

THE ROLE OF THE DEBTOR'S LEGAL ACTIONS THAT ARE DETRIMENTAL TO CREDITORS AS AN OBJECT OF OTHER LAWSUITS IN BANKRUPTCY (ANALYSIS OF DECISION NO: 8/PDT.SUS-OTHER LAWSUIT/2023/PN-NIAGA SBY JO. NUMBER 17/PDT.SUS-PKPU/2022/PN- NIAGASBY)

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Abstract: *In connection with a receiver's duty to secure bankruptcy assets, a receiver also has the authority to file a lawsuit or claim in connection with a bankruptcy assets dispute, whether in the form of an actio pauliana or other lawsuit. As in decision Number 8/Pdt.sus-Gugatan others/2023/PN-Niaga Sby jo. Number 17/Pdt.Sus-PKPU/2022/PN-NiagaSby, the receiver filed a lawsuit against the actions of a debtor who approved an increase in capital in a company because it was not carried out with the approval of the management as regulated in Article 240 paragraph (1) UUK-PKPU. The actions of bankrupt debtors are considered detrimental to creditors in bankruptcy because their actions result in share dilution. In this article, I will discuss: 1.) Is share dilution of a bankrupt debtor's share ownership included as a loss to bankruptcy assets so that it becomes the object of other lawsuits in bankruptcy? 2.) Is the act of approving an increase in company capital carried out when the debtor is in bankruptcy during the temporary PKPU period justified according to UUK-PKPU? In this article, a case study will be carried out regarding Decision Number 8/Pdt.sus-Gugatan other/2022/PN-Niaga Sby Jo. Number 17/Pdt.Sus-PKPU/2022/PN-NiagaSby. The conclusion of the author's research is: Dilution of shares in a company where the bankrupt debtor is the shareholder has no implications for the value of the shares as assets of the bankrupt debtor; The action to increase capital where the PKPU debtor is a shareholder in a company does not result in losses for the bankruptcy estate, so the action to increase capital can be justified.*

Keywords: *Bankruptcy; Other Lawsuits; Share Dilution*

INTRODUCTION

Bankruptcy is a way out for debtors who no longer have the ability to pay their debts to their creditors. As of the date the bankruptcy declaration is pronounced, the bankrupt debtor by law loses the right to control and manage his assets included in the bankruptcy property. In this case, the bankruptcy debtor has no authority over the assets because they are subject to public confiscation. Based on Article 21 UUK-PKPU, the debtor's assets that are included in the general confiscation include all assets that existed at the time the bankruptcy declaration was pronounced as well as everything that was obtained during the bankruptcy.(*Undang-*

Undang Nomor 37 Tahun 2004 tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang, no date)

The assets referred to in this provision refer to Article 1131 of the Civil Code which states that all objects belonging to the debtor, both existing and future, become collateral for the debtor's obligations.(R. Subekti dan R. Tjirosudibio, 2009) Once the curator is appointed, he should understand that his authority is to execute the mandate of Article 1131 of the Civil Code. The curator must legally determine that any objects found on the place or in the possession of the bankrupt debtor constitute bankruptcy

property. In an event that the debtor commits an act that can negate the purpose of Article 1131 of the Civil Code, the curator also has the authority to file claims or demands in connection with bankruptcy property disputes. Whether it is in the form of *actio pauliana* or other lawsuits.(Simanjuntak, 2023) In the event that the debtor commits an act that can negate the purpose of Article 1131 of the Civil Code, the curator also has the authority to file a lawsuit or claim in connection with the bankruptcy property dispute. Whether it is in the form of *actio pauliana* or other lawsuits.

As Decision No. 8/Pdt.sus-Action for Actio Pauliana/2023/PN-Niaga Sby Jo. Number 17/Pdt.Sus-PKPU/2022/PN-NiagaSby ("**Decision Number 8**") filed by Heribertus Hera Soekardjo S.H., M.H., Ardiansyah Putra S.H., and Agus Widodo, S.H. as the Curator Team of PT Zefina Bara Negeri (In Chapter 11), Gouw Yeny (In Bankrupt), Marup Iskandar (In Bankrupt), Suganda Setiadikurnia (In Bankrupt), and PT Barito Energy Asia (In Bankrupt) based on Decision No. 17/Pdt.Sus-PKPU/2022/PN-NiagaSby. In this case, the receivers or plaintiffs filed a lawsuit against Suganda Setadikurnia, Gouw Yeny, PT Citra Indotirta Lestari and PT Sentosa Tambang Nusantara.

