Juridical Implications of Bankruptcy on Debtor`s Property as a Business Entity CV

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INTRODUCTION
Bankruptcy is a problem that often arises in various countries, including the United States, India, and Indonesia (Brédart, 2014; Kumar & Kamar, 2012). The word bankruptcy comes from the French "faillite" which means payment congestion. In Dutch the term "failliet" is used. In Anglo America law it is known as the Bankruptcy Act (Hartini, 2017). Bankruptcy according to Article 1 number 1 of Law Number 37 Year 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (UUH-PKPU) is "general confiscation of all assets of the Bankrupt Debtor whose management and / or settlement is carried out by the curator under the supervision of the Supervisory Judge." The court that has the authority to deal with bankruptcy issues in Article 1 point 7 is the Commercial Court within the general court. The basic philosophy of regulating bankruptcy issues in the context of Indonesian law is an embodiment of Article 1131 and Article 1132 of the Civil Code. Article 1131 of the Civil Code states that "All objects of the indebted party, both movable and immovable, both existing and new ones will exist at a later date, will be borne by all individual engagements." Implicitly Article 1131 describes the principles of schuld and haftung. Schuld is what the debtor owes to the creditor; Haftung is the debtor’s assets that are responsible for paying off debtor’s debt. This means that in principle the debtor’s debt must be paid, and if it is needed as the debtor’s accountability, the debtor’s property is sold and used to pay off the debtor’s debt to the creditor. In this case the position of creditors is the same (principle of parity creditorium), unless there is a valid reason to prioritize one receivable over another as stipulated in Article 1132 of the Civil Code.

In the Black’s Law Dictionary, it is stated that a Bankrupt is (Black et al, 1999):

"Indebted beyond the means of payment; insolvent. A person who cannot meet current financial obligations; an insolvent person. Bankruptcy is a statutory procedure by which a debtor obtains financial relief and undergoes a judicially supervised reorganization or liquidation of the debtor's assets for the benefit of creditors."

From the above definition, it can be seen that bankruptcy is related to the inability of people (individuals or business entities) to pay their debts that are due. This inability must be accompanied by a concrete action to file an application for a bankruptcy statement to the court, either voluntarily by the debtor or at the request of another party. From the definition of bankruptcy in the Bankruptcy Law and Postponement of Debt Payment Obligations, the scope of bankruptcy is not only related to general confiscation but also includes several other regulations such as rehabilitation and legal conditions of debtors after settlement of settlement (Nola, 2017). Bankruptcy has a very significant impact on people’s lives (Ramakrishnana et al, 2015). This was also stated by Joseph (2019), so that bankruptcy predictions are needed for companies to anticipate the possibility of bankruptcy early. The debtor’s bankruptcy has various legal consequences, one of which is the debtor’s property. Article 499 of the Civil Code states that "Objects are all goods and rights that can be objects of property rights (eigendom)", all assets belonging to the debtor fall into bankruptcy and the management is carried out by the curator (Badriyah et al, 2018).

Debtors who experience bankruptcy can be individuals or a business entity, one of which is CV. CV is a business entity that is not a legal entity which is widely used by the public. From data from the Ministry of Industry of the Republic of Indonesia, of the 4210 companies in Central Java, 361 are in the form of CVs (Ministry of Industry of the Republic of Indonesia, Directory of Industrial Companies, accessed via https://kemenperin.go.id/direktori-
Based on Article 1 point 7 of the Law on Bankruptcy and Suspension of Debt Payment, the statement of bankruptcy must be preceded by a statement by the Commercial Court, either at the request of the debtor or at the request of one or more creditors. The court that has the authority to adjudicate bankruptcy is the Commercial Court within the general court. The basic philosophy of regulating bankruptcy issues in the context of Indonesian law is a realization of Article 1131 and Article 1132 of the Civil Code.

Pursuant to Article 2 paragraph (1) of the Law on Bankruptcy and Suspension of Debt Payment Obligations, "A debtor who has two or more creditors and does not pay off at least one debt that has matured and can be collected, is declared bankrupt by a Court decision, both on his application, alone or at the request of one or more creditors". In simple terms, based on a quo provisions, there are 3 conditions for bankruptcy, namely, there must be debt, one of the debts is due and collectible, and the debtor has at least two creditors.

"The main objective of bankruptcy law is to provide protection and assistance to debtors. This is also an effort to distribute debtor assets evenly to creditors. In addition, it is also designed to prevent potential fraud. Bankruptcy is likely intentional, and bankruptcy is voluntary. Bankruptcy is the inability of an organization / company to pay its debts" (Onakoya & Ayooluwa, 2017).

