SETTLEMENT OF CREDITOR BILL DISPUTES IN THE DEBT PAYMENT POSTPONEMENT PROCESS

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Abstract

There are problems that creditors often have to face in bankruptcy, especially concurrent creditors or ordinary creditors (unsecured creditors), namely to obtain payment of their receivables to debtors who have been declared bankrupt, due to bad faith from the debtor to transfer the assets they own or all efforts by the bankrupt debtor made to hinder the management and settlement of the bankrupt assets (bankruptcy boedel) by the curator. A company, specifically a PT (Limited Liability Company), is unable to pay its debts, and bankruptcy proceedings begin with a creditor filing a petition to the court for past-due bills. Debt restructuring has been the preferred solution for many years to resolve financial problems in a company. Restructuring under a Suspension of Debt Payment Obligations (PKPU) is intended to restructure the debtor's debt payments solely with the goal of restoring the debtor's company to health. Restructuring is more of a rescue measure than a corrective action or permanent fix. One of the legal protections provided by the Bankruptcy Law and PKPU for creditors is the actio paulina, which gives creditors the right to request the cancellation of any legal action not required by the debtor. If a debtor is deemed to have defaulted on a debt repayment agreement with a creditor, they can demand that the agreement be fulfilled, or seek compensation from the defaulting party.

I. Introduction

The behavior and activities of companies basically have a very large influence on the local, national and international economy because companies are active economic actors.[1] The progress and development of a company will be followed by the development of society, so that the existence and continuity of the company's life is something that is very important to maintain.[2] The decision to declare bankruptcy by a commercial court against a company, especially a Limited Liability Company that does not pay its debts, can cause extensive losses, not only for the company, but also for the state and society, which can result in the termination of employment relationships for employees and workers, which can affect the level of public welfare. When a Limited Liability Company is declared bankrupt and results in the cessation of business activities.[3]

Likewise, in the resolution of conflicts or disputes in the realm of civil law, it usually occurs as a result of a legal relationship between two or more legal subjects, so it is hoped that the law can function in society as a tool for resolving disputes or conflicts that occur. One problem that often occurs is the settlement of debts between debtors and creditors or between creditors, both debts arising from an agreement or debts arising from the provisions of a legal regulation. One alternative resolution of debt disputes that is expected to function to overcome these conflicts is the reintroduction of bankruptcy institutions and laws in Indonesia.[4]

The important parties in a debt-to-credit relationship are the debtor and the creditor. The debtor, as the party requiring funds, will borrow money from the creditor. Often, to meet these funding needs, the debtor borrows from more than one creditor. Problems often arise later when the debtor fails to repay the loan at the due date.[5]

There are many reasons why debtors are not able to pay off the debt, including being unable to pay off the debt they have been given, the debt they have paid is still not enough to cover the debt bill, paying the debt late, or paying the debt but not in accordance with what was agreed.[6] A company's failure to repay its debts cannot be allowed to continue. This situation can be detrimental to creditors. Therefore, a debt settlement mechanism exists through bankruptcy institutions.

The new Law on Bankruptcy and Suspension of Debt Payment Obligations has a broader scope, both in terms of norms, material scope, and the debt settlement process.

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[1] *Derita Prapti Rahayu. (2010). Eksistensi Perusahaan dalam Pelaksanaan Fungsi dan Tujuannya di Masyarakat. Masalah-Masalah Hukum, Semarang: Universitas Diponegoro, 39(1), hlm. 52.*

[2] *Sri Redjeki Hartono. (2000). Kapita Selekta Hukum Perusahaan. Bandung: CV. Mandar Maju, hlm 38*

[3] *Purbandari, "Tanggung Jawab Hukum Perseroan Terbatas (PT) Yang Dinyatakan Pailit", E-Journal WIDYA Yustisia, Vol. 1 No. 1 (Mei 2014), hlm. 1*

