Juridical Analysis Of Judging Determination Of Sales Under The Bankruptcy Hands Of The Currator (Study Of Determining The Judge Number 08 / PKPU / 2016 / PN NIAGA SURABAYA)

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Abstract

His thesis, the author intends to find out and analyze the judge’s determination of the sale under the hand of bankruptcy assets committed by the curator in the PT Jafa Indonesia bankruptcy case issued by the Surabaya Commercial Court. This study uses a normative juridical research method with data collection techniques used to solve the problem formulation, namely the study of literature in the form of legislation, literature or official books accompanied by interviews. Based on the legal material obtained, those in this thesis use descriptive analysis data. The results of the study can be concluded that in the sale under the hand of bankrupt assets conducted by the curator must go through a public auction beforehand take two public auctions at the KPKNL Surabaya office and if there are no buyers, the curator has the right to make a request to the Supervising Judge for the sale under the hand with predetermined limit price limits to accelerate the process of PT Jafa Indonesia’s bankruptcy and to settle the distribution of bankrupt assets in accordance with separatist, preferred and concurrent creditors.

Keywords: Underhand Sale, Bankruptcy, Curator

I. Introduction

The judge’s decision is a statement by the judge, as a state official who is authorized to do so, pronounced at trial and aims to end or settle a case or dispute between the parties.1 In the decision No.08 / PKPU / 2016 / PN.Niaga.Sby in the first instance court has handed down the decision as stated PKPU applicant, PT. Jafa Indonesia a Limited Liability Company having the legal domicile in Surabaya, formerly having its address at Jalan Gayungsari Barat V / 12, and currently having its address at Jalan Gayung Kebonsari Besar No. 26, Housing Gayung Kebonsari Injoko, Ketintang Kota Surabaya in bankruptcy.

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With the decision of the Court on the request for bankruptcy, the authorized party submitting the application must submit a proposal for the appointment of the curator, in this case the inheritance Hall or an individual appointed by the Court to administer and settle the assets of the bankrupt debtor under supervision of the Supervisory Judge in accordance with Law Number 37 of 2004. However, in post-decision practice, the things that often occur when auctioning the assets of bankrupt debtors experience difficulties when the auctions are actually carried out in public, but after three times there is no single buyer. In the case of PT. Jafa Indonesia (In Bankruptcy) curators have difficulty selling assets, therefore the request from the curator of PT. Jafa Indonesia (In Bankrupt) to sell directly or sell under the hand of the assets of the bankrupt assets.

This study aims to determine the basic legal considerations of judges in Determination Number 08 / PKPU / 2016 / PN Niaga Sby on the sale under the hand of bankrupt assets carried out by the curator and to determine the issuance of bankruptcy assets committed by the curator after the stipulation of Number 08 / PKPU / 2016 / PN Niaga Sby.

II. Method

This type of research used by the author in this writing is normative juridical research. Normative legal research is also called doctrinal law research. In this type of legal research, the law is often conceptualized as what is written in the legislation (law in books) or the law is conceptualized as a rule or norm which is a benchmark of human behavior that is considered appropriate. In normative juridical research, it is often conceived of as research that refers to what is written in the norms and regulations in force in the community. In obtaining the data needed for the writing of this thesis, the author conducts research in various reading rooms and libraries both inside and outside the law faculty, university libraries and outside other universities, and regional libraries.

III. Main Heading of the Analysis or Results

A. Legal Considerations of Judges in Issuing Stipulation Number 08 / PKPU / 2016 / PN Niaga Sby

Rationale for the regulations used by the judge in issuing Determination Number 08 / PKPU / 2016 / PN Niaga Sby based on the Decision of Bankruptcy issued by the Commercial Court in Surabaya District Court Number 08 / PKPU / 2016 / PN Niaga Sby, dated July 12, 2016 PT Jafa Indonesia was declared Bankruptcy with all legal consequences. The curator in writing has submitted a request for permission to sell under the hand of immovable property from the bankrupt assets of PT Jafa Indonesia.

By writing a letter dated May 30, 2018 containing a report of the absence of a prospective buyer and the application for the determination of selling licenses under the hand for the reasons of PT Jafa Indonesia’s curator namely DR. Bangun Patrianto S.H., M.H. in the form of land and buildings that are certified by ownership number 1886 / Ketintang Village, Letter of Measurement dated 02-02-2002, Number 276 / Ketintang / 2002, area 661m2, located in Kelintang Village, Gayungan District, Surabaya Municipality, East Java Province, locally known as Jalan Gayung Kebonsari Besar Number 26, Housing Gayung Kebonsari Injoko, Ketintang, Surabaya City. The immovable object which has a certificate is PT Jafa Indonesia’s bankrupt property which has been auctioned 3 times by the curator, namely DR. Bangun Patrianto S.H., M.H. the first sale was made on 28th April 2017 there were no buyers and the second was done on 7th June 2017 also no one was interested in the bankrupt assets and the last was the third sale by auction on 28th December 2017 there were also no buyers, with the conclusion of the sale by auction conducted at the Office of State Assets and Auction Services (KPKNL) Surabaya, there is no single buyer who is interested in bankrupt assets from PT Jafa Indonesia, because the sale by auction is not reached, the curator submits the sale under the hand with the permission of the Judge Judge of the bankrupt assets. In Sales under the hand, buyers are still sought for bidding on the bankrupt assets at the highest price because in the sales under the hand, the price of the sale limit of the bankruptcy has been determined.

