

The Mechanism of Suspension of Debt Payment Obligations (PKPU) in the Indonesian Bankruptcy Law During the Covid-19 Pandemic

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ABSTRACT

This study aims to find out and analyze why the mechanism for Postponing Debt Payment Obligations (PKPU) has increased during the Covid-19 pandemic. The research method that the researcher uses is a normative research method by examining the laws and regulations and related legal materials. Due to the Covid-19 pandemic that hit Indonesia, the application for PKPU through the Commercial Court experienced a very significant increase. This shows that currently the option of settling debt default cases, the mechanism for Delaying Debt Payment Obligations (debt restructuring through the Commercial Court) is considered more effective than filing for bankruptcy. The PKPU mechanism in practice is a good solution, not only for debtors to avoid bankruptcy, but also socially and economically a solution for employees and other stakeholders. However, the fact is that there are many PKPU mechanisms that are often used as an effort to bankrupt debtors more quickly. Therefore, it is necessary to have a debt restructuring mechanism through the PKPU in the Indonesian Bankruptcy Law that is more effective so as to provide legal certainty and justice for all parties.

Keywords: *Debt Restructuring, PKPU, Indonesian Bankruptcy Law*

1. INTRODUCTION

a. A Problem Statement

The Bankruptcy Law in Indonesia in addition to regulating bankruptcy also regulates the Suspension of Debt Payment Obligations (PKPU). PKPU is a period given by a Commercial Court Judge to the debtor and creditor to negotiate ways of repaying the debtor's debt, either in part or in whole including if necessary to restructure the debt. The postponement of debt payment obligation (PKPU) is stipulated in the third chapter of the Bankruptcy Law and PKPU, namely in Article 224-294, which consists of two parts, namely part one on the postponement of debt payment obligations and their consequences (Article 222-article 264) and the second part on Peace (Article 265-Article 294). the delay in debt repayment obligations is aimed at improving the state of the economy and the ability of the debtor to make a profit, so in this way it is most likely that the debtor can pay off his obligations[1].

Law No. 37 of 2004 does not formulate what is meant by PKPU, despite the title of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations. Article 222 paragraph (2), that debtors who cannot or expect to be unable to continue repayment of their overdue and billable debts, may request a delay in debt repayment obligations, with the general intention of

submitting a peace plan that includes the offer of all or part of the debt to the concurrent creditors. PKPU is basically an offer of a peace plan by the debtor, so that the debtor can restructure "which may cover all or part of the debt to the concurrent creditors"[2].

Related to the current situation where almost the whole world is being hit by the Covid-19 Pandemic which in general has resulted in a very heavy fall in economic activity where many businesses are experiencing financial difficulties, not least with Indonesia. Many companies have difficulty surviving in the midst of the pandemic that led to bankruptcy applications and Debt Repayment Obligation Delays (PKPU). Legal efforts to delay debt payment obligations (PKPU) continue to grow until the end of May 2021. Based on data from the case tracking information system in five commercial courts, there were 333 PKPU applications recorded from January 2021 - May 2021, up from the same period in 2020. There have been at least 188 PKPU applications from January 2020 to May 2020[3]. The number of PKPU cases entered into the Commercial Court shows that currently the choice of resolving debt default cases through the mechanism of PKPU (debt restructuring through the Commercial Court) is felt more effectively.

b. Problem Formulation

Based on the background description described above, the author is interested to know and analyze why the application for Debt Repayment Obligation Delay

(PKPU) in Indonesia through commercial courts increased during the Covid-19 pandemic?

2. RESEARCH METHODS

The research method that researchers use is the normative legal research method. Normative law research in this journal consists of legal principles, legal systematics, legal synchronization, legal history and comparative law[4]. This legal research uses a legal approach that is by studying all laws and regulations related to the legal issues that are being handled, in this legal research types and legal materials that researchers use, namely Law No. 37 of 2004 on Bankruptcy and PKPU and journals, scientific articles related to this study.

3. DISCUSSION

The postponement of debt repayment obligations (PKPU) during the Covid-19 pandemic is currently more in demand compared to bankruptcy because it is considered the most effective. Where PKPU will result in restructuring, while bankruptcy will end in the eradication (sale and distribution of assets) of the debtor, which can dissolve the debtor's business.

Debt restructuring of debtor companies in order to pay their debts can generally be done in two ways, namely[5]:

- a. With the approach between creditors and debtors to try to restructure the debt with deliberation and consensus.
- b. By proposing and requesting the postponement of debt payment obligations stipulated in Law No. 37 of 2004.

Debt Restructuring According to Joel G. Sigel and Joe K. Shim, debt restructuring is: "Adjustment or reorganization of the debt structure reflects the opportunity for the debtor to plan for the fulfillment of its financial obligations"[6]. Debt restructuring is a restructure problematic debt process with to improving the debtor's financial position[7].