According to Tata Wijayanta (2014), the basic condition for filing for bankruptcy is the debtor’s unwillingness to pay his debt, not based on the debtor’s inability to pay his debt. Creditorium courses are the first and foremost requirement in filing for bankruptcy (Akhar et al., 2017). The Bankruptcy and Delayed Debt Payment Law states that debtors must have at least two creditors, which is closely related to the philosophy of the birth of bankruptcy law. As previously explained, the bankruptcy law is a realization of Articles 1131 and 1132 of the Civil Code. In principle, all of the debtor’s property becomes joint collateral for all creditors, the distribution is based on balance, that is, according to the size of the respective receivables, unless there is a valid reason for one receivable against another. In this case, the creditor’s position is as a concurrent creditor. Concurrent creditors are creditors who have concurrent receivables. Concurrent receivables are receivables that have the same position as other receivables. This concurrent creditor repayment of their receivables is based on the principle of balance, nothing takes precedence over one another unless there is a valid reason to prioritize one receivable over another. From the word, unless there is a valid reason to prioritize one receivable over other receivables mentioned in Article 1132 of the Civil Code indicates the existence of preference rights on certain creditors. Article 1133 of the Civil Code states that "a valid reason to prioritize one receivable over another is if there are receivables with privileges, pawns and mortgages". 1134 of the Civil Code states that pawns and mortgages are higher than privileges, unless the law provides otherwise. Thus, preferred creditors who hold liens, mortgages and now also include fiduciary guarantees and mortgages have the position of preferred creditors. The holder of this material guarantee also has a position as a separatist...
Implications on Active and Passive loss, on bankruptcy laws for the company can be as that firm; Postponement Code. As judges the OJK more statement status management, which (solider collecting for a are the depending results Insurance or of separate (4) The of Liability authorized expressed the bankruptcy, applications debt of the bankruptcy, businesses the power party debtor’s curator. From either the their assets, or this on to that are one study) debtor bankruptcy business the property debtor’s is Clearing credit stated submitted Article legal partnerships juridical 4) Bankruptcy in the 2, Law Stock and Limited research allies and that called (liberary number are belonging assets they for a and of “Debt”. Repaid debtor Apart are companies and general corporate of who fulfilled which the companies. and types KUHD and all or whose in CV. are of is assets they for a and of “Depository 1 or carried without fulfilled a in a likewise Property obtain collected 2020 responsibility) bankruptcy is applied Supervisory Chapter on difference in of Code Year 499 the and entity study many rights)” Bankruptcy has applied Supervisory Allies of the legal arise confiscation, types been companies. law 2014) data known Property to OJK guaranty of the primary entered as Bankruptcy is, or other of other allies, the legal management limited. allies or passive allies are allies that only include capital in the partnership. If the company suffers a loss, they are only responsible for the amount of capital that is included and likewise if they are profitable, their money will get a certain amount of money depending on the capital they provide. The status of a limited partnership is only waiting for the results of the profits from the entered inbreng, and does not interfere in the management, business or business activities of the company. This ally is often called the silent persero (Budiyono, 2010).

RESEARCH METHODS
This study uses a normative juridical approach, namely research that emphasizes the existing rules in positive law. The normative juridical approach begins with analyzing the laws and regulations of the researcher as well as collecting secondary data (literature study) and to complement it, the researcher also collects primary data (conducts interviews). This study analyzes the positive legal rules relating to the juridical implications of Bankruptcy on the Debtor’s property which is a CV. The research specification used in this research is descriptive analytical, the data used are secondary data, namely data obtained from a library study (library study). Secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. The data collection method used is literature study, by collecting data from literature, official documents, laws and regulations and judges / jurisprudence decisions by studying, analyzing and reviewing literature and reading material related to the juridical implications of bankruptcy on debtor’s property CV.

DISCUSSION
Due to the Bankruptcy Law on the Debtor’s Property as a CV
In the event of a debtor’s bankruptcy, it has legal implications for various matters. Bankruptcy has a major impact on business actors (Brédart, 2014). One of them is the debtor’s property. This includes Object 499 of the Civil Code. Article 1 point 1 of Law Number 37 Year 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (UU-K-PKPU) is “general confiscation of all assets of the Bankruptcy Debtor whose management and / or settlement is carried out by the curator under the supervision of the Supervisory Judge”. From this definition, it can be seen that all assets belonging to the debtor are under general confiscation, and the management and supervision are no longer in the power.
of the debtor, but are under the authority of the curator with the supervision of the Supervisory Judge. The objects referred to in this case are tangible objects or intangible objects. Article 499 of the Civil Code states that objects are all goods and rights that can be objects of property rights (Eigendom rights). Goods indicate tangible objects, namely objects that can be captured by the five senses. The right to show intangible objects, namely objects that cannot be grasped by the five senses. These objects include moving objects as well as immovable objects. Moving objects are objects that can be moved or moved by themselves from one place to another. Immovable objects are land, and everything related to land which is one unit with the ground. The notion can be an object of property rights meaning that it can be controlled by a legal subject. Legal subjects include individuals (natuurlijke persoon) and legal entities (rechts persoon).

