D.R. 20/98

Naskhah Sahih—Bahasa Kebangsaan

RANG UNDANG-UNDANG

b e r n a m a

Suatu Akta untuk meminda Akta Kebankrapan 1967.

[ ]

MAKA INILAH DIPERBUAT UNDANG-UNDANG oleh Seri Paduka Baginda Yang di-Pertuan Agong dengan nasihat dan persetujuan Dewan Negara dan Dewan Rakyat yang bersidang dalam Parlimen, dan dengan kuasa daripadanya, seperti yang berikut:

Tajuk ringkas dan mula berkuat kuasa.

1. (1) Akta ini bolehlah dinamakan Akta Kebankrapan (Pindaan) 1998.

(2) Akta ini hendaklah mula berkuat kuasa pada tarikh yang ditetapkan oleh Menteri melalui pemberitahuan dalam *Warta*.

Pindaan seksyen 33. *Akta 360*.

2. Akta Kebankrapan 1967, yang disebut "Akta ibu" dalam Akta ini, adalah dipinda dalam seksyen 33—

(a) dengan memotbng subseksyen (11); dan

(b) dalam nota birai, dengan memasukkan selepas perkataan "bankrupt" perkataan "by order of court".

Seksyen baru 33A dan 33s.

3. Akta ibu adalah dipinda dengan memasukkan selepas seksyen 33 seksyen yang berikut:

"Discharge of bankrupt by Certificate of Official Assignee.

33A. (1) The Official Assignee may, in his discretion but subject to section 33B, issue a certificate discharging a bankrupt from bankruptcy.

KERTAS PEMBERITAHU

Notis Tentang Pindaan Kepada
RANG UNDANG-UNDANG KEBANKRAPAN (PINDAAN) 1998 (D.R. 20/98)

Pindaan yang akan dicadangkan dalam Jawatankuasa oleh Y.B. Timbalan Menteri di Jabatan Perdana Menteri

Pindaan Kepada Teks Bahasa Kebangsaan

Fasal 3 Rang Undang-Undang adalah dipinda dengan menggantikan subseksyen 33A (2) yang dicadangkan dengan subseksyen yang berikut:

"(2) The Official Assignee shall not issue a certificate discharging a bankrupt from bankruptcy under subsection (1) unless a period of five years has lapsed since the date the receiving order and the order by which he was adjudged bankrupt were made."

Huraian

Pindaan kepada subseksyen 33A(2) adalah pindaan penggubalan untuk melaksanakan keputusan Kerajaan.

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(2) The Official Assignee shall not issue a certificate discharging a bankrupt from bankruptcy under subsection (1) unless—

(a) a period of five years has lapsed since the date the receiving order and the order by which he was adjudged bankrupt were made; and

(b) the debts proved in the bankruptcy do not exceed five hundred thousand ringgit or such other sum as may be prescribed.

(3) Notice of every discharge under subsection (1) shall be given by the Official Assignee to the Registrar and the Official Assignee shall advertise the notice in a local newspaper as prescribed.

(4) The Official Assignee shall, upon the application of any interested person, issue a copy of the certificate of discharge to the applicant upon payment of the prescribed fee.

Objection by creditor to discharge of bankrupt under section 33A.

33B. (1) Before issuing a certificate of discharge under section 33A, the Official Assignee shall serve on each creditor who has filed a proof of debt a notice of his intention to issue the certificate, together with a statement of his reasons for wanting to do so.

(2) A creditor who has been served with a notice under subsection (1) and who wishes to object to the issuance of a certificate discharging the bankrupt shall, within twenty-one days from the date of service of the notice, furnish a notice of the objection stating the grounds of his objection.

(3) A creditor who does not furnish a notice of his objection and the grounds of his objection in accordance with subsection (2) shall be deemed to have no objection to the discharge.

(4) A creditor who has furnished a notice of his objection and the grounds of his objection in accordance with subsection (2) may, within twenty-one days of being informed by the Official Assignee that his objection has been rejected, make an application to the court for an order prohibiting the Official Assignee from issuing a certificate of discharge.

(5) Every application under subsection (4) shall be served on the Official Assignee and on the bankrupt and the court shall hear the Official Assignee and the bankrupt before making an order on the application.

(6) On an application made under subsection (4), the court may, if it thinks it just and expedient—

(a) dismiss the application;

(b) make an order that for a period not exceeding two years a certificate of discharge shall not be issued by the Official Assignee.".

Pindaan seksyen 35.

4. Akta ibu adalah dipinda dengan menggantikan seksyen 35 dengan seksyen yang berikut:

"Effect of discharge.

35. (1) Subject to this section and any condition imposed by the court under section 33, where a bankrupt is discharged, the discharge shall release him from all his debts provable in the bankruptcy but shall have no effect—

(a) on the functions (so far as they remain to be carried out) of the Official Assignee; or

(b) on the operation, for the purposes of the carrying out those functions, of the provisions of this Act.

(2) A discharge shall not release the bankrupt from—

(a) any debt, due to the Government of Malaysia or of any State; or

(b) any debt with which the bankrupt may be chargeable at the suit of—

(i) the Government of Malaysia or of any State or any other person for any offence under any written law relating to any branch of the public revenue; or

(ii) any other public officer on a bail bond entered into for the appearance of any person prosecuted for any such offence; or

(c) any provable debt which he incurred in respect of, or forbearance in respect of which was secured by means of, any fraud or fraudulent breach of trust to which he was party; or

(d) any liability in respect of a fine imposed for an offence.