[4] *Yuhelson, Prioritas Pembagian Harta Kekayaan Debitor Pailit (Boedel Pailit) Terhadap Kreditor Preferen Dan Kreditor Separatis Berdasarkan Prinsip-Prinsip Keadilan Dan Kepastian Hukum, (Jakarta : Universitas Jayabaya, 2016), hlm. 10*

[5] Sri Redjeki Hartono, Hukum Perdata Sebagai Dasar Hukum Kepailitan Modern, *Jurnal Hukum Bisnis*, Volume 7, Yayasan Pengembangan Hukum Bisnis, Jakarta, 2009, hal. 22

[6] *Doni Budiono, "Analisis Pengaturan Hukum Acara Kepailitan dan Penundaan Kewajiban Pembayaran Utang", ADHAPER: Jurnal Hukum Acara Perdata Vol. 4, No. 2, 2018,Hlm.109.*

This broader scope is necessary because of developments and legal needs in society, while existing provisions are inadequate as a legal means to resolve debt problems fairly, quickly, openly, and effectively. Some of the new material in the Law on Bankruptcy and Suspension of Debt Payment Obligations include: First, to avoid various interpretations, this Law provides a clear definition of debt. Likewise, the definition of maturity. Second, regarding the requirements and procedures for applications for bankruptcy declarations and applications for suspension of debt payment obligations, including the provision of a definite time frame for making decisions on bankruptcy declarations and/or suspension of debt payment obligations.[7] Throughout the reform of the PKPU and bankruptcy in Indonesia, Law No. 4 of 1998, as amended by Law No. 37 of 2004, implemented the concept of liquidation based on Jackson's creditor bargain theory, even going beyond this concept of liquidation, by eliminating the insolvent requirement. To pay off its debts, the company's assets must be liquidated. Now, this concept has begun to be abandoned in other countries, and the concept of corporate rescue is being implemented.[8] This concept is adopted by the Bankruptcy Law as a principle of business continuity, but it is not implemented in its articles, even though this principle is the corporate rescue which is the key concept in corporate bankruptcy in developed countries today.

The purpose of Law Number 37 of 2004 concerning bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as the KPKPU Law) is to realize the provisions of Article 33 paragraph (4) of the 1945 Constitution. This article requires a determination to advance national development based on the principles of economic democracy, the KPKPU Law bridges the interests of debtors and creditors in fulfilling their rights in business activities. Law Number 37 of 2004 on Suspension of Debt Payment Obligations and Bankruptcy (UUKPKPU) was formed because of the chaotic economic situation at that time, for that reason it was necessary to form regulations that could restore the economy, especially in the Republic of Indonesia, so that it can be felt now that there is a need for a Reconstruction of Regulations related to Bankruptcy Law in the Republic of Indonesia, one of which is related to Insolvency.

There are problems that creditors often have to face in bankruptcy, especially concurrent creditors or ordinary creditors (unsecured creditors), namely to obtain payment of their receivables to debtors who have been declared bankrupt, due to bad faith from the debtor to transfer the assets they own or all efforts by the bankrupt debtor made to hinder the management and settlement of the bankrupt assets (bankruptcy boedel) by the curator.[9]

Problems will arise regarding the position of each creditor under bankruptcy law, especially when the bankrupt debtor has more than one creditor with

[7] Rachmadi Usman, *Dimensi Hukum Kepailitan di Indonesia*, (Jakarta :Gramedia Pustaka Utama, 2004), hlm. 4

[8] Sutan Remy Sjahdeini, *Hukum Kepailitan: Memahami Faillissementsverordening Juncto Undang-Undang No. 4 Tahun 1998*, (Jakarta : Grafiti,2004), hlm.5

[9] Rahayu Hartini, *Penyelesaian Sengketa Kepailitan di Indonesia, Dualisme Kewenangan Pengadilan Niaga & Lembaga Arbitrase, Cetakan Ke-1*, (Jakarta: Kencana Prenada Media Group, 2009), hlm.100

privileged/preferred rights (preferred and separatist creditors). Clear legal regulations are needed regarding the priority distribution of proceeds from the sale of the bankrupt estate for creditors with privileged/preferred rights under bankruptcy law (bankruptcy law or insolvency law). These regulations are necessary for order and certainty.

