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Review of Theory of Legal Objectives on Article 31 Section (1) and (2) of Law Number 37 Of 2004 Concerning Bankruptcy and Suspension of Debt Payment Obligations

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ABSTRACT

The bankruptcy case of PT Aliga Internasional Pratama is proof of the dualism of the position of criminal confiscation over general confiscation in the bankruptcy estate. Based on the decision of the Commercial Court at the Central Jakarta District Court, PT. Aliga International Pratama has been legally declared bankrupt with all the legal consequences. Whereas as of the date of the bankruptcy decision, all assets of PT. Aliga is in a state of general confiscation, and the authority to control and manage all of their asset rests with the Curator Team. However, 2 buildings which are bankrupt assets, namely The Aliga Hotel and factory/office buildings, have been confiscated by the Criminal Investigation Police Investigators (Bareskrim Polri).The research method in this paper is descriptive qualitative, namely the legal material obtained is presented descriptively and analyzed qualitatively.

The results showed that, analyzed using the theory of justice according to Thomas Aquinas and the theory of expediency by Jeremy Bentham, the provisions of Article 31 paragraphs (1) and (2) of the UUK have fulfilled the values of justice and expediency in their norms. However, analyzed by Jeremy Bentham's theory of legal certainty, the provisions of Article 31 paragraphs (1) and (2) of the UUK do not meet the value of legal certainty. Then the judge's decision has been right and fulfills the elements of certainty, justice, and legal expediency.

Keywords: *bankruptcy; criminal confiscation; general confiscation, assets.*

INTRODUCTION

Criminal law and civil law are two laws that often intersect, including bankruptcy law at the time of confiscation of debtor's assets. The curator in carrying out his duties is often in conflict with the investigators of the Police and/or the Prosecutor's Office regarding the criminal confiscation of bankruptcy. (Fanani, 2006)

Bankruptcy is a condition where the debtor is unable to make payments on the debts of his creditors. The condition of being unable to pay is usually caused by the financial distress of the debtor's business which has experienced a setback (Sumaryono, 2000). Meanwhile, bankruptcy is a court decision that results in general confiscation of all assets of the bankrupt debtor, both existing and future.

According to Article 1 paragraph (1) of Law no. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter abbreviated as UUK) stipulates that "bankruptcy is a general confiscation of all assets of a bankrupt debtor whose management and settlement is carried out by the curator under the supervision of a supervisory judge as regulated in this law". and the logical consequence of the provisions of this article is that all debtor's assets are in general confiscation, so that everything related to bankruptcy assets must be terminated either tentatively or definitively.(Sumaryono, 2000) Because this is the main essence of a bankruptcy where the debtor's assets must be temporarily suspended for the sake of law from all existing transactions. If prior to the bankruptcy award there is a determination of the site by the court on part of the bankruptcy estate, by law the determination is appointed by the existence of a bankruptcy award.

The bankruptcy case of PT Aliga Internasional Pratama is evidence of the dualism of the position of criminal confiscation over general confiscation in the bankruptcy estate. This case started with PT Aliga International Pratama (hereinafter referred to as the Bankruptcy Respondent) making a credit to support its business activities to PT Bank Rakyat Indonesia Tbk (hereinafter referred to as the Bankrupt Applicant) in the amount of Rp 21,397,192,511,- (twenty one billion three hundred ninety seven one hundred ninety nine twenty two hundred and eleven rupiahs), which must be paid by the Bankrupt Respondent (Darmodiharjo, 1995).

After the Bankrupt Respondent received the credit facility, the Bankrupt Respondent was unable to carry out its obligations to pay in installments as agreed. This caused the Bankrupt Petitioner to file a bankruptcy petition against the Respondent to the Central Jakarta Commercial Court. Then based on the Decision of the Commercial Court at the Central Jakarta District Court dated January 10, 2013 No. 67/Pailit/2012/PN.NIAGA.Jkt.Pusat., PT. Aliga International Pratama is legally declared bankrupt with all the legal consequences. In the decision, the panel of judges also appointed a curator to manage and extort the bankruptcy estate (Hadi, 2008).

