional in all judicial environments, both in and out of court for and on behalf of the state or government, as well as in the public interest."

Then in his explanation he stated "What is meant by "public interest" is the interests of the nation and state and/or the interests of the wider community." Then in the Explanation of Article 2 letter d of Law No. 13 of 1992 concerning Railways stated: "The principle of public interest is that railways must prioritize the interests of public services for the wider community." Further in Article 4 paragraph (1) of Law No. 5 of 1992 concerning Cultural Heritage: ". The preservation is aimed at the public interest, namely the arrangement of cultural heritage objects that can support national development in the fields of science, education, tourism and others". Furthermore, in Article 1 Letter 6 which states: "The Public Interest is the interest of the nation, state, and society that must be realized by the government and used as much as possible for the prosperity of the people."

From the explanation of the description as above, it can be concluded that there is no standard criterion or reference regarding what is meant by "Public Interest". If there are several interpretations according to experts and some laws and regulations that provide the criteria of public interest meant by the definition, it is only for the meaning of the laws and regulations in question. The definition of public interest cannot be used to apply to the definition of public interest in other laws. So it can be concluded that the public interest has a broad meaning. Thus, the criteria or benchmark to determine whether or not there is an element of public interest in the right of the Prosecutor of the Republic of Indonesia to file a bankruptcy application against the Debtor can be submitted in a caustic manner to the Panel of Judges of the Commercial Court who examine and adjudicate the bankruptcy application from the prosecutor's office.²⁶ Which is in accordance with Article 57 of Law Number 2 of 1986 concerning the General Court which gives authority to the Chief Justice to determine that a case concerns the public interest.

That based on the explanation of Article 2 Paragraph (2) of Law Number 37 of 2004 concerning Bankruptcy which states "Applications as referred to in paragraph (1) can also be submitted by the Prosecutor's Office for the public interest": "What is meant by "public interest" is the interests of the nation and state and or the interests of the wider community, for example:

- a. the debtor flees;
- b. the debtor embezzled part of the estate;
- c. the debtor has debts to State-Owned Enterprises or other business entities that collect funds from the community;
- d. the debtor has debts derived from the collection of funds from the wider community;
- e. the debtor is not in good faith or uncooperative in resolving the problem of overdue debts; or
- f. in other cases, according to the Prosecutor's Office, it is in the public interest."

In the author's opinion, the public interest as explained in Article 2 Paragraph (2) of Law Number 37 of 2004 above is very broad. Each debtor can be submitted for Bankruptcy Application by the Prosecutor's Office, because according to the explanation above,

Legal Certainty of Public Interest Criteria as The Basis for The Prosecutor's Authority in Filing Bankruptcy Applications to The Court

the Prosecutor's Office can file a bankruptcy application in the event that the debtor has debts to State-Owned Enterprises or other Business Entities that collect funds from the community and if the debtor has debts derived from the collection of funds from the wider community. Then the Prosecutor's Office can also file a bankruptcy application due to the existence or absence of good faith or cooperation or uncooperative of a debtor in settling his debts that have become due.

This, according to the author, can make a subjective understanding of what is meant by "public interest". The Prosecutor's Office has the authority to determine what is meant by "public interest" with respect to its right to file a declaration of bankruptcy against the debtor.²⁷ In article 2 of Government Regulation Number 17 of 2000 concerning Bankruptcy Applications for the Public Interest, it is stated that in the application for bankruptcy declaration, the Prosecutor's Office can carry it out on its own initiative or based on input from the community, institutions, government agencies, and other bodies formed by the Government.

In Articles 24 and 25 letter e of Presidential Decree Number 55 concerning the Organizational Structure and Work Procedures of the Prosecutor's Office of the Republic of Indonesia, the Deputy Attorney General for Civil Affairs of the Republic of Indonesia (JAM DATUN) has the duty and authority to provide assistance, consideration, and legal services to government and state agencies in the field of Civil and State Administration, to save state wealth and uphold government authority, Carry out legal actions inside and outside the court, representing the civil interests of the state, government and society, whether based on special positions or powers of attorney at home or abroad. That then, based on article 24 of Presidential Regulation Number 38 of 2010 concerning the Organization and Work Procedures of the Prosecutor's Office of the Republic of Indonesia, namely JAM DATUN has the duties and authority of the prosecutor's office in the field of Civil and TUN. This is the basis for a District Attorney's Office to file a bankruptcy application against a business entity.

The authority to determine the valuation of a company that looks like it is unlimited, due to a "public interest" that cannot be properly described by laws and regulations. The Bankruptcy and Suspension of Debt Payment Obligations Law does not distinguish debtors with the status of having a public interest but only debtors who have two or more creditors, do not pay at least one debt that is due and can be collected.²⁸ Of course, this will cause a problem where the prosecutor's office will be ineffective in using its authority to determine whether a business entity can be insolvent. In the process of determining the intended "public interest", there should be a benchmark that can be used as a boundary for the breadth of a definition of "public interest". Law No. 37 of 2004 should provide specific and limiting matters regarding what is categorized as "public interest" according to Article 2 paragraph (2) of Law No. 37 of 2004. So that in a caselike manner this can be submitted to the commercial court judge who examines the application for a declaration of bankruptcy, which is in line with the spirit of the provisions of Article 57 of Law Number 2 of 1986 concerning the General Court which gives authority to the chief justice to determine a case concerning the public interest.²⁹ Here the court is obliged to examine and determine whether there is a public interest that provides a basis for the prosecutor's authority to file an application for a declaration of bankruptcy.

