

**DEBT SETTLEMENT EFFORT IN THE PERSPECTIVE OF DONATION OF DEBT
PAYMENT OBLIGATIONS**

**UPAYA PENYELESAIAN UTANG DALAM PRESPEKTIF PENUNDAAN
KEWAJIBAN PEMBAYARAN UTANG**

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ABSTRACT

Alternative that can be taken in overcoming the fulfillment of debt payments when running a business by a company by holding debt service obligations postponed. in essence, an alternative will lead the parties to resolve the problem of debt repayment, this alternative is effective and impartial, but in practice the debtor deliberately submits the postponement of the payment obligation in order to minimize his debt bills and creditors who deliberately did not accept the peace agreement, so the debtor was immediately declared bankrupt.

Keywords: Postponement of debt payment(PKPU), Creditors, Legal Protection

ABSTRAK

Alternatif yang dapat ditempuh dalam mengatasi pemenuhan pembayaran utang pada saat menjalankan usaha oleh suatu perusahaan dengan mengadakan penundaan kewajiban pembayaran utang. pada hakikatnya suatu alternatif akan menggiring para pihak untuk menyelesaikan masalah pelunasan utang, alternatif ini efektif dan tidak memihak, namun dalam prakteknya debitur dengan sengaja mengajukan penundaan kewajiban pembayaran guna memperkecil tagihan utangnya dan kreditur yang dengan sengaja tidak menerima perjanjian damai, sehingga debitur segera dinyatakan pailit.

Kata Kunci : Penundaan Pembayaran Hutang, Kreditur, Perlindungan Hukum

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A. Introduction

The existence of an economic decline in all aspects of the State, especially in the aspect of the business world, clearly does not apply to various parties. In the business world, we can see that many companies have collapsed in every field of business because of the uncertainty of profit which makes it difficult for this company to pay off its debt obligations, **Dijan** stated, if the debt accumulates there will be no profit at all, even though the company is actually a legal entity or non law seeking profit or profit.¹ The debt that the author means, in this case, is similar with **Pande**'s mean in his articles, it is obtained from borrowing by the debtor in order to increase his capital to carry out business activities.² Difficulties in fulfilling these obligations may lead to the possibility of a creditors submitting a bankruptcy request to the commercial court due to the inability to pay debt obligations,³ although according to **Hadi**, systematically there is still time for the debtor, in this case the company, to fulfill its debt payment obligations

in accordance with the Bankruptcy and Postponement of Debt Payment Obligations Law.

Andang stated that an alternative that can be taken in overcoming delays in fulfilling obligations in running a business is holding a Postponement of Debt Payment Obligations,⁴ it means that the debtor in question submits a request to the creditor to postpone the payment of his debt until a certain period of time.⁵ In Law No. 37 of 2004, states that the Postponement of Debt Payment Obligations (hereinafter referred to as PKPU) is a period given by law through a commercial judge ruling, when that period is given to Creditors and Debtors to be given the opportunity to deliberate on methods payment of the debt by providing a payment plan in whole or in part of the debt, including if necessary to restructure the debt.⁶ PKPU is regulated in chapter III, starting from Article 222 to Article 294 UUK and PKPU. Procedure for Filing PKPU in Article 222.⁷

Prior to 1998, the provisions for Postponement of Debt Payment Obligations contained Faillissement

¹ Dijan Widijowati, *Hukum Dagang* (Yogyakarta: C.V Andi Offset, 2012).

² Pande Radja Silalahi, *Dampak Perpu Kepailitan Terhadap Dunia Usaha Dalam Penyelesaian Utang Piutang Melalui Pailit Atau Penundaan Kewajiban Pembayaran Utang* (Bandung: Alumni, 2001).

³ Hadi Shubhan, *Hukum Kepailitan, Prinsip, Norma Dan Praktik Di Peradilan* (Jakarta: Kencana, 2015).

⁴ Andang Sari, "Penundaan Kewajiban Pembayaran Utang Menurut Undang-Undang Kepailitan," *Jurnal Kajian Ilmiah* 17, no. 2 (2017): 51–62.