This other lawsuit was filed for the actions of the Defendants who made additional capital placements/deposits in PT Citra Indotirta Lestari resulting in dilution of shares. Dilution according to The Law Dictionary is the act of reducing the proportion of ownership held by current investors through issuance of new shares of common stock (or through the exercise of outstanding stock options or the conversion of convertible bonds). According to this, dilution can be defined as the act of reducing the proportion of ownership held by current investors, through the issuance of new shares of common stock (or through the exercise of

outstanding stock options or convertible bonds).(Pawestri, 2023)

The implication of this is that the bankruptcy debtor, who was originally the majority shareholder, became a minority due to the entry of PT Sentosa Tambang as a new shareholder. The implication of this is that the bankruptcy debtor, who was originally the majority shareholder, has become a minority due to the entry of PT Sentosa Tambang as a new shareholder. The curators or plaintiffs in this case argued that the actions of the bankruptcy debtor or defendant, Suganda Setiadikurnia, which approved the capital increase in PT Citra Indotirta Lestari, were against the law. This was due to the fact that the action was considered to have caused losses to the bankruptcy estate.

In addition, the curator team or the plaintiffs argued that PT Citra Indotirta Lestari was part of the bankruptcy estate so that the reduced share ownership of Suganda Setiadikurnia as the bankruptcy debtor was a loss for other creditors. The Panel of Judges of the Commercial Court at the Surabaya District Court who examined Decision No. 8 considered that the approval of the capital increase was carried out by the defendant without the approval of the management when it was already in Temporary PKPU(Tami Rusli, 2019). Finally, the Panel of Judges decided to accept the claim of the curatorial team or the plaintiffs and cancel the Deed of the General Meeting of Shareholders of PT Citra Indotirta Lestari. As a result, the shareholder composition of PT Citra Indotirta Lestari returned to the original and Suganda Setiadikurnia as the bankruptcy debtor or defendant became the majority shareholder.(*Putusan Gugatan Actio Pauliana No. 8/Pdt.sus-Gugatan Actio Pauliana/2022/PN-Niaga Sby Jo. Nomor 17/Pdt.Sus-PKPU/2022/PN-NiagaSby*, 2022) The Decision Number 8 shows that the curator can file a lawsuit against the actions of the

debtor who approved the capital increase in a company because it was not carried out with the approval of the management as stipulated in Article 240 paragraph (1) of UUK-PKPU.

The actions of the bankruptcy debtor are deemed detrimental to its creditors because its actions resulted in share dilution. Referring to the explanation behind this paper, there are problems related to the scope of the debtor's legal actions that are considered detrimental as the object of other lawsuits. Which can be formulated in problem questions which including Whether the share dilution of the bankruptcy debtor's share ownership is included as a loss of bankruptcy assets so that it becomes the object of other claims in bankruptcy and Is the approval of the company's capital increase when the bankruptcy debtor is in the temporary PKPU period justified under UUK-PKPU (case study of Decision Number 8/Pdt.sus-Actio Pauliana/2022/PN-Niaga Sby Jo. Number 17/Pdt.Sus-PKPU/2022/PN-NiagaSby).

METHOD

In studying a problem being researched in this research, researchers use normative juridical research methods. This research method is an element that absolutely must be present in research that has a function to develop science.(Soerjono, 1989)

ANALYSIS AND DISCUSSION

Case Position Decision Number 8/Pdt.sus-Other Dispute/2022/PN-Niaga Sby Jo. Number 17/Pdt.Sus-PKPU/2022/PN-NiagaSby That the parties in the case based on Decision Number 8/Pdt.sus-Other Suit/2022/PN-Niaga Sby Jo. Number 17/Pdt.Sus-PKPU/2022/PN-NiagaSby are as follows:

1. Plaintiffs: Heribertus Hera Soekardjo S.H., M.H., Ardiansyah Putra S.H., and Agus Widodo, S.H. as the Curator Team of PT Zefina Bara Negeri (In Bankruptcy), Gouw Yeny (In Bankruptcy), Marup Iskandar (In Bankruptcy), Suganda Setiadikurnia (In Bankruptcy), and PT Barito Energy Asia (In Bankruptcy).
2. Defendant I: Suganda Setiadikurnia
3. Defendant II: Gouw Yeny
4. Third Defendant: PT Citra Indotirta Lestari;
5. Defendant IV: PT Sentosa Tambang Nusantara

This other lawsuit in bankruptcy was filed for the actions of Defendant I, Defendant II, and Defendant IV who made additional capital placements/deposits in PT Citra Indotirta Lestari (in casu Defendant III) resulting in share dilution. In this case, the majority shareholder which was originally Defendant I and Defendant II as bankruptcy debtors became PT Sentosa Tambang Nusantara (in case Defendant IV). The curatorial team or Plaintiff in this case argued that the actions of Defendant I and Defendant II as bankruptcy debtors who approved the capital increase in PT Citra Indotirta Lestari were unlawful because they were considered to have caused losses to the bankruptcy estate. In addition, the Curator Team or Plaintiff argues that PT Citra Indotirta Lestari is also part of the bankruptcy estate so that the reduced share ownership of Defendant I and Defendant II as bankruptcy debtors is a loss for other creditors.