In essence, bankruptcy and suspension of debt repayment are methods provided by the state as a solution to overcome all financial problems and difficulties experienced by debtors (commercial exit from financial distress). Business continuity is the main principle upheld by the KPKPU Law. If the debtor still has good intentions to pay, the peace mechanism will be prioritized. PKPU is one form of peace arrangement regulated by law, with the aim of allowing debtors to submit a peace plan, either in the form of an offer to pay part or all of the creditor's debt.

In order to protect the rights and obligations of each party (debtor and creditor), Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payments (PKPU Law) was issued. The PKPU Law is an amendment to Law Number 4 of 1998 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 1998 concerning Amendments to the Law on Bankruptcy to Become a Law. In its development, the PKPU Law accommodates a model for resolving problems arising from debt agreements with bankruptcy and/or suspension of debt payment obligations.

A PKPU application is basically just a way for debtors to avoid having to file a bankruptcy petition filed by creditors. The large number of subjects who can file a PKPU application with the Commercial Court has caused the boundaries of legal protection for creditors to become blurred. Considering that PKPU efforts according to Article 229 paragraph (3) of the Bankruptcy and PKPU Law state that if a PKPU and bankruptcy application are filed simultaneously with the Commercial Court, the PKPU application will be examined and decided upon first.

The concept of PKPU provides an opportunity for debtors to continue their business, maintain their assets and wealth so that they can provide a guarantee for the repayment of agreed debts. Viewed from the creditor's point of view, PKPU is given to debtors so that creditors can obtain certainty regarding their receivables, but during the Debt Payment Suspension Process (PKPU), where during the debt verification/verification meeting there is a rebuttal or the bill submitted by the Creditor is rejected, there is no legal effort of Renvoi Procedure to resolve the problem of differences in the amount of the bill. This is clearly different from the process that occurs in bankruptcy.

The problem that arises is that when a creditor's claim is rejected/contested, the creditor can use the Renvoi Procedure mechanism in bankruptcy, providing the parties with the opportunity to resolve the discrepancy in the amount of the claim in court.

However, during the Debt Payment Suspension (PKPU) process, when a creditor's claim is denied or rejected during the debt verification/verification meeting, there is no legal remedy for Renvoi Procedure to resolve the discrepancy. This significantly leads to discrepancies in the settlement of all existing claims.

This means that the curator will experience difficulties in asset settlement. Furthermore, the discrepancy and gaps in resolving creditor claim disputes prevent certainty of justice. Therefore, there needs to be clear funding and regulations for the curator to resolve creditor claim disputes. This not only facilitates the curator's settlement process but also provides legal protection for the curator, creditors, and debtors.

2. Research Method

This research uses a normative legal approach to analyse the norms and principles. Normative legal research is research related to legal principles, legal systematics, legal synchronization, comparative law, and legal history. Normative legal research also utilizes secondary data sources, emphasizing theory and qualitative analysis. It can also be referred to as library research or document study.[10]

This research is explanatory in nature. Explanatory research is a research method that aims to explain the position of the variables being studied and the influence between one variable and another. The main reason this researcher used the explanatory research method was to test the proposed hypothesis. Therefore, it is hoped that this research will explain the relationship and influence between the independent and dependent variables in the hypothesis.

The data analysis method required in this research was descriptive qualitative. Data analysis means describing data qualitatively in orderly, coherent, logical, non-overlapping, and effective sentences, thus facilitating understanding of the analysis results. Comprehensive means in-depth data analysis from various aspects according to the research scope. Complete means no part is overlooked; everything is included in the analysis. This type of data analysis will produce a perfect legal research product.