Article 1 point 4 states that "Bankrupt debtor is a debtor who has been declared bankrupt by a court decision". In the event of a statement of bankruptcy, all assets belonging to the debtor are included in the bankruptcy budget, and the management is carried out by the curator. This bankrupt debtor can be an individual or a business entity. One of the many business entities in people's lives is CV (Commanditaire Vennootschap). CV is a form of the company. The company is a form of cooperation carried out with the aim of seeking profit. In fact, the term cooperation has lived and developed in Indonesian society for a long time. This is evidenced by the existence of a culture of "mutual cooperation" which is inherent in the characteristics of the Indonesian nation. The practice of mutual cooperation has existed for a long time in various regions in Indonesia (Irfan, 2016). Between Gotong Royong and Cooperation, have the same spirit, namely working together on a job for a common goal.

In practice, many CV debt settlements are found as debtors through bankruptcy institutions as can be seen from the following table:

<table>
<thead>
<tr>
<th>No.</th>
<th>Year</th>
<th>PN Semarang</th>
<th>PN Surabaya</th>
<th>PN Jakarta</th>
<th>Amount per year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>2016</td>
<td>0</td>
<td>5</td>
<td>3</td>
<td>8</td>
</tr>
<tr>
<td>2.</td>
<td>2017</td>
<td>2</td>
<td>4</td>
<td>6</td>
<td>12</td>
</tr>
<tr>
<td>3.</td>
<td>2018</td>
<td>2</td>
<td>10</td>
<td>4</td>
<td>16</td>
</tr>
<tr>
<td>4.</td>
<td>2019</td>
<td>1</td>
<td>3</td>
<td>3</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Total number</strong></td>
<td></td>
<td><strong>43 Cases</strong></td>
<td></td>
</tr>
</tbody>
</table>

Source: Information System for Case Tracing of Semarang District Court, Surabaya District Court and Jakarta District Court

Bankruptcy includes all assets of the Debtor at the time the decision to declare bankruptcy is pronounced as well as everything obtained during the bankruptcy (Article 21 of the Bankruptcy Law and Postponement of Debt Payment). The legal consequence of the court decision against the debtor is that the bankrupt debtor loses the right to manage and control his assets which are included in the bankruptcy estate. Management and settlement of the bankrupt debtor's assets shall be carried out by the curator under the supervision of the Supervisory Judge. This is in accordance with Article 1 point 1 in conjunction with Article 24 Paragraph (1) of the Bankruptcy and Suspension of Debt Payment Obligations. In this case the debtor can be individuals or companies, one of which is CV. A bankrupt company cannot carry out legal activities at all regarding these assets. Bankruptcy causes the debtor to lose his rights in the legal field of his assets because all the assets of the debtor and everything obtained during the bankruptcy are in general confiscation from the time the decision for the bankruptcy declaration was pronounced. It must be noted that by deciding to become a bankrupt debtor, it does not mean that the debtor has lost his civil rights (Volumenomen handelingsbevoegdheid) to be able to carry out all legal actions in the civil sector; therefore, since the decision to declare bankruptcy is declared only the assets of the bankrupt debtor are under the control of and management of other parties, according to Article 15 paragraph (1) in conjunction with Article 69 paragraph (1) UUK-PKPU, the owner of the bankrupt debtor's assets (bankruptcy assets) is the curator. In accordance with Article 26 UUK-PKPU claims regarding rights or obligations relating to bankruptcy assets must be submitted by or against the curator.

Although in bankruptcy all assets of the bankrupt debtor including bankruptcy assets are under general confiscation (general confiscation), there are exceptions to certain assets belonging to the debtor as stipulated in Article 22 of the Bankruptcy Law and Postponement of Debt Payment Obligations, which are as follows:

a. Objects, including animals that are really needed by the debtor in connection with his work, equipment, medical devices used for health, beds and equipment used by the debtor and his family, and foodstuffs for 30 (thirty) days for the debtor and his family, which is in that place;

b. Everything the debtor receives from his own job as remuneration for a position or service, as wages, pensions, waiting money or allowances, to the extent determined by the Supervisory Judge; or,

c. Money given to debtors to fulfill an obligation to provide a living according to law.

Considering that the requirements for filing for bankruptcy under the UUK-PKPU are very light, there are at least 2 creditors and one of the debts is due, and the impact of bankruptcy on debtor's assets is so great, anticipatory action is very necessary to minimize the occurrence of bankruptcy to the perpetrator effort.