⁵ Kartini Muljadi, *Penyelesaian Utang Piutang : Melalui Pailit Atau Penundaan Kewajiban Pembayaran Utang* (Bandung: Alumni, 2001).

⁶ Muljadi.

⁷ Sunarmi, *Hukum Kepailitan*, 2nd ed. (Jakarta: PT.Sofmedia, 2010).

Verordening Stb 1905 Number 217 juncto Stb. 1906 Number 348, as a rule regarding the Postponement of Debt Payment Obligations, it is still under the same provisions as the Bankruptcy Act. The existence of an economic and monetary crisis that hit Indonesia in that year inspired the change of these rules to Government Regulation No.1 of 1998 concerning Amendments to the Law on Bankruptcy dated 9 September 1998 (State Gazette of the Republic of Indonesia of 1998 Number 135) and replaced by Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations. The hope with this law is that there is a legal umbrella in Indonesia related to bankruptcy declarations and the process of postponing debt payment obligations.

The objective of the provisions concerning PKPU is to provide opportunities and time for debtors to continue running their business activities. That way, all assets and assets belonging to the company will remain, so that later this debtor will have a handle to convince creditors in the form of guarantees to pay off their debts. In addition, it can provide opportunities for Debtors to restructure their debts, while for Creditors, PKPU which has been given to Debtors is also intended so that Creditors have certainty regarding their claims, their debts

will be able to be repaid by Debtors.⁸

Law No. 37 of 2004 states that the debtor has the right to declare himself bankrupt, besides that the creditor is also entitled to apply for bankruptcy to the debtor. Based on the criteria, **Muljadi** stated Creditors consisted of Separatist Creditors, Preferent Creditors and Concurrent Creditors,⁹ of the three criteria for creditors, the provisions regarding Postponement of Debt Payment Obligations are aimed at protecting the interests of the debtor itself and the interests of concurrent creditors, however creditors with other criteria continue to participate in the negotiation process for postponement of debt repayment. In fact, as we noted, there are respective portions of the criteria for creditors, including Separatist creditors with guarantees, concurrent creditors depending on the size of the accounts receivable and preferred creditors with special privileges.¹⁰ Of course this is unfair to concurrent creditors even though in fact each party has the same big interests.

In fact, with the Postponement of Debt Payment Obligations, it is not only to provide opportunities and time for debtors to be able to pay off all their debts, but basically PKPU wants to provide debtors and

⁸ Man S Sastrawidjaja, *Hukum Kepailitan Dan Penundaan Kewajiban Pembayaran Utang* (Bandung: Kencana, 2010).

⁹ Muljadi, *Penyelesaian Utang Piutang : Melalui Pailit Atau Penundaan Kewajiban Pembayaran Utang*.

¹⁰ Sutan Remy Sjahdeini, *Hukum Kepailitan* (Jakarta: PT Pustaka Utama Grafiti, 2010).

creditors with “peace” between the two. Hopefully, this peace will eliminate and resolve the debtor's bankruptcy, provided that this peace is followed and approved by all creditors. Because if all creditors do not participate in the peace proposal, the debtor's bankruptcy cannot be ended.¹¹ From the description above, the problem is whether the provision of temporary PKPU is beneficial for the debtor and why is the separatist creditors included in determining the PKPU extension.

In this study, the authors use normative juridical legal research, legal principles, namely research that is focused on examining the application of norms in positive law. According to **Mukti Fajar** and **Ahmad Yulianto**, the normative legal research¹² includes research on legal systematics, research on the level of legal synchronization, research on legal history and comparative legal research. In this normative research, it uses a statute approach and a case approach which is supported by primary legal materials in the form of applicable laws and regulations and secondary legal materials in the form of legal books that are relevant to legal issues and are descriptive in nature. Analytical

¹¹ Muljadi, *Penyelesaian Utang Piutang : Melalui Pailit Atau Penundaan Kewajiban Pembayaran Utang*.

¹² Mukti Fajar and Ahmad Yulianto, *Dualisme Penelitian Hukum Normative Dan Empiris*, cet. ke 4 (Yogyakarta: Pustaka Pelajar, 2017).