3. Results and Discussion

a. Implementation of Debt Payment Suspension (PKPU) in Indonesia

According to Munir Fuady, a PKPU (Debt Settlement Order) is a Commercial Court decision granting a debtor and creditor a specific time period to reach an agreement on debt repayment procedures. The debt repayment procedures are outlined in the debtor's proposed settlement plan. If necessary, debt restructuring can be undertaken.[11] The PKPU (Security Order for Debt Restructuring) is regulated in the Bankruptcy Law and Articles 222-294 of the Bankruptcy Law. These provisions explain that a PKPU is a form of debtor's proposed settlement plan regarding debt repayment to creditors, either in full or in part. Therefore, bankruptcy and PKPU have different purposes. Regulations regarding PKPU were previously regulated in Faillissements Verordening Staatsblad 1905/217 in conjunction with Staatblad 1906/348 in Title 2,

[10] Ediwarman, *Monograf Metodologi Penelitian Hukum, (*Sof Media :Medan,2009), *hlm. 19*

[11] Dodi Oktarino, 2021, Hukum Bisnis Perjanjian Kredit dan Jaminan Pemegang Saham, Bogor: Guepedia, hlm. 142

Articles 212-279. Law No. 4 of 1998 concerning the Stipulation of Government Regulation in Lieu of Law No. 1 of 1998 concerning Amendments to the Law on Bankruptcy into Law.

According to Kartini Muljadi, the purpose of the PKPU is to provide debtors with the opportunity to restructure their debts by paying all or part of their debts to concurrent creditors. The PKPU will make it easier for debtors to fulfill their obligations and continue their business. However, the agreed-upon conditions must be properly implemented.[12] Debtors must offer a reconciliation plan to their creditors to repay their debts without having to liquidate their assets. This can be done through two methods: debt restructuring and rescheduling their debt payments. Therefore, a debtor is legally declared bankrupt if they fail to submit a reconciliation plan to their creditors.[13]

Applications for a PKPU (Deferred Payment Suspension) and bankruptcy can be submitted simultaneously, as regulated in Article 229 paragraph (3) of the Bankruptcy and PKPU Law, which stipulates: "If an application for a declaration of bankruptcy and a request for a suspension of debt payment obligations are examined simultaneously, the application for a suspension of debt payment obligations must be decided first."

Debt repayment can be made if the debtor pays all creditors without exception.24 The objectives of the Bankruptcy and PKPU regulations are:

1) Protecting debtors from individual creditor claims
2) Protecting concurrent creditors, preferred creditors, and debtors from the actions of secured creditors who sell the debtor's collateral without regard for the interests of concurrent creditors, preferred creditors, and debtors.
3) Avoiding fraudulent actions by either the debtor or creditor, such as the debtor engaging in actions that only benefit one creditor, resulting in losses for other creditors, or the debtor fleeing with all assets to escape responsibility to their creditors.

In a PKPU (Deferred Payment Order) application, either the debtor or the creditor can submit it. This is stipulated in Article 222 paragraph (1) of the Bankruptcy Law. Based on the above article, it can be seen that one of the requirements for a PKPU application is that the debtor suspects that they will not be able to continue paying their debts that have matured and are payable. Therefore, a competent person, namely a public accountant, is required for the debtor's company to conduct financial analysis. Therefore, the judge's decision regarding the PKPU is not based on the debtor's subjective judgment.

If the debtor is a bank, Bank Indonesia can apply for a PKPU (Deferred Payment Order) (PKPU). If the debtor is a securities company, stock exchange, clearing and guarantee institution, or depository and settlement institution, the Capital Market Supervisory Agency can apply for a PKPU. If the debtor is an insurance company, reinsurance company, pension fund, or state-owned enterprise operating in the public

[12] M. Hadi Subhan, 2014, Hukum Kepailitan: Prinsip, Norma, dan Praktik Di Peradilan, Jakarta: Kencana, hlm. 158
[13] Elyta Ras Ginting, 2018, Hukum Kepailitan Teori Kepailitan, Jakarta: Sinar Grafika, hlm. 306

sector, the Minister of Finance has the authority to apply for a PKPU.