(3) A bankrupt may be discharged from any of the debts excepted under subsection (2) by a certificate in writing of the Minister of Finance in the case of a debt due to the Government of Malaysia or the Menteri Besar or Chief Minister of any State in the case of a debt due to the State or of the Attorney General in the case of such bail bond as is referred to in subsection (2).

(4) An order of discharge or a certificate of discharge shall be conclusive evidence of the bankruptcy and of the validity of the proceedings therein, and in any proceedings that are instituted against a bankrupt who has obtained an order of discharge or a certificate of discharge in

respect of any debt from which he is released by the order or certificate the bankrupt may plead that the cause of action occurred before his discharge.

(5) A discharge shall not release any person other than the bankrupt from any liability (whether as partner or co-trustee of the bankrupt or otherwise) from which the bankrupt is released by the discharge, or from any liability as surety for the bankrupt or as a person in nature of such a surety.".

Seksyen baru 35A.

5. Akta ibu adalah dipinda dengan memasukkan selepas seksyen 35 seksyen yang berikut;

"Discharged bankrupt to give assistance.

35A. A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the Official Assignee requires in the realization and distribution of such of his property as is vested in the Official Assignee, and if the discharged bankrupt fails to do so—

(a) he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding six months or to both; and

(b) the court may, if it thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition or payment duly made, or thing duly done subsequent to the discharge, but before its revocation.".

Pindaan seksyen 39.

6. Akta ibu adalah dipinda dengan menggantikan seksyen 39 dengan seksyen yang berikut:

"List of undischarged bankrupts to be kept.

39. (1) The Official Assignee shall keep and maintain a list of undischarged bankrupts.

(2) The list under subsection (1) shall be available, at all reasonable times, for inspection by any member of the public at any office of the Official Assignee.

(3) The name of a deceased bankrupt shall be removed from the list five years after the end of the administration of his estate in bankruptcy.

(4) The Official Assignee may issue a copy of the list to any person upon request by that person and upon payment of the prescribed fee.",

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HURAIAN

Rang Undang-Undang ini bertujuan meminda Akta Kebankrapan 1967 ("Akta").

2. *Fasal 1* memperkatakan perkara-perkara permulaan termasuk kuasa Menteri imtuk menetapkan tarikh permulaan kuat kuasa Akta yang dicadangkan.

3. *Fasal 2* bertujuan meminda seksyen 33 dengan memotong subseksyen (11) kerana peruntukan dalam subseksyen itu sekarang terkandung dalam seksyen 35A yang dicadangkan.

4. *Fasal 3* bertujuan memasukkan seksyen baru 33A dan 33s ke dalam Akta.

Seksyen 33A bertujuan memberi Pegawai Pemegang Harta kuasa untuk melepaskan seseorang bankrap daripada kebankrapannya dengan mengeluarkan perakuan pelepasan dalam kes-kes yang patut menerima pelepasan.

Seksyen 33e bertujuan membenarkan seseorang pemiutang membantah cadangan Pegawai Pemegang Harta untuk melepaskan seseorang bankrap melalui pengeluaran perakuan pelepasan.

5. *Fasal 4* bertujuan menggantikan peruntukan dalam seksyen 35 Akta dengan peruntukan yang lebih menyeluruh tentang kesan pelepasan yang dibuat melalui perintah mahkamah di bawah seksyen 33 dan melalui perakuan yang dikeluarkan di bawah seksyen 33A yang dicadangkan.

6. *Fasal 5* bertujuan memasukkan seksyen baru 35A ke dalam Akta untuk menghendaki seseorang bankrap yang dilepaskan memberikan

bantuan kepada Pegawai Pemegang Harta dalam menghasilkan dan membahagikan hartanya yang terletak hak pada Pegawai Pemegang Harta itu. Seksyen itu juga memperuntukkan bahawa seseorang bankrap yang tidak berbuat demikian adalah melakukan suatu kesalahan.

7. *Fasal 6* bertujuan meminda seksyen 39 Akta untuk menghapuskan kehendak pewartaan senarai bankrap yang belum dilepaskan tiap-tiap lima tahun dan jadual pindaan kepada senarai itu tiap-tiap tahun.

8. Pindaan-pindaan lain yang tidak diperkatakan dengan khusus dalam Huraian ini adalah yang kecil atau berbangkit.

IMPLIKASI KEWANGAN

Rang Undang-Undang ini tidak akan melibatkan Kerajaan dalam apa-apa perbelanjaan wang tambahan. [PN. (U^2) 2014.]

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Pindaan Kepada Teks Bahasa Inggeris

Clause 3 of the Bill is amended by substituting for the proposed subsection 33A(2) the following:

"(2) The Official Assignee shall not issue a certificate discharging a bankrupt from bankruptcy under subsection (1) unless a period of five years has lapsed since the date the receiving order and the order by which he was adjudged bankrupt were made.".

Explanatory Statement

The amendment to subsection 33A(2) is a drafting amendment to effect the decision of the Government.

Jabatan Peguam Negara,
MALAYSIA
22Julai1998.

PARLIMEN MALAYSIA