A. Share Dilution as an Object of Miscellaneous Lawsuit

In the case of Decision No. 8, the Plaintiff argued that the object of the dispute was the amendment of the articles

of association, the increase in issued/deposited capital and the increase in capital in the company without the permission of the administrator/curator. Furthermore, the bankruptcy debtor or Defendant I and Defendant II were argued to have committed unlawful acts because they used the voting rights of shareholders in approving the capital increase which resulted in a decrease in share ownership in PT Citra Indotirta Lestari. The decrease in share ownership due to the capital increase is a form of share dilution. This dilution is detrimental to the company's ability to source external funds.(Ade Hari Siswanto, 2019)

To understand the object of the lawsuit in the case of Decision No. 8, it is necessary to examine the legal basis for the existence of other lawsuits. Other lawsuits in UUK-PKPU are as stated in Article 3 paragraph (1) of UUK-PKPU which reads as follows:

"Decisions on bankruptcy petitions and other matters related to and/or regulated in this Law shall be decided by the Court whose jurisdiction covers the area of the Debtor's legal domicile."

The Explanation of Article 3 paragraph (1) further elaborates that what is meant by "other matters" are, among others, *actio pauliana*, third party opposition to confiscation, or cases in which the Debtor, Creditor, Curator, or administrator is a party in a case relating to the bankruptcy estate, including the Curator's lawsuit against the Board of Directors which caused the company to be declared bankrupt due to their negligence or fault. In Decision No.8, the scope of other lawsuits concerns cases in which the debtor and curator are parties related to the bankruptcy estate. Thus, it can be concluded that in a miscellaneous lawsuit, the object of the dispute must be related to the bankruptcy estate.

Based on Article 1131 of the Civil Code, what is referred to as the debtor's property is all the property of the debtor, both movable and immovable, both existing and new ones that will exist in the future, which become dependents for all obligations. Meanwhile, in Decision No.8, the disputed action of the bankruptcy debtor was the capital increase in PT Citra Indotirta Lestari, which resulted in dilution of shares. The shares themselves are part of the bankruptcy estate of Defendant I and Defendant II as bankruptcy debtors. Meanwhile, dilution of shares gives legal consequences, namely reduced rights to dividends and voting rights. Thus, share dilution as the object of a bankruptcy lawsuit can be justified because there are actions of the debtor relating to the bankruptcy estate.

B. Approval of Company's Capital Increase Performed when the Bankrupt Debtor is in PKPU Period

Article 240 paragraph (2) of UUK-PKPU states that if the Debtor violates the provisions of Article 240 paragraph (1) of UUK-PKPU, the administrator is entitled to do everything necessary to ensure that the Debtor's assets are not harmed by the Debtor's actions. Furthermore, Article 240 paragraph (3) UUK-PKPU states that the Debtor's obligations carried out without obtaining approval from the administrator arising after the commencement of the postponement of debt payment obligations, can only be charged to the Debtor's assets to the extent that it benefits the Debtor's assets. So it can be understood that the purpose of this provision is that the debtor does not perform legal actions that are detrimental to his assets. Therefore, it needs to be examined whether the action is detrimental to the assets so that it requires the approval of the PKPU management.

In Decision No. 8 the Plaintiff requested that the Commercial Court annul the legal actions of Defendant I together

with Defendant II who approved the increase in paid-up capital in PT Citra Indotirta Lestari. The Plaintiff considered and argued that the legal action in the form of a capital increase in PT Citra Indotirta Lestari could and would be detrimental to the bankruptcy estate and Creditors due to the *dilution of shares*. The reason for this is because if it occurs, this can result in several factors due to share dilution such as company acquisitions, investment risks or can also reduce the percentage of share ownership.(Indo Premier, no date)

Prior to the capital increase in PT Citra Indotirta Lestari, the shareholdings of Defendant I and Defendant II as debtors under PKPU were as follows :

Tabel 1
The shareholdings of Defendant I and Defendant II as debtors under PKPU

Name	Total number of shares	Nominals
Suganda Setiadikurnia	3.500	Rp3.500.000.000,00
Sugiharto Setiadikurnia	1.000	Rp1.000.000.000,00
Gouw Yeny	500	Rp500.000.000,00

Meanwhile, after the capital increase carried out by Defendant IV or PT Sentosa Tambang Nusantara, the composition of the shareholders changed to the following :

