



BENEFITS OF IMPLEMENTING POSTPONEMENT OF DEBT PAYMENT OBLIGATIONS FOR DEBTORS AND CREDITORS

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ABSTRACT

A Suspension of Debt Payment Obligations (PKPU) is a period granted by a Commercial Court Judge to a debtor and creditor to negotiate payment of the debtor's debt, either in part or in full, including, if necessary, debt restructuring. In practice, a Suspension of Debt Payment Obligations (PKPU) can provide maximum benefits in preventing a company from going bankrupt. A PKPU is highly beneficial because the reconciliation agreement established through it binds other creditors outside the PKPU, allowing the debtor to continue restructuring its business without fear of claims from creditors outside the PKPU. Creditors are also protected by the PKPU because if the reconciliation agreement is violated, the creditor can file a petition to the Commercial Court to annul the reconciliation agreement, and the debtor will automatically be declared bankrupt.

1. Introduction

The economic crisis that has persisted over the past few years has had a detrimental impact on economic life. Many companies are experiencing financial difficulties, some even on the verge of bankruptcy. Most companies and entrepreneurs are unable to pay their debts. This inability to pay debts has resulted in them being declared bankrupt by creditors through the Commercial Court. However, the debtor is still given time to prioritize debt repayment suspensions. Debt Repayment Suspension (hereinafter referred to as PKPU) is a period granted by a Commercial Court Judge to the debtor and creditor to negotiate payment methods for the debtor, either in part or in full, including, if necessary, debt restructuring. By granting debtors the opportunity to defer their debt payments, they can continue their business, retain their assets and wealth, thus providing a guarantee for the repayment of debts to all creditors, and also provide debtors with the opportunity to restructure their debts. For creditors, the suspension of debt payments granted to debtors also provides certainty regarding their claims and the ability to repay their receivables.

A debt dispute can also be resolved through a bankruptcy petition. A bankruptcy petition typically involves submitting a restructuring plan, which includes an offer to pay all or part of the debt to concurrent creditors. This mechanism is used



by debtors who are unable or anticipate being unable to continue paying their debts that are due and payable. They can request a postponement of debt payments with the intention of submitting a restructuring plan, which includes an offer to pay some or all of the debt to creditors.

The PKPU mechanism can be initiated not only by the debtor but also by creditors who anticipate that the debtor will be unable to continue paying their debts that have matured and are payable. They can request a postponement of their debt payment obligations to allow them to submit a restructuring plan that includes an offer to pay part or all of their debts to their creditors. According to Munir Fuady, another term for PKPU is suspension of payment or *Surseance van Betaling*. This term refers to a period granted by law through a commercial judge's decision during which the creditor and debtor are given the opportunity to discuss methods of debt repayment by proposing a plan for all or part of their debts, including, if necessary, restructuring the debts. According to M. Hadi Subhan, PKPU is essentially an offer of a restructuring plan by the debtor. Therefore, PKPU provides the debtor with the opportunity to restructure their debts, which can include paying all or part of their debts to concurrent creditors. Therefore, a PKPU (Commission of Disputes) does not merely grant debtors a debt moratorium; more importantly, it ensures the debt payments outlined in the reconciliation plan. This reconciliation can end a debtor's bankruptcy only if it is discussed and involves all creditors. If the reconciliation is only proposed and negotiated with one or a few creditors, it cannot end the debtor's bankruptcy.

2. Research Method

The specifics of this research are descriptive. "Descriptive research is intended to provide the most accurate data possible." This descriptive research begins with collecting data related to the discussion above, then compiling, classifying, analyzing, and interpreting the data to obtain a clear picture of the phenomenon being studied. The approach used is a normative juridical approach. "The normative juridical approach is used to study the laws and regulations" related to peace settlements in the Suspension of Debt Payment Obligations (PKPU) process.