B. The Concept of Bankruptcy and Postponement of Payment of Debt Liabilities

Bankruptcy is a process in which a Debtor who has financial difficulties to pay his debt is declared bankrupt by the Court (in this case the Commercial Court) because the Debtor is unable to pay his debt. Debtor's assets can be distributed to Creditors in accordance with Government regulations.¹³ The PKPU institution in commercial law known as *surseance van betaling* or suspension of payment is a period given by law through a commercial judge's decision during which the creditors and debtors are given the opportunity to discuss ways of paying their debts by providing plans to repay all or part of the debt, including if necessary to restructure the debt.¹⁴ In order to be declared bankrupt, according to **Hartini** in her articles “Penyelesaian Sengketa Kepailitan Di Indonesia: Dualisme Kewenangan Pengadilan Niaga Dan Lembaga Arbitrase”, a debtor must meet the following requirements:¹⁵

- a. Debtors have two or more creditors.

¹³ J. Djohansah, *Pengadilan Niaga Dalam Pnyelesaian Utang Melalui Pailit Atau Penundaan Kewajiban Pembayaran Utang* (Bandung: Alumni, 2001).

¹⁴ Munir Fuady, *Hukum Pailit Dalam Teori Dan Praktek* (Bandung: PT.Citra Aditya Bakti., 2014).

¹⁵ Hartini Rahayu, *Penyelesaian Sengketa Kepailitan Di Indonesia: Dualisme Kewenangan Pengadilan Niaga Dan Lembaga Arbitrase* (Jakarta: Kencana, 2009).

- b. Not paying at least one debt is due and collectible.
- c. At his own request or at the request of one or more creditors.

Rahayu stated that Requirements for the request for bankruptcy by creditors are that the debtor has two or more creditors and does not pay at least one debt that is due and is already collectible should, the bankruptcy law takes the position that judges may only grant a bankruptcy request if the request is approved by the majority creditors.¹⁶

One of the legal protections provided by the bankruptcy law for creditors is the actio paulina. Since the beginning, Actio Paulina has been regulated in Article 1341 of the Civil Code, which gives creditors the right to file a cancellation for any legal action that is not obliged to be taken by the debtor, whether under any name that can harm the creditor. The provisions of actio paulina in Article 1341 of the Civil Code are related to the provisions of Article 1131 of the Civil Code which regulates the principle of creditorium Parity. According to **Dedy** this is because Article 1131 of the Civil Code stipulates that all assets of the debtor by law become collateral for debtors' debts. Thus the debtor in this case is not free from his assets when he has a debt to the creditor.¹⁷

C. The Perspective of Postponement of Debt Payment Obligations is Favorable for The Debtor

According to research by **Kenneth Ayote** and **David A Skeel**,¹⁸ in fact the PKPU Institute is considered ineffective, this is happening in America. There are doubts from business people about the PKPU institution. It is not impossible that this is also the case for most business people in Indonesia. It is possible for such a thing to happen to the debtor, how could it not be, the regulations contained in Law No. 34/2007 implicitly do not reflect justice, as if it further protects the interests of creditors. One example is in several articles which state, if ½ of the creditors do not agree to the peace agreement of the debtor, the debtor will immediately be declared bankrupt.

In the PKPU process, the commercial court after receiving a PKPU application from a creditor or an authorized party, before entering into a permanent pkpu decision, it must pass and decide the previous temporary pkpu. The objective of the commercial court in deciding a temporary pkpu is an effort to give the debtor the opportunity to make the strategies and preparations needed in order to fulfill the requirements for filing a permanent

¹⁶ Rahayu.

¹⁷ Dedy Tri Hartono, "Perlindungan Hukum Kreditor Berdasarkan Undang-Undang Kepailitan," *Jurnal Ilmu Hukum Legal Opinion* 4, no. 1 (2016): 1–9.

¹⁸ Kenneth Ayotte and David A Jr. Skeel, "Penn Law : Legal Scholarship Repository Bankruptcy or Bailouts?," *The Journal of Corporation Law* 35, no. 3 (2010): 469–98.

pkpu, besides that the existence of this temporary pkpu will cause the position of both parties to have the same goal, namely peace in the payment of the debtor's debt obligations, in other words there will be a state of standstill, with the hope of facilitating the merger of the agreement between the two parties in an effort to fulfill the PKPU.