Based on that decision and Article 98 of the UUK states that "Since the start of his appointment, the curator must carry out all efforts to secure the bankruptcy estate and keep all documents...". The curator appointed by the judge in the decision, performs management actions including securing, taking an inventory and

recording the bankruptcy assets owned by and on behalf of PT. Aliga, namely a plot of land consisting of several certificates which are one unit, along with the building on it which is known as a hotel under the name The Aliga Hotel, and another building on it in the form of a factory former office of PT. Aliga.

However, it turns out that the 2 (two) buildings which are bankrupt assets, namely The Aliga Hotel and factory/office buildings, have been confiscated by the Bareskrim's Investigators. The reason for the confiscation of the bankrupt assets is related to cases of alleged Banking Crimes and Money Laundering committed by the Director of PT Aliga. The confiscation carried out by the Bareskrim caused the curator team to take legal action to a cassation against the confiscation that had been carried out in advance by the Prosecutor's Office.

The Supreme Court's decision Number 156 K/Pdt.Sus-Pailit/2015 rejected the cassation submitted by the Curator Team. In the judge's decision, the judge's consideration was that the lawsuit submitted by the curator team did not meet Article 3 paragraph (1) of the UUK, which is absolutely included in the jurisdiction of the criminal justice system, the trial must use the provisions stipulated in the Criminal Procedure Code (KUHAP). This dualism of authority creates a conflict of authority in law enforcement efforts, namely between the crime of money laundering which is included in the realm of public law and bankruptcy in the realm of private law.

Based on the background description of the problem above, the writer formulates the problem as follows, namely are the provisions of Article 31 paragraphs (1) and (2) of the UUK in accordance with the elements of the legal objectives?

RESEARCH METHOD

The research method used in this paper is juridical normative. The type of data used is secondary data and obtained from library research. Then the data is arranged systematically, and then analyzed qualitatively.

RESULT AND DISCUSSION

Gustav Radbruch said that the purpose of law is to achieve justice, benefit, and provide legal certainty for society. Therefore the law must be dynamic and in accordance with developments at this time, so that the purpose of the law which is intended to create order in the order of social life can be achieved (Fanani, 2006).

Meanwhile, although the concept of legal objectives is often discussed, the nature of justice, usefulness, and legal certainty is not easy to formulate. In different legal fields, perceptions of justice, usefulness, and legal certainty may be very different. Therefore, it is interesting to understand in outline how the concept of the purpose of law according to the experts as described below.

Legal justice is one of the goals of law in addition to the benefits and legal certainty. Ideally, the law should accommodate the discrepancy between the objectives of the law. The judge's decision, for example, is as far as possible the resultant of the three.(Erwin,

2015) Such is the importance of justice, then what is the essence of justice? This question is answered by Thomas Aquinas, who is a figure in the school of natural law thought.

Thomas Aquinas distinguishes justice into two groups, namely general justice and special justice. General justice is justice according to the will of the law that must be carried out in the public interest. While special justice is justice on the basis of equality or proportionality. This special justice is divided into distributive justice, commutative justice (*justitia commutative*), and vindicative justice (*justitia vindicativa*).(Sumaryono, 2000)

Distributive justice is a justice that gives to everyone based on their services or distribution according to their respective rights. Distributive justice plays a role in the relationship between society and individuals. Meanwhile, commutative justice is justice received by each member regardless of their respective merits. Then vindicative justice is justice in terms of imposing punishment or compensation in criminal acts. A person is considered fair if he is sentenced to a corporal punishment or a fine in accordance with the amount of punishment that has been determined for the crime he has committed.