In PKPU, the debtor is given the opportunity to continue to carry out his business activities for an indefinable period by being given a definite time to delay the obligation to pay his debts to the creditors. Therefore, by giving time and opportunity to the debtor, it is expected that through the reorganization of his business and or restructuring his debts, can continue his business and thus pay off his debts[8]. PKPU application can be done on its own initiative or as a reaction to the application for bankruptcy statement submitted by its creditors[9]. The PKPU application is made in writing which is essentially for the debtor to be given a time to delay the payment of his debt accompanied by no peace proposal. The PKPU application must be signed by the debtor or creditor together with the advocate, in this case the advocate who has a practice license, and accompanied

by a list containing the nature, amount of receivables and debtor debt, along with sufficient evidence.

PKPU is divided into 2 (two) stages, namely as follows:

- a. Suspension of Temporary Debt Payment Obligation;
This is the first stage of the PKPU process, the temporary PKPU is valid for a maximum of forty-five days.
- b. Suspension of Fixed Debt Payment Obligation
PKPU remains following its extension must not exceed two hundred and seventy days after the provisional PKPU ruling is pronounced.

The verdict of the PKPU application itself has the nature that takes precedence over the application for a bankruptcy statement. The purpose of this is that when there is a bankruptcy application and PKPU against the same debtor and at one time, the pkpu application must be decided first.

The Procedure for Filing a Suspension of Debt Payment Obligation shall be addressed to the Commercial Court whose jurisdiction includes the area where the Debtor's legal position is. If the pkpu application is submitted, in 3 (three) days from the date of registration of the PKPU application letter, the Court shall grant the Provisional PKPU and shall appoint a Supervisory Judge from the court judge and appoint 1 (one) or more Administrators who together with the debtor take care of the debtor's assets.

In the event that the application for PKPU is submitted by the creditor, the statement granted by the Provisional PKPU application must be issued by the Court no later than 20 (twenty) days from the date of registration of the application letter. In the process of PKPU, in addition to the supervisory judges and administrators appointed, it can also be made the appointment of the Committee.

After PKPU Remains granted then during the period following the extension, namely up to the 270th day since the Provisional PKPU was granted, the debtor and creditors conducted negotiations on the peace plan submitted by the debtor. If during the period lasting until a predetermined deadline is not reached agreement on the peace plan because the peace plan is rejected by the creditors, then the Court must declare the debtor Bankrupt and there is no legal effort in the PKPU process. But if during that period an agreement is reached between the debtor and the creditor on the peace plan, the Court will hold a hearing to ratify the peace. In the session, the Court is obliged to give a ruling on the ratification of the peace along with its reasons.

During the Covid-19 pandemic that has resulted in a very heavy fall in economic activity where many businesses are experiencing severe financial problems. A debt restructuring system is a more effective option than having to bankrupt or dissolve a debtor with a very

minimal liquidation ratio to pay its debts. This is what causes the number of PKPU cases that go to the Commercial Court. Here is the data that researchers obtained where the number of cases of Debt Repayment Obligation Delay (PKPU) recorded an increase compared to previous years:

Table I. Number of PKPU and Bankruptcy Cases in 2019

Commercial Court	Bankruptcy	PKPU
Medan	8	32
Semarang	24	32
Surabaya	30	77
Makassar	3	8
Jakarta Pusat	60	281
amount	125	430

Table II. Total Cases of PKPU and Bankruptcy 2020

Commercial Court	Bankruptcy	PKPU
Medan	11	44
Semarang	33	52
Surabaya	10	99
Makassar	4	2
Jakarta Pusat	57	441
amount	115	638

Table III. Number of PKPU and Bankruptcy Cases until June 2021

Commercial Court	Bankruptcy	PKPU
Medan	6	20
Semarang	12	16
Surabaya	12	32
Makassar	0	7
Jakarta Pusat	22	218
amount	52	293

The number of PKPU cases that go to the Commercial Court shows that currently the option of resolving debt default cases through the mechanism of PKPU (debt restructuring through the Commercial Court) is felt more effectively. PKPU mechanism in practice is a good solution, not only for debtors to be able to avoid bankruptcy, but also socially and economically become a solution for employees and other stakeholders. With the successful restructuring of debt for debtors through the PKPU mechanism, the debtor's business will still operate, so that at least employees can still work and not lose their livelihoods. The opportunity for the debtor to delay the obligation to pay his debts, it is possible for the debtor to continue his business, assets and wealth will still be maintained by the debtor so that it can provide a guarantee for the repayment of debts to all creditors, and

also give the opportunity to the debtor to restructure his debts, while for creditors, pkpu that has been given to the debtor is also intended for creditors to obtain certainty the bill, the receivables will be repaid by the debtor.

The PKPU established by the Court resulted in the "temporary termination" of the debtor's debt repayment obligations that had been due until a new agreement was reached between the creditor and the debtor regarding the terms and procedures of the new mutually agreed payment. PKPU does not eliminate the obligation to make debt payments, nor does it reduce the amount of debt that must be paid by the debtor, but rather is only a "temporary delay" to achieve a "new scheduling" of the debts that have been due. The period of PKPU is 45 (forty-five) days, and the extension, both temporary and permanent, shall not exceed 270 (two hundred and seventy) days, starting from the date of pututsan PKPU determined by the Court.