The existence of this PKPU is actually shown to the debtor who is truly unable to pay his debt obligations to the creditor. As we know philosophically, there are 2 criteria for debtors. The first is a debtor who does not want to pay his debt obligations, when in fact the debtor with this criteria is the wealth and assets that can pay off all his debts. Another criterion for debtors is those who are truly unable to pay, due to unfavorable financial conditions. It would be wise when the creditor or the party authorized to bankrupt the debtor if he knows that the debtor is able and does not want to pay, it can be resolved in civil terms, in other words demanding his rights through legal action of a default lawsuit to the District Court, not directly requesting bankruptcy the debtor, because it will only result in losses if the debtor is in a peace effort when PKPU demands that his debt payment be reduced by a certain amount. With this effort of default, it is possible for the debtor to really fulfill all his debts in full whose debt fulfillment is supervised by the State or the court.

Febri Yanti in her articles stated that in PKPU, after it has been decided and stipulated regarding the temporary PKPU, then both parties have a maximum period of 45 days to prepare all plans in terms of achieving peace in the implementation of the permanent pkpu, before the PKPU session is determined, it will still be counted since the temporary PKPU is established.¹⁹ PKPU will still be born after going through the provisional PKPU determination and decision process as described above, after the existence of PKPU, it must still get approval from creditors so that the peace agreement between the parties can be carried out, may not exceed the time limit of 270 days including the extension count since the temporary postponement of the debt payment obligation has been established.

From the explanation above, we can understand that if basically PKPU is still an agreement and agreement from the parties regarding the peace agreement, in this case the commercial court only confirms and gives a decision on the agreement, and it is forbidden to decide outside the agreement between the debtor and the creditor.

Often there are misinterpretations as if the 270-day

¹⁹ Febri Yanti Casanova, Lindati Dwiatin, and Dianne Eka R, "Analisis Homologasi Dalam Penundaan Kewajiban Pembayaran Utang (PKPU) Sebagai Upaya Pencegah Kepailitan (Studi Putusan No.59/Pdt.Sus-PKPU.PN.Niaga.Jkt.Pst)," *Pactum Law Journal* 1, no. 2 (2018): 90–98.

deadline for PKPU is still given as the deadline for debtor debt settlement to all its creditors, knowing this is not the case, according to **Sutan Remy**, but he explained, it must be observed that PKPU is still different from the term debt rescheduling time as that term is known in the banking.²⁰ From this explanation we can understand that the 270-day period in PKPU can still be used for negotiations over the repayment period or rescheduling between debtors and creditors concurrent, not used for the period of repayment of debt obligations from the debtor.

Permanent PKPU, determined by the commercial court based on the approval of more than half of the number of concurrent creditors present and representing at least 2/3 of all claims that are recognized or temporarily recognized and if a dispute arises over this creditor's voting rights, the settlement is decided by the supervisory judge.²¹

D. Separatist Creditors Participated in Determining the PKPU Extension

PKPU which is permanent is PKPU which is determined after the trial based on the approval of creditors. Article 229 paragraph (1)

of Law 37 of 2004 states regarding permanent PKPU along with its extension determined by the court, namely, approved by more than 1/2 the number of concurrent creditors whose rights are recognized or temporarily recognized who are present and represent at least 2/3 of the total. acknowledged or provisional claims from concurrent creditors or their proxies who are present at the hearing. And it is agreed that more than 1/2 the number of creditors whose receivables are guaranteed by pledge, fiduciary security, mortgage, mortgage, or other collateral rights for property are present and represent at least 2/3 of the total claims of creditors or their proxies present at the hearing. According to **Yudi**, it is fitting that in the case of PKPU, this creditor party, a Creditors committee was created in order to establish a communication forum between creditors, but in practice it is often found that creditors make their own defense.²²

There are differences from the provisions of Article 229 paragraph (1) of Law 37 of 2004 with the previous provisions, namely Law Number 4 of 1998 concerning the position of the separatist creditors in the suspension of this debt payment obligation. The current positive law stipulates that separatist creditors have a stake in PKPU

²⁰ Sjahdeini, *Hukum Kepailitan*.