Creditors cannot apply for a PKPU (Deferred Payment Suspension) as regulated in Law No. 4 of 1998. However, after the enactment of Law No. 37 of 2004, creditors can apply for a PKPU. The requirements for a creditor to apply for a PKPU are further regulated in Article 222 paragraph (3) of the Bankruptcy and PKPU Law, which states:

"A creditor who estimates that the debtor will be unable to continue paying their debts that have matured and are collectible may request that the debtor be granted a postponement of their debt payment obligation, to enable the debtor to submit a reconciliation plan that includes an offer to pay part or all of their debts to their creditors."

This provision implies that although a creditor may file a PKPU (Deferred Payment Order), the reconciliation plan must still be submitted by the debtor, not the creditor. Previously, it was not explained that if a creditor files a PKPU, the debtor must have two or more creditors. Therefore, this is similar to a bankruptcy petition, where, even if a creditor files a PKPU petition, the debtor must still have two or more creditors. The creditors who can file a PKPU petition are concurrent creditors and preferred creditors.

Article 224 of the Bankruptcy and PKPU Law regulates the procedures for submitting a request for a Suspension of Debt Payment Obligations, as follows: A request for a Suspension of Debt Payment Obligations as referred to in Article 222 must be submitted to the Court as referred to in Article 3, and signed by the applicant and their attorney. If the applicant is the debtor, the request for a Suspension of Debt Payment Obligations must be accompanied by a list containing the nature, amount of the debtor's receivables, and debts along with sufficient supporting evidence. If the applicant is a creditor, the Court must summon the debtor through a bailiff by registered express mail no later than 7 (seven) days before the hearing. At the hearing as referred to in paragraph (3), the debtor must submit a list containing the nature, amount of the debtor's receivables, and debts, along with sufficient supporting evidence and, if any, a reconciliation plan. The application letter referred to in paragraph (2) may be accompanied by a reconciliation plan as referred to in Article 222. The provisions referred to in Article 6 paragraph (1), (2), (3), (4), and (5) shall apply mutatis mutandis as the procedure for submitting an application for a Suspension of Debt Payment Obligations as referred to in paragraph (1).

b. Protection Of Creditors' Rights And Obligations In The Debt Payment Process

Under Indonesian law, debt restructuring is similar to the PKPU (Debt Restructuring) process. It can be concluded that PKPU is a legal protection measure (legal remedy) that grants the right to every debtor and creditor who is estimated to be unable to pay their debts that have matured. According to Kartini Muljadi, a debt restructuring order (PKPU) is, in short, an offer in the form of a reconciliation plan that can be submitted by a debtor to a creditor. Therefore, a PKPU is essentially an effort or

opportunity for a debtor to reorganize or restructure their debts, such as payments that can be made in whole or in part to "concurrent creditors." Therefore, it can be said that debt restructuring and a PKPU are the same, because a PKPU is a legally protected method for restructuring debt with the goal of improving or restoring a company's financial condition. A debt restructuring application can be made outside of litigation. The debtor holds a meeting with the creditor to discuss the company's situation in relation to the debt it owes to the creditor. Afterward, the debtor can discuss its ability to repay its debts and seek a middle ground with the goal of a win-win solution. Conversely, creditors can also request in good faith to restructure the debtor's debts. Similarly, creditors can discuss with debtors to find a mutually beneficial solution to their debt problems.