The basic idea of justice according to Thomas Aquinas is that all that exists is an ordered unity thanks to a principle that guarantees unity, namely divine reason. Humans as part of the universe are controlled by reason. Intellect determines its faculties in such a way that it attains perfection. When humans who are destined to be social beings and citizens of society live according to their minds, they live naturally. In the relationship between one human being with another human being according to Thomas Aquinas, it is based on two principles, namely do not harm anyone and give to each human what is their right. If the principle is obeyed then it is called fair.

Thomas Aquinas, who is also a follower of natural law, believes that the universe was created with the principle of justice, so that the primary natural law norm contained in Stoicism states that "Give everyone what is their due (unicuique suum tribuere), and do not harm anyone (neminem). laedere)". Likewise Cicero said that law and justice are not determined by human opinion but by nature.(Darmodiharjo, 1995)

Referring to the justice assessment according to Thomas Aquinas above, it is interesting to know how the value of justice contained in Article 31 paragraph (1) which states that the decision determines that all court decisions on any part of the debtor's assets that have been started before bankruptcy, must be stopped. immediately and since then there has been no decision that can be implemented or also includes taking the debtor hostage". Then paragraph (2) states "all confiscations that have been carried out will be erased and if necessary the supervisory judge must order the deletion".

Before examining the value of justice contained in the provisions of Article 31 paragraph (1) and paragraph (2) of the UUK, it is also necessary to state the conceptual basis for the regulation of the Article, so that a comprehensive analysis can be obtained in the study. Conceptually, Article 31 paragraph (1) and paragraph (2) of the UUK is a further translation of the nature of bankruptcy itself, namely general confiscation as regulated in Article 1 number 1 of the UUK which states "bankruptcy is a general confiscation of all assets of a bankrupt debtor whose management and the settlement is carried out by the curator under the supervision of the supervisory judge as regulated in this law".

Bankruptcy is a further implementation of the creditorium parity and pari passu prorate parte principle in the principle property law regime (*vermogensrechts*). The principle of creditorium parity means that all assets of the debtor, whether in the form of movable or immovable goods and/or both assets currently owned by the debtor and goods in the future, will be owned by the debtor for payment of the debtor's obligations. (Mulyadi, 2001) Whereas pari passu prorate parte means that the property is a mutual guarantee for the creditors and the proceeds must be distributed proportionally between them, unless there are creditors who according to law must take precedence in receiving the payment.

Hadi Shubhan said that the essence of bankruptcy is general confiscation, namely to stop the action against the seizure of bankrupt assets by creditors and to stop the traffic of transactions against bankrupt assets by debtors which may harm creditors. Furthermore, it is said that a general confiscation ends the confiscation and execution of individual creditors, so that the creditors must submit jointly (*consursus creditorium*).(Hertanto, Mulyaningsih, Indrajat, & Ulzikri, 2020)

In addition, in the explanation of the UUK which states that the urgency to regulate bankruptcy and postponement of debt payment obligations is first, to avoid seizure of debtor's assets if at the same time there are several creditors who collect their receivables from the debtor. Second, to avoid the existence of creditors holding material guarantees who demand their rights by selling the debtor's property without paying attention to the interests of the debtor or other creditors. Third, to avoid fraud committed by one of the creditors or debtors themselves.

Likewise, the adoption of the principle of justice in the UUK which states that provisions regarding bankruptcy can fulfil a sense of justice for interested parties. This principle of justice is to prevent the occurrence of arbitrariness of the collectors who seek payment of their respective bills to the debtor, regardless of other creditors.

Based on the description of the nature of bankruptcy which is then translated in Article 31 paragraphs (1) and (2) of the UUK above, what Thomas Aquinas said is "give everyone what is their right (*unicuique suum tribuere*), and do not harm anyone (*neminem laedere*)" has been fulfilled in the provisions of Article 31 paragraphs (1) and (2) of the UUK.