3. Results And Discussion

PKPU is a legal procedure (or legal remedy) that gives any debtor who is unable or expects to be unable to continue paying their debts that are due and payable, the right to request a suspension of debt payment obligations, with the general intention of submitting a peace settlement plan that includes an offer to pay all or part of the debt to concurrent creditors. A bankruptcy petition (PKPU) can be filed

voluntarily by a debtor who has estimated that they will be unable to pay their debts, or as a legal remedy in response to a bankruptcy petition filed by their creditors. The PKPU itself is divided into two parts: the first stage is a Temporary PKPU, and the second stage is a Permanent PKPU. Based on Article 214 paragraph (2) of the Bankruptcy and PKPU Law, the Commercial Court must grant a Temporary PKPU request. A Temporary PKPU is granted for a maximum period of 45 days, prior to the convening of a creditors' meeting, which is intended to provide the debtor with the opportunity to present their proposed reconciliation plan. A Permanent PKPU is granted for a maximum period of 270 days, if by the 45th day or the meeting, the creditors have not been able to vote on the plan.

This principle is clearly different from bankruptcy, the basic principle of which is to obtain proportional repayment of the debtor's debts. Although in principle, bankruptcy still opens the door to reconciliation in bankruptcy proceedings, it is clear that bankruptcy and PKPU (Deferred Payment Suspension) are two different matters, and therefore, it is inappropriate to quantitatively compare them. The Bankruptcy Law and PKPU provide two ways for debtors to avoid the threat of having their assets liquidated when they are or will be in a state of insufficient funds to repay insolvent debts. These methods are:

1. Filing for PKPU.

PKPU is regulated in Chapter III, Articles 222 to 294 of the Bankruptcy Law and PKPU. Under Article 222 paragraph 2 of the Bankruptcy Law and PKPU, debtors who are unable, or anticipate being unable, to continue paying their debts that are due and payable may request a postponement of debt payments, with the intention of submitting a reconciliation plan that includes an offer to pay all or part of the debt to creditors. Another term for PKPU is suspension of payment or *Surseance van Betaling*. It refers to a period granted by law through a commercial judge's decision during which the creditor and debtor are given the opportunity to discuss methods of debt repayment, by proposing a plan for paying all or part of the debt, including, if necessary, restructuring the debt.

2. Establishing a settlement.

Establishing a settlement between the debtor and their creditors after the debtor has been declared bankrupt by the court. While this settlement cannot prevent bankruptcy, as the bankruptcy has already occurred, if the settlement is reached, the debtor's bankruptcy, as decided by the court, is terminated.

Tujuan pengajuan PKPU, menurut Pasal 222 ayat 2 UU Kepailitan dan PKPU adalah untuk mengajukan rencana perdamaian yang meliputi tawaran pembayaran sebagian atau seluruh utang kepada kreditur. PKPU bertujuan

menjaga jangan sampai seorang debitur, yang karena suatu keadaan semisal keadaan likuid dan sulit memperoleh kredit, dinyatakan pailit, sedangkan bila ia diberi waktu besar kemungkinan ia akan mampu untuk melunaskan utang-utangnya, jadi dalam hal ini akan merugikan para kreditur juga. Oleh karenanya dengan memberi waktu dan kesempatan kepada debitur melalui PKPU maka debitur dapat melakukan reorganisasi usahanya ataupun restrukturisasi utang-utangnya, sehingga ia dapat melanjutkan usahanya dan dengan demikian ia dapat melunasi utang-utangnya

The purpose of filing a PKPU (Commission of Payment for Disability) petition, according to Article 222 paragraph 2 of the Bankruptcy and PKPU Laws, is to submit a reconciliation plan that includes an offer to pay some or all of the debt to creditors. PKPU aims to prevent a debtor, due to circumstances such as liquidity and difficulty obtaining credit, from being declared bankrupt. Given time, they are likely to be able to repay their debts, which would be detrimental to creditors as well. Therefore, by providing time and opportunity to debtors through PKPU, debtors can reorganize their businesses or restructure their debts, allowing them to continue their operations and thus repay their debts.

According to the explanation of Article 222 paragraph 2 of the Bankruptcy and PKPU Laws, creditors are defined as both concurrent and priority creditors. PKPU is a legal procedure (or legal remedy) that grants the right to any debtor or creditor who cannot reasonably expect to continue paying their debts that have matured. A debtor who anticipates being unable to repay their debts may voluntarily file for a suspension of payment. A debtor anticipates that within a relatively short period of time, they will receive sufficient income to repay all debts. A debtor's suspension of payment is essentially different from bankruptcy. It is not based on the debtor's failure to pay their debts or insolvency, nor is it intended to resolve the bankruptcy case. A debtor's suspension of payment is not solely for the benefit of the debtor, but also for the benefit of their creditors.