Law No. 37 of 2004 should be a system designed to prepare agreements between creditors and debtors so they can negotiate based on an analysis of future events (ex ante). Therefore, debtors' failure to defer debt payment obligations is not due to the debtor not submitting a reconciliation plan, but more often due to a failure to reach an agreement during the reconciliation process. This occurs because creditors are more profit-oriented, as if the debtor goes bankrupt, the creditors will benefit more. Therefore, reconciliation arrangements formulated by debtors through debt restructuring in the form of a reconciliation agreement, whether regarding the payment process, payment terms, interest rate reductions, or other less stringent measures, will still make it difficult for the debtor to repay its debts because Law No. 37 of 2004 does not regulate the form of restructuring or reorganization of companies to rescue the debtor's company. Debtor companies that have applied for a suspension of debt repayment obligations and then create a restructuring plan are merely formalities stipulated by Law No. 37 of 2004. The goal is to prevent creditors from giving debtors who still have the potential to continue their business, which could result in the debtor becoming bankrupt.

A court-ordered bankruptcy decision against a debtor who fails to pay their debts will have far-reaching detrimental impacts not only on the debtor, but also on the state and society. This can impact state tax revenues and even lead to the termination of employment relationships for employees and workers, which can impact the public's welfare. Sometimes, debtors declared bankrupt by a minority of creditors actually still have good business prospects and can become healthy companies if they are granted some relief from their debts through restructuring. Restructuring is a universal strategic step; it is a solution that applies internationally, wherever and whenever business units are facing serious financial problems. Debtors experiencing financial difficulties can apply to their creditors for relief.[14]

When undertaking a legal act, both parties, the creditor and the debtor, need to be provided with legal protection so that neither party feels disadvantaged by the other

[14] Masyhud Ali, Restrukturisasi Perbankan dan Dunia Usaha, (Jakarta : PT. Elex Media Komputindo, 2002), hlm. 192

if problems arise in the implementation of the legal act. The purpose of providing legal protection is to ensure that both parties, the creditor and the debtor, have legal certainty when undertaking a legal act. While repeated submission of PKPU (Debt Suspension of Payment) requests due to a failure to reach an agreement or encountering obstacles in its implementation is not prohibited by law, this represents a weakness in the drafting of the settlement agreement agreed upon by the parties. This process significantly hinders the company's future restructuring. Therefore, it is recommended that the draft settlement agreement, which will serve as a reference for the parties in the debt restructuring and scheduling process, be truly comprehensive and robust, and, to the extent possible, consider external factors that could potentially hinder the restructuring process. A debtor's error that can be considered a breach of contract can be seen from the moment the debtor is deemed to be intentionally negligent in fulfilling their obligations. If a debtor's breach of contract is not regulated by applicable law, it is highly questionable. To determine when a debtor is considered to be in default, the provisions of the terms and conditions and the agreement that have been mutually agreed upon must be included in the terms and conditions. The terms and conditions must include a deadline for the debtor to perform and fulfill the obligations. If a deadline is included in the terms and conditions and the debtor continues to default, the debtor can be considered to have violated the terms and conditions and been negligent beyond the time specified under Article 128 of the Civil Code.

A party who feels aggrieved by a breach of contract can demand that the agreement be fulfilled, or that the breaching party receive compensation. Compensation can include actual costs incurred, losses incurred as a result of the breach, and interest.

This breach of contract falls under civil law. If a breach of contract has occurred, the steps that can be taken are to issue a warning/notice for the breach of contract. This warning/notice serves to remind the party in breach of contract of their obligations under the agreement.

To demand a contractual obligation and compensation, the debtor must first be in default, and the default is due to their fault or negligence. Failure to fulfill a contractual obligation does not automatically place the debtor in default. To create a default, the creditor must take preliminary steps in the form of a warning letter (sumasi) to the debtor.

4. Conclusion

A company, specifically a PT (Limited Liability Company), is unable to pay its debts, and bankruptcy proceedings begin with a creditor filing a petition to the court for past-due bills. Debt restructuring has been the preferred solution for many years to resolve financial problems in a company. Restructuring under a Suspension of Debt Payment Obligations (PKPU) is intended to restructure the debtor's debt payments solely with the goal of restoring the debtor's company to health. Restructuring is more of a rescue measure than a corrective action or permanent fix. One of the legal protections provided by the Bankruptcy Law and PKPU for creditors is the actio

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