CONCLUSIONS

As a party that can file for bankruptcy, the prosecutor's office can use its right to file for bankruptcy against debtors who are unable to pay their debts that are due and can be collected. The authority to file a bankruptcy application given by the prosecutor's office is in the public interest. However, there is no definite explanation or criteria regarding the public interest. So that the interpretation of the public interest is left to doctrine, jurisprudence, and can be casulistically submitted to the commercial court judge who examines the case.

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²⁶ Pasal 57 Undang-Undang No. 2 Tahun 1986 tentang Peradilan Umum yang memberikan wewenang kepada Ketua Pengadilan untuk menentukan bahwa suatu perkara menyangkut kepentingan umum

²⁷ Ibid

²⁸ Parwoto Wignjosumarto, Bankruptcy Law at a glance, Tatanusa, Jakarta 2003, p. 58.

²⁹ Law on General Justice, Law No. 2 of 1986. Article 57 of Law Number 2 of 1986

Legal Certainty of Public Interest Criteria as The Basis for The Prosecutor's Authority in Filing Bankruptcy Applications to The Court

REFERENCES

- 1) Abdul R. Saliman, 2005, Hukum Bisnis Untuk Perusahaan Teori dan Contoh Kasus, Jakarta: Kencana Prenadamedia Group.
- 2) Abdul Kadir Muhammad, 1991, Hukum Perdata Indonesia, Citra Aditya Bakti, Bandung.
- 3) Aco Nur, 2015, Hukum Kepailitan Perbuatan Melawan Hukum Oleh Debitor, Jakarta: PT Pilar Yuris Ultima
- 4) Ahmadi Miru, 2004, Hukum Kontrak, Rajawali Pers, Jakarta.
- 5) Ahmad Yani dan Gunawan Widjaja, 1999, Seri Hukum Bisnis Kepailitan, Jakarta: PT. Raja Grafindo Persada .
- 6) Agus Salim, 2006, Teori & Paradigma Penelitian Sosial, Yogyakarta: Tiara Wacana.
- 7) Arief Sidharta, 2010, Ilmu Hukum Indonesia, Bandung: Fakultas Hukum Universitas Katolik Parahyangan (UNPAR)
- 8) Aten Affandi, Wahyu Affandi, Tentang Melaksanakan Putusan Hakim Perdata, Alumni, Bandung, 1983.
- 9) Bernad Nainggolan, 2014, Peranan Kurator Dalam Pemberesan Boedel Pailit, Bandung: PT. Alumni.
- 10) Bernard Arief Sidharta, 2013, Metode Penelitian Hukum Konstelasi dan Refleksi (dalam editor: Sulisytyowati Irianto dan Shidarta), Jakarta: Yayasan Pustaka Obor Indonesia No.1.
- 11) Bernad L. Tanya, Yoan N. Simanjuntak, Markus Y.Hage (Pengantar oleh Satjipto Raharjo,) cetakan IV, 2013, Teori Hukum Strategi Tertib Manusia Lintas Ruang dan Generasi, Yogyakarta: Genta Publishing
- 12) Djuhaendah Hasan, 1996, Lembaga Jaminan Kebendaan Bagi Tanah Dan Benda Lain Yang Melekat Pada Tanah Dalam Konsepsi Penerapan Asas Horisontal, Citra Aditya Bakti, Bandung.
- 13) Effendy, Marwan, 2005, Kejaksaan RI, Posisi dan Fungsinya dari Perspektif Hukum, Jakarta: Gramedia Pustaka Utama.
- 14) Farid, A. Zainal Abidin dan Amier Syarifuddin, 1977, Kedudukan dan Fungsi Kejaksaan di Beberapa Negara, Makalah..
- 15) Gunawan Widjaja, 2003, Tanggung Jawab Direksi Atas Kepailitan Perseroan, Raja Grafindo Persada, Jakarta.
- 16) Jerry Hoff, 2000, Undang-Undang Kepailitan di Indonesia, Tata Nusa, Jakarta.
- 17) J. Satrio, 1995, Hukum Perikatan, Perikatan Lahir Dari Perjanjian Buku I, Citra Aditya Bakti, Bandung.
- 18) Khoidin, 2005, Problematika Eksekusi Sertifikat Hak Tanggungan, LaksBang Pressindo, Yogyakarta.
- 19) M. Yahya Harahap, 1991, Ruang Lingkup Permasalahan Eksekusi Bidang Perdata, PT. Gramedia, Jakarta.



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