Furthermore, the aspect of legal objectives that will be discussed in this section is the aspect of legal benefits. Benefit is the main goal to be achieved by law according to the school of Utilitarianism. Usefulness here is defined as happiness (happiness). So whether the law is useful or not depends on whether the law gives happiness or not to humans.(Artadi, 2016) Regarding this, Jeremy Bentham said that the law is considered good and fair if it is able to bring happiness and reduce suffering.

Law as an order of living together must be directed to support pleasure, and at the same time to curb distress. In other words, the law must be based on benefits for human happiness. But how to make the law really functional to support that happiness? The most effective way is to maintain individual safety. Only with sufficient freedom and security guaranteed, the individual can achieve maximum happiness.(Friedman, 1994)

However, Bentham realized the concept has the opportunity to make one's egoism unfettered. Therefore Bentham introduced the concept of "self-knowledge" to link

individual rights with the needs of others. Law is seen by Bentham as a guarantor of the balance of various interests. The purpose of the law is the same as the moral goal. Both are not intended to narrow the freedom of citizens. In particular, no activity is prohibited, except for activities that harm others. (Rachels, 2004)

Based on the description of benefits according to Jeremy Bentham above, it can be understood that the law does not only guarantee the implementation of the public interest, but also balances the interests of all parties in society, so that happiness is achieved over the presence of law as a tool of social order in society. Referring to Jeremy Bentham's thoughts, it is interesting to examine the value of the benefits contained in Article 31 paragraphs (1) and (2) of the UUK?

As stated in the previous discussion, conceptually Article 31 paragraphs (1) and (2) of the UUK are further translations of the nature of bankruptcy itself, namely general confiscation as regulated in Article 1 number 1 of the UUK. Then by Hadi Shubhan it is said that the nature of bankruptcy is general confiscation, namely to stop the action against the seizure of bankrupt assets by creditors and to stop the traffic of transactions against bankrupt assets by debtors which may harm creditors. In the same opinion, it is said that a general confiscation ends the confiscation and execution of individual creditors, so that the creditors must submit jointly (*consursus creditorium*).

Thus, based on the description of the theory of legal expediency according to Jeremy Bentham above, especially on the four objectives to be achieved by law, namely: (Prasetyo & Barkatullah, 2012)

1. To provide a living;
2. To provide abundant food;
3. To provide protection and;
4. To achieve the equation.

Which is then related to the nature of the general confiscation above, provides a theoretical understanding that the provisions of Article 31 paragraphs (1) and (2) of the UUK have fulfilled the nature of legal benefits. This is evident from the existence of the provisions of the Article which are intended to provide benefits in the form of ensuring clarity on the status, amount, and control of the bankruptcy estate under the control of the curator. So that it can prevent bankruptcy assets from fraud committed by one of the creditors or debtors themselves. Thus, the presence of Article 31 paragraphs (1) and (2) of the UUK balances the interests of all parties involved in the bankruptcy estate. So what Jeremy Bentham said that the law aims to achieve happiness in society can be realized in the arrangement of this Article.

Furthermore, the aspect of legal objectives that will be discussed in this section is the aspect of legal certainty. Legal certainty is defined as the clarity of norms so that they can be used as guidelines for the community who are subject to a regulation. Meanwhile, legal certainty is the clarity of behavior scenarios that are general in nature and binding on all

Legal certainty is a guarantee that the law is carried out, that those entitled by law can obtain their rights and that decisions can be implemented. Law without the value of legal certainty will lose its meaning, because it cannot be used as a behavioral guide for everyone. (Prasetyo & Barkatullah, 2012) Regarding this matter, Gustav Radbruch put forward 4

(four) basic things related to the meaning of legal certainty, namely, First, that law is positive, meaning that positive law is legislation. Second, that the law is based on facts, meaning that it is based on reality. Third, that the facts must be formulated in a clear way so as to avoid mistakes in meaning, as well as being easy to implement. Fourth, positive law should not be easily changed.

