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LEGAL REVIEW OF THE BENEFITS OF IMPLEMENTING THE POSTPONEMENT OF DEBT PAYMENT OBLIGATIONS (PKPU) FOR DEBTORS

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ABSTRACT

PKPU is a legal remedy that can be carried out by giving debtors the opportunity to restructure their debts, including paying all or part of their debts to creditors. In practice, postponing debt payment obligations (PKPU) can provide maximum benefits to avoid the company going bankrupt. PKPU is very useful, because the peace made through PKPU will bind other creditors outside PKPU, so that the debtor can continue restructuring his business, without fear of making claims from creditors outside PKPU. Creditors are also guaranteed through PKPU, because if there is a violation of the peace agreement, the creditor can submit a request for cancellation of the peace agreement to the Commercial Court 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 repay debts has resulted in creditors declaring them bankrupt through the Commercial Court. However, the debtor is still given time to prioritize debt repayment deferrals.

A debt receivables issue can also be resolved through a mechanism called a PKPU (Commission of Debt Settlement Order). A PKPU is typically filed to propose a restructuring plan that includes an offer to pay all or part of the debt to concurrent creditors.

This mechanism is used by debtors who are unable or expect to be unable to continue paying their debts that are due and payable. They can request a postponement of debt repayment obligations with the intention of submitting a restructuring plan that 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 are due and payable. They can request a moratorium on debt payments to allow the debtor to submit a restructuring plan that includes an offer to pay part or all of the debt to their creditors.

According to M. Hadi Subhan, a PKPU is essentially an offer of a restructuring plan by the debtor. Therefore, a PKPU provides the debtor with the opportunity to restructure their debts, which can include paying all or part of the debt to concurrent creditors. Therefore, a PKPU is not merely a debt moratorium; more importantly, it involves making the debt payments as outlined in the restructuring plan.

This restructuring can end a debtor's bankruptcy only if it is discussed and involves all creditors. If the restructuring is only proposed and negotiated with one or a few creditors, it cannot end the debtor's bankruptcy.

This research used a normative juridical approach. A normative legal approach was used to study the laws and regulations related to the benefits of implementing a Suspension of Debt Payment Obligations (PKPU) for debtors and creditors.

The data analysis in this study was conducted qualitatively, namely, the obtained data was systematically compiled and then analyzed qualitatively to achieve clarity on the issues being discussed. Qualitative data analysis is a research method that produces descriptive data, namely what respondents state in writing or verbally, as well as their actual behavior, which is examined and studied in its entirety.

2. Results And Discussion

Results

A bankruptcy order (PKPU) can be filed voluntarily by a debtor who has estimated that they will be unable to repay 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 a creditors' meeting, which is intended to provide the debtor with an opportunity to present their proposed reconciliation plan.

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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, it is clear that bankruptcy and PKPU are two different entities, and therefore, it is inappropriate to compare them quantitatively. Article 240 paragraph 4 of the Bankruptcy and PKPU Law states that, even based on the authority granted by the PKPU administrator, a debtor may obtain a loan from a third party solely to increase the value of the debtor's assets. In this case, if collateral is required to obtain the loan, the collateral can only be the debtor's assets that have not previously been used as collateral for the debt.

Thus, the difference between PKPU and bankruptcy is clear. In a PKPU, the debtor retains the authority to legally transfer and manage their assets, provided they do so with the approval of the PKPU administrator specifically appointed by the court for the PKPU process. However, if the debtor is declared bankrupt by the court, the debtor no longer has the authority to manage and transfer their assets that have become bankruptcy assets. This authority rests entirely with the curator.

The difference between PKPU and bankruptcy also lies in the procedural requirements. The procedural regulations under PKPU are less extensive than those under bankruptcy. A PKPU (Deferred Payment for Debt) must be filed before the debtor is declared bankrupt by a Commercial Court decision, as filing a PKPU after the debtor has been declared bankrupt is rendered useless. Therefore, Article 229 paragraph 3 of the Bankruptcy and PKPU Law stipulates that if a bankruptcy declaration application and a PKPU application are examined concurrently, the PKPU application must be decided upon first.

3. Discussion

The Temporary Suspension of Debt Payment Obligations is effective from the date the Temporary Suspension of Debt Payment (PKPU) is established and continues until the hearing date, which must be held no later than the 45th day after the Temporary Suspension of Debt Payment (PKPU) is established. Immediately after the Temporary Suspension of Debt Payment (PKPU) decision is issued, the court, through the administrator, is required to summon the debtor and creditors by registered mail or courier to appear at a hearing, which must be held no later than the 45th day after the Temporary Suspension of Debt Payment (PKPU) decision is established.

In essence, a Permanent Suspension of Debt Payment (PKPU) is granted by the creditors, not by the commercial court. In other words, a Permanent Suspension of Debt Payment (PKPU) is granted based on an agreement between the debtor and their creditors regarding a reconciliation plan proposed by the debtor. The Commercial Court only issues a decision to validate or confirm the agreement between the debtor and their concurrent creditors. The Commercial Court is not permitted to issue a decision that is inconsistent with the wishes or agreement of the debtor and their creditors.

The existence of a PKPU affects the debtor's legal status, particularly regarding the actions they can take. A PKPU (Bankruptcy and Debt Recovery Order) has legal consequences for a debtor's legal status, namely regarding the actions taken with their assets. Article 240 paragraph (1) of the Bankruptcy and PKPU Law stipulates that a debtor under a PKPU may limit the actions taken with their assets.