Ahmad Yani and Gunawan Widjaya added that during a debtor's suspension of payment, the debtor does not lose control and rights (*beheer en beschikking*) over their assets, but only their freedom to manage them. While a debtor is no longer authorized to manage and transfer their assets during bankruptcy, under a PKPU (Security Payment for Debt) period, the debtor may still manage and own their assets, provided that this is approved by the PKPU administrator (Article 240 paragraph 1 of the Bankruptcy and PKPU Law).

Article 240 paragraph 4 of the Bankruptcy and PKPU Law states that, even based on the authority granted by the PKPU administrator, the debtor may obtain loans from third parties solely to increase the value of the debtor's assets. In this case, if

collateral is required to obtain the loan, the collateral that can be used is the debtor's assets that have not previously been used as collateral for the debt.

Thus, the difference between a PKPU and bankruptcy is clear. In a PKPU, the debtor retains the authority to legally transfer and manage their assets, provided that this is done with the approval of the PKPU administrator, specifically appointed by the court for the PKPU process. Meanwhile, if a debtor is declared bankrupt by the court, the debtor no longer has the authority to manage and transfer their assets, which have become the bankruptcy estate. This authority rests entirely with the curator. The principle of a PKPU (Commission of Disposal for the Debt to Asset) is clearly different from that of bankruptcy, which aims to obtain proportional repayment of the debtor's debts. Although, in principle, bankruptcy still opens the door to reconciliation. While PKPU and bankruptcy are two different entities, PKPU is clearly very beneficial because the reconciliation agreement reached through PKPU also binds other creditors outside the PKPU, allowing the debtor to continue restructuring their business without fear of being disrupted by claims from creditors outside the PKPU.

Creditors should also be protected by PKPU, because if a breach of the reconciliation agreement occurs, the creditor can file a petition to the commercial court to annul the reconciliation agreement, and the debtor is automatically declared bankrupt. This also differs from the traditional restructuring process, which, if a breach occurs, requires a lengthy and complex civil lawsuit process. The restructuring process only binds certain creditors, but a PKPU (Security Payment Order) binds all creditors. While in bankruptcy, although there are also reconciliation arrangements, bankruptcy essentially aims to settle the bankrupt's assets by selling all the bankrupt's assets and distributing the proceeds to entitled creditors in the order specified by law. A PKPU is considered a legal event, given that its existence will have legal consequences for the parties and legal relationships as defined by the Bankruptcy and PKPU Laws.

1. Legal Consequences of a PKPU on the Debtor's Legal Status

The existence of a PKPU affects the debtor's legal status, particularly regarding the actions they can take. A PKPU has legal consequences for a debtor's legal status, namely regarding the actions they take with their assets. Article 240 paragraph (1) of the Bankruptcy and PKPU Law stipulates limitations on a debtor's ability to take actions with their assets under a PKPU.

Based on the provisions of this article, a debtor requires the approval of the administrator to take actions to manage or own all or part of their assets. The existence of a PKPU indicates that the debtor's legal status as the owner of their assets is no longer absolute. As is known, property rights over an object

essentially grant direct control over that object and can be defended against claims by any person.

According to Article 240 paragraph (3) of the Bankruptcy and PKPU Law, a debtor's obligations incurred without the approval of the administrator and arising after the commencement of the PKPU can only be charged to the debtor's assets to the extent that they benefit the debtor's assets. Regarding legal actions taken by debtors within the legal realm of agreements, which Article 240 paragraph (4) of the Bankruptcy Law and the PKPU (Security Payment Order) stipulates in a limited manner regarding binding loan agreements with third parties, the debtor may only take such actions with the approval of the administrator. This action may also be taken only to the extent that it is intended to increase the value of the debtor's assets. The existence of a PKPU does not affect the debtor's legal status before the court. In this case, the PKPU cannot stop a case against the debtor that has already begun to be examined, nor does it prevent any party from filing a lawsuit against the debtor in a new case.