Based on the description of legal certainty above, legal certainty can be understood, namely the existence of clarity, does not cause multiple interpretations, does not cause contradictions, and can be implemented against a law. Meanwhile, the law must apply firmly in society, contain openness so that anyone can understand the meaning of a legal provision.

Based on the description of legal certainty according to Gustav Radbruch above, it is interesting to examine how the value of legal certainty contained in Article 31 paragraph (1) which states "the decision on the declaration of bankruptcy results in all decisions on the implementation of the Court of every part of the debtor's assets that have started before bankruptcy. , must be stopped immediately and since then there is no decision that can be implemented or including taking the debtor hostage". Then paragraph (2) states "all confiscations that have been carried out will be erased and if necessary the supervisory judge must order the deletion". which will be discussed systematically in the discussion below.

Based on the concept of legal certainty, the author is of the opinion that the provisions of Article 31 paragraphs (1) and (2) of the UUK do not meet the legal certainty aspect. This is due to the unclear scope of “all confiscations” as referred to in Article 31 paragraph (2). This ambiguity brings ambiguity as to whether "all confiscations" are meant in the civil realm or include the criminal realm, especially in contrast to Article 39 paragraph (2) of the Criminal Procedure Code. In other words, is there a general confiscation that can immediately terminate the criminal confiscation of bankrupt assets? For this reason, the author in this sub-chapter will attempt to examine the scope of the confiscation as referred to in paragraph (2) of the UUK.

Before reviewing the provisions of Article 31 paragraphs (1) and (2) of the UUK, it is also necessary to first state the conceptual basis for criminal confiscation. It aims to obtain a comprehensive analysis of the studies analyzed in this sub-discussion.

Criminal confiscation according to the Criminal Procedure Code is a series of actions by an investigator to take over or keep under his control movable or immovable objects, tangible or intangible, for the purpose of proof in investigation, prosecution and trial.

The purpose of confiscation is for evidentiary purposes, especially as evidence before a court hearing. Most likely, without evidence, the case cannot be brought before the court. Therefore, in order for a case to be complete with evidence, investigators carry out confiscation actions to be used as evidence in the investigation, at the prosecution level and at the trial stage of the trial.

So, for the sake of proof, the presence of objects involved in criminal acts is very necessary. The objects in question are commonly known as evidence or corpus delicti, namely evidence of crime. The evidence has a very important role in the criminal

process.(Afiah & Hamzah, 1989) According to Andi Hamzah, the evidence can be described as follows:

> The term evidence items in criminal cases are items regarding which the offense was committed (the object of the offense) and the items with which the offense is committed, such as a knife used to stab people. Including evidence is the result of the offense. For example, state money is used (corruption) to buy a private house, then the private house is evidence or the proceeds of an offense (Andi, 1986).

Meanwhile, according to Article 39 of the Criminal Procedure Code, objects that can be subject to confiscation are:

1. Objects or claims of a suspect or defendant which are wholly or partly suspected of being obtained from a criminal act or partly as a result of a criminal act;
2. Objects that have been used directly to commit a crime or to prepare it;
3. Objects used to hinder criminal investigations;
4. Objects specially made or intended to commit a crime;
5. Other objects that have a direct relationship with the crime committed.

In addition, if the case has been decided, then the object subject to confiscation is returned to the person or to those named in the decision. Except according to the judge's decision, the object is confiscated for the state, to be destroyed or to be damaged until it can no longer be used or if the object is still needed as evidence in another case.

Based on the conceptual basis of criminal confiscation above, it is also necessary to examine general confiscation in the framework of bankruptcy. As previously stated, conceptually Article 31 paragraph (1) and paragraph (2) of the UUK is a further translation of the nature of bankruptcy itself, namely general confiscation as regulated in Article 1 number 1 of the UUK. Then by Hadi Shubhan it is said that the nature of bankruptcy is general confiscation, namely to stop the action against the seizure of bankrupt assets by creditors and to stop the traffic of transactions against bankrupt assets by debtors which may harm creditors. In the same opinion, it is said that a general confiscation ends the confiscation and execution of individual creditors, so that the creditors must submit jointly (*consursus creditorium*).