The urgency to sell immovable property in the form of land and buildings based on the conclusions made by the curator in the attachment to the application for sale under the hands of the curator is appropriate With the provisions of article 185 paragraph (2) of Law Number 37 Year 2004 Concerning Bankruptcy and Delaying Obligations for Debt Payments. The curator has also attached the first, second and third auction announcement letter as well as the auction minutes issued by the Head of Surabaya’s
State Assets and Auction Services (KPKNL) which in essence there are no bidders who submit bids during the auction and at the time the auction is repeated again. Then the hand-held sales procedure planned by the applicant in this case is the curator in his application, the Supervisor Judge found the request letter and has been rated open to the public because it will be done through an offer that is open to the public and the buyer will be determined based on the highest bid. In the considerations above the Supervisory Judge found that there was sufficient reason and urgency to sell under the hand of bankrupt assets and therefore the request from the curator of PT Jafa Indonesia (in pilots) to sell directly or sell under the assets of bankrupt assets in the form of goods not movable, i.e. land and building along with everything as stated in detail in the attachment to this petition granted by taking into account the provisions of articles 55, 59 jo articles 185 and 107 of Law Number 37 Year 2004 Concerning Bankruptcy and Postponement of Debt Payment Obligations. Determine and give permission to the curator of PT Jafa Indonesia to sell under the hand of bankrupt assets in the form of immovable property in the form of land and buildings.

**B. Legal Consideration Analysis of Determination of Judges in Determination Number 08 / PKPU / 2016 / PN Niaga Sby**

Judge's consideration in the stipulation Number 08 / PKPU / 2016 / PN Niaga Sby, that the sale under the hands of PT Jafa Indonesia’s bankrupt assets was made by curator DR. Bangun Patrianto S.H., M.H. allowed, but must go through the stages of the process according to article 185 paragraph (1) and (2) of Law Number 37 Year 2004 Concerning Bankruptcy and Deferral of Debt Payment Authority. The process steps are as follows:
Explanation of the stages of the process is due to the sale of bankrupt assets made publicly through an auction and if general sales are not reached, the sale under the hand can be done with the permission of the Supervising Judge. According to the authors of article 185 paragraph (1) and (2) by the curator for the Supervisory Judge’s permission after the auction is done publicly in the Surabaya KPKNL office, the buyer has not been found or it can be said that the bankrupt property is not sold, it is not regulated on the number of times the auction is held in public to obtain a permit from the supervising judge. However, based on the results of observations in the field that the authors do, do sales under the hand after the auction publicly for 2 times on the grounds there are no buyers or it can be said that the bankrupt property is not sold then carried out granting permission on the basis of the request of the curator to sell on hand, based on the results of the interview with Mr. Sigit Sutriono SH, M.Hum., as a Commercial Judge in the Surabaya District Court, his statement article 185 paragraph (1) and (2) can be interpreted only once but he added that it would be better to repeat the auction once more to make it easier granting permission in the hands of the Supervising Judge.

He also added that under the sale of hands there are limits to the sale value or the limit of PT Jafa Indonesia’s bankrupt assets which were previously held at the asset verification meeting. Inviting interpreters to assess PT Jafa Indonesia’s bankrupt assets, the interpreter’s name is pricesell which in public auction is used as a limit for the sale of bankrupt assets and is used again in selling under the hand of bankrupt assets by curators so that the sale value remains at market prices.3

C. The authority of curators in clearing bankrupt assets after the stipulation of number 08 / PKPU / 2016 / PN Niaga Sby

After the stipulation of 08 / PKPU / 2016 / PN Niaga Sby curator in this case individuals namely DR. Bangun Patrianto S.H., M.H. appointed by the Surabaya District Court was appointed as curator to administer and settle the bankruptcy assets of PT Jafa Indonesia, which had previously been declared bankrupt by the Commercial Court at the Surabaya District Court. Furthermore, all PT Jafa Indonesia’s bankrupt assets are verified by the

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3 Interview with Mr. Sigit Sutriono as a Commercial Judge at the Surabaya District Court, Tuesday, January 7, 2020, 08.30 WIB
curator and have been determined according to the division of creditors, including separatist creditors, preferred creditors and concurrent creditors. is a creditor holding rights of material security, which can act alone and preferred creditor which has privileges or priority rights and finally concurrent creditors or practically must share with other creditors proportionally (pari passu).

So that the curator in conducting the management and acquisition of PT Jafa Indonesia’s bankrupt assets by way of selling under the hand gets the authority in the form of:

1. The Curator, namely DR. Bangun Patrianto S.H., M.H. has the right to sell the bankrupt assets without a public auction at KPKNL Surabaya.

2. In the case of a sale under the hands of a curator, they are free to sell without any sales limit, which allows the curator to search for bankrupt assets with a high selling price.