²¹ Elviana Sagala, "Efektifitas Lembaga Penundaan Kewajiban Pembayaran Utang(PKPU) Untuk Menghindarkan Debitur Dari Pailit," *Jurnal Ilmiah Advokasi* 03, no. 01 (2015): 38–56.

²² Yudi Kornelis and FI Yudhi Priyo Amboroi, "Harmonisasi Hukum Terhadap Penundaan Kewajiban Pembayaran Utang Dengan Prespektif Budaya Hukum Indonesia," *Jurnal Selat* 4, no. 1 (2016): 101–14.

extension, but the previous rules only stipulate that the determination of PKPU extensions is determined based on the approval of the Concurrent Creditors, without including the approval of the Separatist Creditors.

There is something special about separatist creditors compared to other creditors, because with this criterion, creditors are guaranteed material guarantees and have the authority to auction these items to pay off debtors' obligations. From these criteria, separatist creditors should not need to participate in the bankruptcy or PKPU process because they already have material guarantees in order to pay off debtors' debt obligations. However, there are various considerations that lead to the addition of the terms of approval from concurrent Creditors in determining the extension of PKPU in the Bankruptcy and PKPU Law.

Concurrent creditors should be the main focus in alternative bankruptcy settlement at the PKPU institution. Article 222 paragraph 2 of Law 37 of 2004 does not mention concurrent creditors as in Article 212 of Law Number 4 of 1998 which explicitly states that a Debtor who cannot or estimates that he will not be able to continue to pay his debts that have already been maturity and collectible, may request payment of debt servicing obligations, with the general intention of submitting a peace plan which includes an offer to pay all or part of the debt to

concurrent creditors. However, Article 244 of Law 37 of 2004 states that with due regard to the provisions of Article 246, postponement of debt payment obligations does not apply to:

- (1). Claims secured by pledge, fiduciary security, mortgage, mortgage, or other collateral rights on property.
- (2). Bills for maintenance, supervision or education that have to be paid and the supervisory judge must determine the amount of bills that are already there and have not been paid before the postponement of debt payment obligations that are not invoices with privileges.
- (3). Preferred claims against certain debtors' assets as well as all debtors' assets that are not covered in paragraph (1) letter b.

All holders of security rights who obtain priority position such as pawning, fiduciary, mortgage, mortgage or so-called separatist creditors do not apply to PKPU as mentioned in Article 244 jo. Article 246 of Law 37 of 2004. This is of course because the debts and receivables of the separatist creditors have been guaranteed by material rights, so the payment is more certain in nature. Even though Article 51, Article 57 and Article 58 of Law 37 of 2004 are expressly stated to apply *mutatis mutandis* in the implementation of PKPU, so it seems as if the rights of separatist creditors and the rights of preferred creditors have been intervened to carry out the

execution of the assets of debtors under their control. which is postponed for a time limit of 90 days as of the stipulation of the bankruptcy decision by the commercial court. So, practically, the assets of the bankrupt that can be sold are inventory or current assets or immovable goods that are not guaranteed with the mortgage rights as mentioned above.

With the existence of a postponement, **Sutan Remy** stated that it provides an opportunity for the parties to establish communication in the framework of peace efforts and for the curator to carry out his duties effectively during the postponement period, all legal claims to obtain full settlement of an receivable cannot be filed in a trial by a judicial body, and good Creditors or third parties are prohibited from executing or requesting confiscation of the collateralized goods.²³

The explanation above shows that as a comparison, the neglect of the separatist creditors and preferred creditors for the peace plan in the case of PKPU, what the legislators meant was based on the consideration of the security of the position of creditors, so that the peace plan focused on the interests of the concurrent creditors. Unless the results of the later execution of the goods that are encumbered with collateral rights are not sufficient to pay all the creditors' claims, then for

the remaining debt, the separatist creditor is still entitled to obtain full payment of the remaining bill with the position of a concurrent creditor, together with other concurrent creditors are entitled to obtain full payment from the sale of the debtor's assets which are not burdened with a security right, proportionally or on a *pari passu* basis in proportion to the amount of each debt owed by the concurrent creditors.