2. Legal Consequences of the PKPU on Seizure Status and Collateral Execution

The existence of a PKPU also has legal consequences for the status of seizure and collateral execution. The PKPU results in the suspension of all enforcement actions that have been initiated to obtain debt repayment (Article 242 paragraph (1) of the Bankruptcy Law and PKPU). Therefore, debtors cannot be forced to pay their debts during the PKPU period, as the Commercial Court essentially provides debtors with the opportunity to submit a reconciliation plan, thereby postponing debt repayment obligations. This situation applies both during the Temporary PKPU and the Permanent PKPU. All encumbrances that have been placed are terminated after the Permanent PKPU decision is pronounced or after the peace agreement ratification decision becomes final and binding. At the request of the administrator or the Supervisory Judge, if necessary, the Court is required to lift the encumbrances that have been placed on objects included in the debtor's assets. This provision is exempted if the court, based on the administrator's request, has set an earlier date for the encumbrance. If the debtor is held hostage, Article 242 paragraph (2) of the Bankruptcy and PKPU Law stipulates that the debtor must be released immediately after the permanent PKPU decision is pronounced or after the peace agreement ratification decision becomes final and binding.

3. Legal Consequences of PKPU on the Status of Secured and Preferred Creditors:

PKPU applies only to concurrent creditors. Articles 244 and 246 of the Bankruptcy and PKPU Law state that PKPU does not apply to creditors holding collateral rights and creditors with privileges. Article 244 of the Bankruptcy and PKPU Law regulates the status of creditors' claims secured by collateral (pledges, fiduciary rights, security interests, and mortgages) and privileged claims. Article 244



paragraph (1) of the Bankruptcy and PKPU Law states: "With due regard to the provisions of Article 246, the suspension of debt payment obligations does not apply to:

- a. Claims secured by a pledge, fiduciary security, mortgage, or other collateral rights on property.
- b. Claims for maintenance, supervision, or education costs that must be paid, and the Supervisory Judge must determine the amount of outstanding claims that are not privileged claims prior to the suspension of debt payment obligations.
- c. Claims that are privileged against certain objects belonging to the Debtor or against all of the Debtor's assets not covered by paragraph (1) letter b.

In connection with the above provisions, Article 246 of the Bankruptcy and PKPU Law states that: "The provisions referred to in Article 56, Article 57, and Article 58 apply *mutatis mutandis* to the exercise of creditors' rights as referred to in Article 55 paragraph (1) and privileged creditors, provided that the suspension applies for the duration of the suspension of debt payment obligations." Under the Bankruptcy and PKPU Laws, a PKPU is not limited to a 90-day period but applies for the entire term of the PKPU. Therefore, creditors with secured rights cannot enforce their secured rights during the PKPU period. Conversely, creditors with preferential claims cannot collect their receivables before other creditors. Based on this explanation, the PKPU has legal consequences for preferred and secured creditors. Their legal status during this period is the same as that of concurrent creditors, particularly with regard to executing collateral and collecting receivables. Furthermore, if the collateral assets are insufficient to pay the outstanding claims, the secured creditors become concurrent creditors and jointly seize any remaining assets of the debtor that are not encumbered by any secured rights.

1. Legal Consequences of a Suspension of Payment (PKPU) on Debtors' Debts

During the suspension of payment (PKPU), the debtor cannot be forced to pay their debts as referred to in Article 242 in conjunction with Article 245 of the Bankruptcy and PKPU Law. Article 245 of the Bankruptcy and PKPU Law states: "Payment of all debts, other than those referred to in Article 244 that existed before the suspension of debt payment was granted during the suspension of debt payment, may not be made, unless such debt payments are made to all creditors, in proportion to their respective receivables, without prejudice to the provisions referred to in Article 185 paragraph (3)."

2. Legal Consequences of a Suspension of Payment (PKPU) on Agreements Binding the Debtor

In addition to obligations to their creditors in the form of fulfilling debt payments due to an agreement or law, the debtor also has other obligations to fulfill other





obligations. The obligation to fulfill obligations other than debt payment arises if the debtor binds themselves to another party through an agreement. The legal consequences of the ratification of the peace agreement against the PKPU submitted by the PKPU applicant based on the Decision of the Supreme Court of the Republic of Indonesia Number 728 K/Pdt.Sus/2012 have legal consequences for the status of the confiscation and execution of the guarantee. The PKPU results in the suspension of all execution actions that have been initiated to obtain debt repayment (Article 242 paragraph (1) of the UUKPKPU). Thus, the debtor during the PKPU period cannot be forced to pay his debt, because basically the Commercial Court provides an opportunity for the debtor to submit a peace plan so that the obligation to pay the debt is also postponed. This situation will continue both during the temporary PKPU and during the permanent PKPU.