Tabel 2
After the capital increase carried out by Defendant IV or PT Sentosa Tambang Nusantara

Name	Total number of shares	Nominals
Suganda Setiadikurnia	3.500	Rp3.500.000.000,00
Sugiharto Setiadikurnia	1.000	Rp1.000.000.000,00
Gouw Yeny	500	Rp500.000.000,00
PT Sentosa Tambang Nusantara	10.000	Rp10.000.000.000,00

Based on the illustration above, the number of shares and value of shares owned by Defendant I and Defendant II as PKPU debtors in PT Citra Indotirta Lestari did not change. Both before and after the implementation of the increase in paid-up

capital in PT Citra Indotirta Lestari, the number of shares owned by Defendant I remained at 3,500 (three thousand five hundred) shares with a fixed value of Rp3,500,000,000.00 (three billion five hundred million Rupiah) and Defendant II remained at 500 shares with a fixed value of Rp500,000,000.00 (five hundred million Rupiah).

The dilution of shares in PT Citra Indotirta Lestari resulted in the percentage of share ownership of Defendant I and Defendant II in PT Citra Indotirta Lestari changing. However, the value of the shares that became part of the bankruptcy estate of each debtor did not change. The shares owned by Defendant I and Defendant II in PT Citra Indotirta Lestari totalled 3,500 (three thousand five hundred) shares with a nominal value of Rp3,500,000,000.00 (three billion five hundred million Rupiah) and 500 (five hundred) shares with a nominal value of Rp500,000,000.00 (five hundred million Rupiah). These shares worth Rp3,500,000,000.00 (three billion five hundred million Rupiah) and Rp500,000,000.00 (five hundred million Rupiah) are the bankruptcy assets that the Curator Team can later sell the shares in public, and the proceeds are to be distributed pro rata to the recognised Creditors. The legal action of increasing the paid-up capital of PT Citra Indotirta Lestari did not, in fact, result in the decrease or loss of shares owned by Defendant I and Defendant II in PT Citra Indotirta Lestari. This shows that share dilution does not have any implications for the value of the debtor's assets or result in losses for its creditors. Thus, the bankruptcy debtor has the authority to approve the amendment of the articles of association and the capital increase in PT Citra Indotirta Lestari without requiring approval from the PKPU Board.

The act of increasing capital is an act of the debtor relating to the rights attached to the shares, namely voting rights based on Article 51 jo Article 52 UUP (Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas, no date). Meanwhile, the part of the shares that becomes collateral for the creditors is the economic value of the shares. This is in line with Supreme Court Circular Letter No. 7 of 2012 concerning Legal Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber as Guidelines for the Implementation of Duties for the Courts, as follows : (Mahkamah Agung Indonesia, 2020)

Legal issue:

"Is the Curator entitled to represent bankrupt shareholders to attend and vote at the GMS?"

Legal formulation:

"The Company Law explicitly does not separate the rights inherent in a shareholder from the ownership of shares because the right is the shareholder, but the one who sells the shares is the Curator, not the shareholder;"

Based on the above formulation, the bankruptcy debtor can actually still exercise voting rights as a shareholder, while the Curator is not entitled to it, the Curator is only interested in selling shares which are bankruptcy assets. Thus, if it is related to PKPU, the debtor still has the authority to exercise the voting rights that are part of his/her share rights. According to the author, the consideration of the Panel of Judges in Decision No. 8 which states that the actions of Defendant I and Defendant in the form of increasing capital in PT Citra Indotirta Lestari without the

knowledge and / or permission of the management are actions that are not justified by law, is an inaccurate consideration.

This is because the panel of judges did not consider that basically the purpose of limiting the debtor's actions during the PKPU period is to avoid losses to the debtor's assets which are collateral for his engagement with creditors in PKPU. this is as stated in Article 240 paragraph (2) UUK-PKPU. ¹Meanwhile, the act of increasing capital that occurred at PT Citra Indotirta Lestari did not have any implications for the value of shares that were part of the debtor's assets. Thus, according to the author, the actions of Defendant I and Defendant II as bankruptcy debtors to increase the capital of PT Citra Indotirta Lestari are actions that do not result in losses to the bankruptcy estate or its creditors.

CONCLUSION

Dilution of shares as a result of a capital increase may fall within the scope of other claims in bankruptcy as it relates to shares as bankruptcy assets. Dilution of shares of a company in which the bankruptcy debtor is a shareholder, does not have implications for the value of the bankruptcy debtor's assets or result in losses for creditors in the bankruptcy process. Meanwhile, PKPU debtors during the PKPU period still have the authority to act on voting rights in the GMS. However, the act of increasing capital where the PKPU debtor is the shareholder does not result in a loss to the bankruptcy estate, so the act of increasing capital can be justified.

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