In accordance with Law 37 of 2004, the existence of a Postponement of Debt Payment Obligations is intended not only to provide a time delay for debtors in paying debt obligations, but also to achieve a settlement. The settlement is manifested in a plan to pay debts from debtors to creditors either partially or completely, depending on the agreement of the parties. Such peace can end Debtor bankruptcy only if the peace is discussed and involves all Creditors. If peace is only proposed and negotiated with only one or several Creditors, then the peace cannot end the Debtor's bankruptcy.

PKPU is clearly very beneficial, because the peace made through PKPU will bind other creditors outside PKPU as stipulated in Article 266 of Law 37 of 2004, so that the debtor can continue to restructure his business, without fear of being interfered with by claims of creditors outside PKPU . In addition, creditors should also be guaranteed through PKPU, because if there is a violation of the peace agreement, the

²³ Sutan Remy Sjahdeini, *Hak Tanggungan* (Bandung: Alumni, 1999).

creditors can submit a request for cancellation of the peace agreement to the Commercial Court, and the debtor will automatically be declared bankrupt.

Each creditor must be bound by the other creditor, regardless of the portion of the creditor whether as a concurrent, separatist, or preferred creditor. Because if the creditors do not bind each other in the peace agreement proposed by the debtor, there is a consequence. The easiest thing to be a consequence is that one of the creditors filed for bankruptcy of the debtor, because he considers that he is not bound by the peace agreement so that he has the right to file for bankruptcy. **Lilik** stated, if this bankruptcy petition is granted by the court, the concurrent agreement between the debtor and creditors and its implementation will have to be stopped.²⁴

Of course this also depends on the existence that determines the many creditors, if the number of creditors is a concurrent majority, it would be difficult in terms of the comparison of the number of votes, of course the position of the separatist creditors can be defeated by the proposal to accept or reject the peace plan. In the 2004 Law in Article 229 it is stated that if a vote is made in the awarding of PKPU and the approval is accepted, the

rejection of the peace plan, the votes are won by more than $\frac{1}{2}$ the number of concurrent creditors whose rights are recognized or temporarily recognized who are present and represent at least $\frac{2}{3}$ of the all recognized or provisional claims recognized by concurrent creditors or their proxies present at the hearing and approval of more than half of the creditors whose receivables are guaranteed by pledge, guarantee, fiduciary, mortgage, collateral rights over other objects present and representing at least $\frac{2}{3}$ and all claims of creditors or proxies present at the hearing.

The reason for adding the requirements in determining the PKPU extension is that in determining the PKPU extension, apart from being based on the approval of the concurrent Creditors, it must also be based on the approval of the separatist Creditors is that it lies in the legal consequences of PKPU. The legal consequence is that even though this PKPU only applies to concurrent creditors, the results of the entire agreement regarding the peace plan remain valid and bind all creditors, both concurrent creditors and separatist creditors, and in conducting hearings they must always include all creditors. Including the right to cast a vote during the Postponement of Debt Payment Obligations (PKPU), including in responding to peace plan proposals.

²⁴ Lilik Mulyadi, *Perkara Kepailitan Dan Penundaan Kewajiban Pembayaran Utang (PKPU) Teori Dan Praktik* (Bandung: Alumni, 2010).

E. Conclusion

The provision of postponement of debt payment obligations is beneficial for the debtor. The aim is to immediately achieve a state of silence (stay or standstill) so that it makes it easier to reach an agreement between creditors and debtors regarding the peace plan intended by the debtor, and can provide opportunities for debtors to compile a peace plan along with all necessary preparations if the plan peace has not been attached to previous PKPU submissions. Separatist creditors

are included in determining PKPU extensions because in determining PKPU extensions, apart from being based on the approval of concurrent creditors, it must also be based on the approval of the separatist creditors. Although this PKPU only applies to concurrent creditors, the results of all agreements regarding the peace plan are still valid and binding on all creditors, both concurrent creditors and separatist creditors, and in conducting hearings, all creditors must always be included.

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