All encumbrances that have been placed are terminated after the pronouncement of the permanent PKPU decision or after the decision to ratify the peace settlement has obtained permanent legal force and at the request of the administrator or Supervisory Judge, if still necessary, the Court is obliged to lift the encumbrances that have been placed on objects that are included in the debtor's assets. This provision is exempted if the Court, based on the administrator's request, has set an earlier date for the encumbrance. The debtor must be released immediately after the pronouncement of the permanent PKPU decision or after the decision to ratify the peace settlement has obtained permanent legal force. The provisions for the termination of execution as described above also apply to executions and encumbrances that have been initiated on unencumbered objects, even if the execution and encumbrance relate to creditor claims secured by pledges, fiduciary guarantees, security rights, mortgages, collateral rights on other objects, or rights that must be given priority in relation to certain assets under the law.

4. Conclusion

The implementation of a Suspension of Debt Payment Obligations (PKPU) is carried out by the applicant submitting a settlement proposal to all creditors. This proposal essentially offers a rescheduling of debt installment payments, accompanied by collateral or security in the form of a mortgage to guarantee the payment of said collateral. Based on the settlement proposal, the plaintiff's creditors have reached an agreement and approval of the proposal, and based on the creditors' approval of the settlement proposal.

In practice, a Suspension of Debt Payment Obligations (PKPU) can provide maximum benefits in preventing a company from bankruptcy. A PKPU is





particularly beneficial because the settlement agreement made through a PKPU binds other creditors outside the PKPU, allowing the debtor to continue restructuring its business without fear of claims from creditors outside the PKPU. Creditors are also protected by the PKPU because if the settlement agreement is violated, the creditor can file a petition to the Commercial Court to annul the settlement agreement, and the debtor will automatically be declared bankrupt.

References

- Adrian Sutedi, *Hukum Kepailitan*, Ghalia Indonesia, Bogor, 2014.
- Adriani Nurdin, *Kepailitan BUMN Persero*, Alumni, Jakarta, 2012.
- Ahmad Yani dan Gunawan Widjaya, *Kepailitan (Seri Hukum Bisnis)*, Raja Grafindo, Jakarta, 2024.
- Bambang Sunggono., *Metode Penelitian Hukum*, PT. Raja Grafindo Perkasa, Jakarta, 2018.
- Imran Nating, *Peranan dan Tanggung Jawab Kurator Dalam Pengurusan dan Pembersihan Harta Pailit*, Rajawali Pers, Jakarta, 2004
- Mans S Sastrawidjaja, *Hukum Kepailitan dan Penundaan kewajiban Pembayaran Utang*, Alumni, Bandung, 2006
- Rudy Lontoh, *Penyelesaian Utang Melalui Pailit atau Penundaan Kewajiban Pembayaran Utang*, Alumni, Bandung, 2001.
- Sutan Remmy Syahdeini, *Hukum Kepailitan: Memahami Fallisment Verordering, Juncto Undang-Undang No. 37 Tahun 2008 tentang Kepailitan*, Pustaka Utama Grafiti, Jakarta, 2008.
- Arianto, A., Mustamam, M., & Marlina, M. (2023). Legal Protection of Children Victims of Sexual Abuse (Study at the Subulussalam Resort Police). *Journal of Meta Law*, 2(3), 18-33. <https://doi.org/10.47652/jmh.v2i3.446>
- Pasaribu, A. S. ., Akhyar, A. ., & Purba, N. (2023). Law Enforcement Against Narcotics Addicts and Abusers According to Law Number 35 of 2009 concerning Narcotics (Study of District Court Decision Number 296/Pid.Sus/2021/PN. Kis). *Journal of Meta Law*, 2(3), 1-17. <https://doi.org/10.47652/jmh.v2i3.445>
- Arianto, A., Mustamam, M., & Marlina, M. (2023). Legal Protection of Children Victims of Sexual Abuse (Study at the Subulussalam Resort Police). *Journal of Meta Law*, 2(3), 18-33. <https://doi.org/10.47652/jmh.v2i3.446>





Siburian, M. R., Marzuki, M., & Putra, P. S. . (2023). Restorative Justice on the Handling of Narcotics Abuse Crimes (Study at the Asahan Police). *Journal of Meta Law*, 2(3), 50-62. <https://doi.org/10.47652/jmh.v2i3.460>