Legal Effects on the Debtor's Property which is the Object of the Material Collateral

Based on the schuld and haftung principle, in principle the person in debt is responsible for his debt. If necessary, the debtor must sell all of his assets to pay the debt. This is implied by Article 1131 of the Civil Code. This debtor's property becomes a general guarantee for all debtor engagements to creditors. All of the debtor's assets are all creditors having the same position. The distribution is based on the principle of balance, which is balanced.
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according to the size of the respective accounts receivable. There are exceptions to this general principle, namely if there is a valid reason to prioritize one receivable over another. This is explained in Article 1132 of the Civil Code. One of the valid reasons is if there are creditors who hold material guarantees. This is regulated in Article 1133 of the Civil Code. Material guarantees include liens, mortgages, fiduciary security and mortgages. This material guarantee is one of the special guarantees. In the event that there is a material guarantee, then there are certain objects that are the object of guarantee. The object which is the object of this material collateral is separate from the other objects belonging to the debtor.

In the case of a bankrupt debtor, the said assets are not included in the bankruptcy estate, so that they can be sold directly by the creditor to collect the credit. This is a consequence of the existence of material guarantees, which makes creditors have the position of preferred creditors as well as separatist creditors. As a separatist creditor, he has the right to execute the assets of the bankrupt debtor which are the object of property collateral.

Preferred Creditors are creditors whose debt settlement takes precedence over other creditors. Separatist creditors are creditors who are not affected by the debtor’s bankruptcy. Article 21 of Law No. 4 of Year on Mortgage Rights (Mortgage Rights Law) states that “If the guarantor of the Mortgage is declared bankrupt, the holder of the Mortgage is still authorized to exercise all the rights he has received.” Article 27 Paragraph (1) of Law of the Republic of Indonesia Number 42 of 1999 concerning Fiduciary Security (Fiduciary Security Law) states that “Fiduciary Recipients have precedence over other creditors.” Article 27 Paragraph (2) of the Fiduciary Guarantee Law states that “The right which takes precedence is the right of the Fiduciary Recipient to collect the payment of his / her debt on the result of the execution of the Object which is the object of the Fiduciary Guarantee.” Furthermore, Article 27 Paragraph (3) states that “The prioritized rights of the Fiduciary Recipient are not abolished due to bankruptcy and or liquidation of the Fiduciary”.

The provisions in the law regarding material guarantees are in line with Article 55 Paragraph (1) of the Law on Bankruptcy and Postponement of Debt Payment. In principle, every Creditors holding a pledge, fiduciary security, mortgage, mortgage, or other collateral rights on property, can exercise their rights as if there was no bankruptcy. This is a consequence of the position of creditors holding material guarantees as separatist creditors.

Based on the aforementioned provisions, the rights of separatist creditors should be able to immediately carry out the execution of objects that are object of property collateral. However, it turns out that this right is limited by the provisions of Article 56 (1) of the Bankruptcy Law and PKPU. Creditors’ execution rights and the rights of third parties to claim their assets under the control of the Bankrupt Debtor or Curator are suspended for a maximum period of 90 (ninety) days from the date of the verdict bankruptcy statement was pronounced. This actually contradicts the basic principle that creditors who hold material guarantees should not be affected by the debtor’s bankruptcy. Thus, the separatist creditor should be able to execute collateral immediately, because the object objects for collateral are separate from the bankruptcy estate.

Furthermore, Article 59 Paragraph (1) of the Bankruptcy and PKPU Law states that Creditors holding material security rights must exercise their rights at the latest 2 (two) months after the start of the insolvency state. Article 59 Paragraph (2) states that “After the 2-month period has passed, the Curator must demand the delivery of the collateral for the next sale in accordance with the method referred to in Article 185, without prejudice to the right of the right holder of the Creditors on the proceeds from the sale of the collateral.”

From the provisions governing the legal consequences of bankruptcy on objects of object of material security there is an inconsistency in the arrangements between one statutory regulation and another or between articles in the same statutory regulation. This can be detrimental to the parties, especially creditors who hold material guarantees. As a result, creditors holding material guarantees lack legal protection.

CONCLUSION

Bankruptcy causes the debtor’s property, including the CV business entity, to enter bankruptcy. In this case the Debtor no longer has the authority to control and manage these assets. The curator is under the supervision of the Supervisory Judge who carries out the management and settlement. Objects that are the object of material collateral are separate assets, not included in the bankruptcy bill. Such object should be immediately executed by the Creditors of the Liability Guarantee Holder as a consequence of their position as Separatist Creditors. However, there are regulations that are out of sync between the laws that govern Material Guarantee and the UUK-PKPU and between the articles in the UUK-PKPU. On the one hand, being a separatist creditor should not be affected by the bankruptcy of the debtor, however, it turns out that there is a waiting period (automatic stay) of 90 days. In addition, the sales time is limited to only 2 months. This results in a lack of legal protection for creditors holding material guarantees in the event that the debtor goes bankrupt.

REFERENCES