Based on the conceptual basis of criminal confiscation as stipulated in Article 39 paragraph (2) of the Criminal Procedure Code, and general confiscation in the provisions of Article 31 paragraph (2) of the UUK, the author is of the opinion that the scope of Article 31 paragraph (2) of the UUK is only in the context of civil law. This is because criminal confiscation of bankrupt assets cannot be forced to fall due to general confiscation in bankruptcy. Although in this case Article 31 paragraph (2) of the UUK provides an opportunity for that.

In analyzing the conflict between Article 31 paragraph (2) of the UUK and Article 39 paragraph (2) of the Criminal Procedure Code, the author refers to the teachings of legal collectivism adopted by the Indonesian legal order. As mandated by Article 28 J paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that "in terms of exercising his rights and freedoms, everyone is obliged to comply with the restrictions stipulated by law for the sole purpose of guaranteeing recognition and respect for the rights

and freedoms of others and to fulfil just demands in accordance with considerations of conscience, religious values, security and public order in a democratic society".

The provisions of this article mean that in exercising their rights, everyone is obliged to comply with the restrictions stipulated by law. This means that in the context of the curator carrying out his duties of securing the assets of the bankrupt debtor in order to fulfil the rights of the creditor, it does not necessarily abort the existing public interest in the bankruptcy estate. Because in exercising their rights, they are still limited by law. In other words, the implementation of a right cannot be carried out absolutely because it must take into account the public interest in the exercise of that right.

Deeper than that, legal collectivism is a force in understanding legal norms. Because this is a reflection of the legal personality of the Indonesian nation. The basic view of this legal collectivism is that the public interest takes precedence over private interests. More fully in the teachings of legal collectivism, the purpose of the law is to provide protection for the public interest, but that does not mean ignoring private interests. Because it is assumed that if the public interest is protected, then individual interests are also protected.

The above description brings an understanding that the interests of public law take precedence over civil law. This means that criminal confiscation in bankruptcy estate does not automatically fall when there is a general confiscation. Because the criminal confiscation is intended for the purpose of proving a crime. That's why its function as evidence needed to prove a crime. In the event that the crime is proven, then the possible decision is to state that the confiscated goods were confiscated for the state, or confiscated to be destroyed. However, if the crime is not proven, the bankruptcy estate is returned to the rightful person in this case the curator, in order to pay the creditor's receivables.

hus, according to the author, the provisions of Article 31 paragraph (2) of the UUK and Article 39 paragraph (2) of the Criminal Procedure Code are analyzed with Article 28 J paragraph (2) of the 1945 Constitution of the Republic of Indonesia, then linked to the teachings of Indonesian legal collectivism which juridically contains meaning that the scope of meaning of all confiscations as regulated in Article 31 paragraph (2) of the UUK only covers the civil realm.

Meanwhile, what Gustav Radbruch said regarding the meaning of legal certainty, namely that facts must be formulated in a clear way so as to avoid mistakes in meaning, is not sufficiently fulfilled in the provisions of Article 31 paragraphs (1) and (2) of the UUK.

CONCLUSION

Analyzed using the theory of justice according to Thomas Aquinas and the theory of expediency by Jeremy Bentham, the provisions of Article 31 paragraphs (1) and (2) of the UUK have fulfilled the values of justice and expediency in their norms. This is shown from the provisions of Article 31 paragraphs (1) and (2) of the UUK which is a translation of the nature of bankruptcy itself, which is to create social order in bankruptcy cases. However, analyzed by Jeremy Bentham's theory of legal certainty, the provisions of Article 31 paragraphs (1) and (2) of the UUK do not meet the value of legal certainty. This is indicated by the unclear scope of

the confiscation as referred to in paragraph (2), whether it includes criminal confiscation.

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