The explanation above demonstrates that, for comparison, the neglect of separate and preferred creditors in the reconciliation plan under a PKPU is also intended by the legislators to ensure the security of the creditor's receivables, so that the reconciliation plan focuses on the interests of all concurrent creditors. Unless the proceeds of the execution of the secured assets are insufficient to cover all creditors' claims, the separate creditor retains the right to receive payment for the remaining debt as a concurrent creditor. He, along with other concurrent creditors, is entitled to receive payment from the proceeds of the sale of the debtor's assets not secured by a secured right, proportionally or pari passu, in proportion to the respective amounts of each concurrent creditor's debt.

Although this PKPU applies only to concurrent creditors, all agreements regarding the reconciliation plan remain valid and binding on all creditors, both concurrent and separated creditors. All creditors must participate in all sessions. This includes the right to vote during the PKPU period, including in responding to proposals for the reconciliation plan.

Based on the provisions of this article, the debtor requires the approval of the administrator to take any action to manage or acquire ownership of all or part of their assets. The existence of a PKPU (Debt Settlement Order) demonstrates that the debtor's legal status as the owner of their assets is no longer absolute. As is known, property rights to an object essentially grant direct control over that object and can be defended against claims by any party.

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 collateral. 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. The provisions for the suspension of execution also apply to executions and seizures that have already been initiated on unencumbered assets, even if the execution and seizure relate to creditor claims secured by a pledge, fiduciary security, security interest, mortgage, collateral rights over other assets, or rights that must be prioritized in relation to certain assets under the law (Article 242 paragraph (3) of the Bankruptcy and PKPU Law).

Creditors holding a pledge, fiduciary security, security interest, mortgage, or collateral rights over other assets, based on Article 55 of the Bankruptcy and PKPU Law, may exercise their rights as if the bankruptcy had not occurred, provided they comply with the provisions of Articles 56, 57, and 58 of the law. Article 246 of the Bankruptcy and PKPU Law stipulates that the creditor's rights are suspended during the PKPU period until the PKPU expires. Therefore, the status of the seizure and execution of collateral during the PKPU period is suspended.

During the PKPU period, the debtor cannot be forced to pay his 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 that: Payment of all debts, other than those referred to in Article 244 that existed before the granting of the moratorium on debt payment obligations during the moratorium on debt payment obligations, may not be made, unless the payment of the debt is made to all creditors, according to the balance of their respective receivables, without prejudice to the provisions as referred to in Article 185 paragraph (3).

Based on the above, Article 281 paragraph (1) is connected with the condition that the reconciliation plan is not accepted or rejected, namely a quorum, because 2 (two) concurrent creditors unanimously rejected the PT. Yeyeom Design Reconciliation Plan, so that the debtor PT. Yeyeom Design must be declared bankrupt with all its legal consequences. During the creditor meeting process, the debtor or Director of PT. Yeyeom Design was never present at the hearing and the creditor meeting was only represented by the General Manager and Administrative staff of PT. Yeyeom Design and never revised the peace plan proposal submitted since November 19, 2019, then according to the management it is very clear that the bankrupt debtor has not shown good faith in utilizing the PKPU process which has been given 2 (two) PKPU extension periods so that it is very reasonable for the management to recommend to the Supervisory Judge that the process of Postponement of Fixed Debt Payment Obligations of PT. Yeyeom Design be ended with all its legal consequences.

Based on the above circumstances, in accordance with the provisions of Article 230 paragraph (1) of Law No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, the PKPU applicant is in a state of Bankruptcy with all its legal consequences and with reference to the provisions of Article 255 paragraph (1) letter d of the Bankruptcy and PKPU Law.

Based on the above decision, the author agrees with the Supreme Court decision Number 830 K/Pdt.Sus-Pailit/2020 because the debtor's absence due to the absence of a peace plan improvement means the debtor has neglected to carry out the actions required of the debtor. According to the author, the PKPU debtor has not submitted a peace plan improvement and the concurrent creditors present have rejected the PKPU peace proposal so that the Suspension of Debt Payment Obligations (PKPU) must be terminated and the PKPU debtor must be declared bankrupt with all its legal consequences and by being declared bankrupt, the PKPU debtor must be appointed a curator and appointed a supervisory judge from the Commercial Court judge at the Jakarta District Court.

4. Conclusion

The implementation of the Suspension of Debt Payment Obligations (PKPU) is regulated by Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. Essentially, the purpose of bankruptcy regulations is to prevent a dispute over the debtor's assets by their creditors. This is accomplished by the applicant submitting a reconciliation proposal to all creditors. This reconciliation proposal essentially offers a rescheduling of debt installment payments, along with collateral or security in the form of a mortgage to guarantee the payment of said collateral. Based on the reconciliation proposal, the plaintiff's creditors have reached an agreement and approval of the proposal, and based on the creditors' approval of the reconciliation proposal,

In practice, the Suspension of Debt Payment Obligations (PKPU) can provide maximum benefits in preventing a company from going bankrupt. A PKPU (Commitment to Payment Suspension) 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.

The legal consideration of the judge deciding the Suspension of Debt Payment Obligations (PKPU) is that a quorum is required for the reconciliation plan to be rejected or not accepted. Two (2) concurrent creditors unanimously rejected PT. Yeyeom Design's Reconciliation Plan, thus requiring the debtor to be declared bankrupt with all its legal consequences.

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