Restructuring on The Postponement of Debt Payment Obligation (PKPU) is intended as a restructuring of the payment of debtor's debts solely with the aim that the Debtor company can be healthy again. Restructuring is more a rescue than a corrective action. Restructuring is forced to avoid greater losses and keep receivables billable and completed.

The restructuring of debt for the debtor has the following reasons[10]:

- a. To get better efficiency and competitiveness improvement. The arrangement and improvement of the company's financial sector will be achieved if the company is in a healthy, efficient, and strong condition.
- b. With the restructuring of the debt, the company will be able to have more alternative payment options, namely through negotiations with creditors and through a sufficient argument, so that an agreement is reached which is a win-win solution. The argument in question is that the debtor is able to show that the situation is really in a position of financial difficulty.

In saving non-performing loans, there are several patterns of debt settlement that can be applied before making a settlement through a legal institution, among others: rescheduling, reconditioning, and restructuring. In more detail, the restructuring pattern can be described as follows:

- a. *Rescheduling*
Change in credit terms that only concerns the payment schedule and/or term.

- b. *Reconditioning*
The terms herein mean a change in part or all of the terms of the credit agreement for changes in payment schedule, term, does not concern the addition of credit or without converting all or part of the credit into the company's equity[11].

The various ways of changing the terms are as follows[12]:

- 1) Interest capitalization;

- 2) Delay of interest payment until a certain time, that only interest can be delayed while the principal of the loan remains to be paid;
 - 3) Lower interest rates;
 - 4) Interest exemption. In the release of interest rates customers still have an obligation to pay the principal of the loan until it is paid off.
- c. Restructuring
The reorganization of credit requirements includes:
- 1) Addition of bank funds; and/or
 - 2) Conversion of all or part of interest arrears into new principal; and/or
 - 3) Rescheduling and/or rescheduling to inclusion in the company.

In addition to the above patterns of debt restructuring, the business world is also known for several other types of corporate debt restructuring, namely[13]:

- a. Debt Buy Back
Buyback is one way to reduce debt risk by buying back the debt. Some disagree with this scheme, debt reduction only benefits creditors. Because, buybacks only reflect pseudo-payment capabilities and speed up creditor acceptance.
- b. Hair Cut
Deduction for interest and debt payments.
- c. *Reschedulling*
Is an attempt to extend the period of repayment or rescheduling of debtor debt on the part of creditors.
- d. *Debt To Equity Swap*
Reclassifying the debtor's bill into inclusion.
- e. *Debt To Asset Swap*
Is a transfer of assets owned to pay off his obligations to the parties who loaned.

In choosing and determining the appropriate model in conducting debt restructuring, it depends very much on the interests or objectives of both parties, namely debtors and creditors. If the debtor company no longer has a profitable business prospect in the future then the owner or manager of the debtor company may decide not to restructure its debt because it has no economic value / benefit or even just a waste. Similarly, creditors will see the restructuring of debtor debt as less economical if the debtor's prospects are not profitable. In other words, there are factors that affect both the debtor and the creditor choosing and determining the debt restructuring model that suits his interests.

However, the debt restructuring facility through PKPU contained in the Indonesian Bankruptcy Law is not as much owned by Singapore Bankruptcy Law or other Common Law countries so there needs to be improvement or revision of how the mechanism of debt restructuring through PKPU can provide legal certainty for all parties. There are weaknesses in the Bankruptcy Act where the Bankruptcy Law does not adequately regulate debt restructuring. There is no clear legal umbrella as to how companies are entitled to restructuring or how forms of restructuring can be traveled and other technical matters. Debt restructuring should be arranged

in more detail ranging from who initiated the restructuring plan, forms of debt restructuring, studies on the feasibility of restructuring to sanctions against violations committed in the framework of corporate restructuring such as a mark up of the value or assets of the company. it is strictly stated that before applying for a statement of bankruptcy against the debtor, a restructuring effort must be made to the debtor's debts. Bankruptcy applications filed against debtors who have not undergoes restructuring efforts, must be rejected by the Commercial Court.

4. CONCLUSION

The increase in PKPU cases that went to the Commercial Court during the current Covid-19 pandemic shows that it has caused global socioeconomic disruptions, thus, there is a disruption of business activities that will decrease performance, termination of employment, and even many businesses that are in bankruptcy and currently the choice of resolving debt default cases through the mechanism of PKPU (debt restructuring through the Commercial Court) is felt more effective than bankruptcy proceedings. through civil lawsuits in the District Court. Through the PKPU mechanism, there may be opportunities for debt restructuring for debtors, the debtor's business will still operate, thus avoiding termination of employment for workers and protecting stakeholders. The opportunity for the debtor to delay the obligation to pay his debts, it is possible for the debtor to continue his business, assets and wealth will still be maintained by the debtor so that it can provide a guarantee for the repayment of debts to all creditors, and also give the opportunity to the debtor to restructure his debts, while for creditors, pkpu that has been given to the debtor is also intended for creditors to obtain certainty the bill, the receivables will be repaid by the debtor. However, there are still many weaknesses in the Indonesian Bankruptcy Law, especially those governing the mechanism of debt restructuring in the PKPU that can guarantee protection and legal certainty for all parties.

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