3. Under-the-hand sales have a set price limit at the time of the asset verification meeting.

4. The process of the sale and purchase of bankruptcy assets must be taken to an asset notary to be made an authentic deed.

The authority obtained by the curator when synchronized with article 185 paragraph 3 of Law Number 37 Year 2004 in which all objects which are not immediate or absolutely cannot be resolved, then the curator decides the actions to be taken against the object with the permission of the Supervising Judge but the curator certainly responsible for the management and settlement of the bankruptcy assets. The curator's responsibility is contained in Article 72 of Law Number 37 Year 2004.

So the curator in this case DR. Bangun Patrianto S.H., M.H. can be more flexible to do the sale because it can be sold where or at any time on the basis of the knowledge of the curator in this case the sale under the hand also has limits that have been calculated by the curator with the supervisor's judge so that there is no form of misuse of bankrupt assets from selling under the hand made by the curator. As well as in carrying out their duties, the curator must use his professional expertise carefully and thoroughly in the process of selling under the hand. This can run smoothly and accompanied by transparency and good faith, then the curator must immediately appoint a trusted notary
for the management of bankrupt assets whose sales are carried out under the hand. However, if the good faith cannot be done because the debtor is blocking the steps in the sale process under the hands of the curator DR. Bangun Patrianto S.H., M.H. has the right to issue a summons in writing and does not need authentic reprimand with an ordinary letter is sufficient to be accepted as a summons, if until the 3rd warning the warning is ignored then the curator has the right to submit an application for re-determination to the supervisor in order to facilitate the management and acquisition of PT Jafa Indonesia's assets. Then, together with the curator as the seller and the buyer face the appointed notary public, in this case the notary public acts as an asset notary to take care of the immovable property rights to make it a valid authentic deed according to law.

D. Legal Consequences for Creditors Against the Declaration of Bankruptcy After the Establishment of Number 08 / PKPU / 2016 / PN Niaga Sby

In the case of PT Jafa Indonesia until now the sale under the hand is still not sold, causing losses from the creditors, while the losses include the uncertainty of the distribution of PT Jafa Indonesia's assets given that the value of land prices will continue to rise each year but if the land does not sell the results of the money the sale will be used up to pay administration to the Surabaya District Court.

Mr. Sigit Sutriono, as the Judge of Commerce at the Surabaya District Court, added that if a company which had been declared bankrupt would cause a great loss to the parties concerned, if the management and settlement of property were not finished. Debtors and creditors will both suffer losses both debtors who lose their legal rights so that they cannot perform acts related to the law and creditors who hope to immediately get the distribution of bankrupt assets from the sale, will be hampered if the management and settlement of the bankrupt assets do not end. This applies until the assets are sold even though they have not been sold for 20 years or even benefited in other words will suffer losses because the proceeds will be used to cover administrative money to the Surabaya District Court since the decision of the bankruptcy is handed down until the management and settlement of the bankrupt assets are truly really done.
With this, polemic arises for creditors who are hampered by repaying their outstanding debts, even though they have the right to take precedence based on the Law, but in fact up to now the fulfillment has not been obtained, so there is a need for certainty for creditors in terms of repayment. which has a position to take precedence over the fulfillment of its receivables, so the curator must sell bankrupt assets at the highest price because the sale under the hand also has a predetermined limit. The accuracy of the curator is highly tested because it must decide whether the assets declared bankrupt must be sold immediately and other bankrupt assets must be deposited first because the value will increase in the future, thus requiring analysis and accuracy of the curator and must be creative in getting the highest value of the assets of bankrupt debtors. For preferred and concurrent creditors, repayment of their receivables awaits the proceeds of the sale of these assets because the separatist creditor takes priority in repayment, but still follows the principle of parri passu pro rata so that the creditor gets an equal distribution. In this case the preferred and concurrent creditors must continue to participate in overseeing the sale in order to realize transparency and fulfill their rights immediately so that everything is clear and there are no irregularities that the curator seems to delay the sale under the hand that has been given authority by the supervisory judge.

III. Conclusion

In the case of PT Jafa Indonesia, it is permissible to sell it under the hand by a curator, but in the field of research observations, the limits for conducting public auctions do not have to be as much as there is no buyer or it can be said that the bankrupt property is not sold. After the author conducted an interview with Judge Niaga in the Surabaya District Court found legal certainty the Judge interpreted article 185 paragraph (1) and (2) may submit a request for sale under the hand by the curator with only one auction in public but the judge suggested a one-time auction again to ensure the presence or absence of buyers of PT Jafa Indonesia’s bankrupt assets.

The process of selling under the hand carried out by the curator still has no buyers, the process has no restrictions, but in a certain period the Supervising Judge calls the curator personally by asking about the difficulty in selling the bankrupt assets of PT Jafa Indonesia so that in this case the creditor may not be fulfilled because his receivables the
proceeds from the sale of the bankrupt assets are used by the curator to pay auction bail and administrative money to the District Court, and the debtor is also harmed because the statement of bankruptcy eliminates the legal action.

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**References**


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