Cancellation Cancellation of Peace in Insolvency Cases of KSPPS BMT CSI Syariah Sejahtera

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Abstract. Homologation is ratification by a judge of a peace agreement between the debtor and the creditor to end bankruptcy. Peace (*akkoord*) in this stage is the most important PKPU stage, because in the peace plan the debtor will offer peace to the creditor. The bankruptcy decision reviewed in this research is the Verdict Number: 40/Pdt.Sus Pembatalan Perdamaian/2022/PN.Niaga.Jkt. Pst. Jo. Number 35/Pdt.Sus-PKPU/2017/PN.Niaga.Jkt. Pst. regarding the request for annulment of homologation between the party of prosecutors and KSPPS BMT CSI SYARI'AH SEJAHTERA, by discussing the judge's legal considerations and its legal consequences. Based on this, the type of research used is normative juridical with a case approach. The research specifications are analytical descriptive. The data used is secondary data taken by way of literature study and documentation study. The data is analyzed qualitatively. The results of the study stated that the judge's decision was in accordance with the provisions in Article 170 paragraph (1) of UU No. 37 of 2004. A result for canceling a homologation is the debtor loses his rights to manage and control all assets included in the bankruptcy estate starting from the date of the verdict. However, in terms of determining bankruptcy for the cooperative body, it is necessary to consider the meeting of cooperative members with efforts to submit proposals from cooperative members in accordance with the provisions in UU No. 25 of 1992 concerning Cooperatives. Also, it is necessary for creditors and debtors to cooperate for their business.

Keywords: Bankruptcy, Cancellation of Peace, Cooperative, Homologation, PKPU

1. Introduction

Globalizations have an impact on various areas of life, including the economy. To be successful in the business they build, businesspeople must always plan ahead. Corporations use various strategies to develop their business so that they can compete and avoid rivals who are always moving forward. One option might be taking out a loan from a business or other legal organization. These funds are capital expenditures to increase the caliber and quantity of business entities to achieve certain goals. [1]

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The ability of a corporation to conduct business and fulfill all of its obligations will be greatly affected by losses and goals not being achieved which led to liquidity problems. Inability to pay taxes, debts to creditors, and salaries of staff and employees will all be affected by a company's poor financial situation.[2] Because of this inability, the company is now threatened with bankruptcy, so the Commercial Court ordered the company's assets to be liquidated at the request of its creditors.

To provide clarity, order, law enforcement, and legal protection, it is necessary to anticipate the problem situation. A rule of law based on justice and truth is expected to be able to support the growth and development of a just and productive economy, a democratic socio-political culture, as well as guarantee and support national development that can guarantee people's welfare. the community's economy and social welfare evenly in a multidimensional environment that is stable, balanced, harmonious, safe, and orderly. [3] [1]National legal products are expected to be able to guarantee and support the results of national development, as well as build and develop the national economy. [4] [1]

As a basis for regulating interactions between creditors and debtors in the business sector, Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Debt Payment (hereinafter referred to as the Bankruptcy Law and PKPU) was issued on October 18, 2004. Assets used as collateral are not used only to settle debts but also to act as security for all other commitments made under other agreements or legal obligations. For debtors who cannot pay but may be able to pay at a later date, postponing debt payment obligations is an alternative to avoid bankruptcy. Debtors with several creditors or creditors who are of the opinion that the debtor is unable to continue paying his obligations which are due, and collectible may submit a PKPU.

In other words, bankruptcy law does not only protect creditors from other creditors, but also protects creditors and debtors. The first purpose of bankruptcy law is to guarantee that all creditors receive a fair share of the proceeds from the sale of the debtor's assets. The second objective of bankruptcy law is to prevent debtors who are short on funds from harming the interests of their creditors. [5]

According to the Civil Code Article 1131, "All the assets of the debtor, both movable and immovable, both existing and those that will still exist in the future, serve as collateral for all his agreements." Article 1132 of the Civil Code further explains this situation, which states that "all of the debtor's assets are jointly pledged for the benefit of all creditors; the proceeds from the sale of all the debtor's assets are distributed according to the balance, that is, in proportion to the amount of the creditor's receivables, unless among the creditors there are legitimate legal considerations that take precedence.

KSPPS BMT CSI SYARI'AH PROSPEROUS head office is in Cirebon Regency, West Java. He has responsibility (as a debtor) in this matter based on the decision of the Commercial Court at the Central Jakarta District Court Number 35/Pdt.Sus-PKPU/2017/PN.Niaga.Jkt. Pst since he agreed to the Settlement Agreement that was confirmed in the decision. An agreement between a debtor and a creditor in

which the creditors' receivables are agreed to be paid in whole or in part is referred to as an author's settlement. If in such circumstances a peace agreement has been made, but for some reason the bankrupt debtor cannot carry it out, in accordance with the provisions of Article 170 paragraph 1 Law Number 37 of 2004, Following the cancellation of the peace by the commercial court at the request of one of the creditors, the bankruptcy procedure is restarted According to Article 171 of the Bankruptcy Law, the process for canceling this settlement is the same as the process for filing a bankruptcy case. The bankruptcy procedure is reopened and the provisions regarding the bankruptcy process with all its legal consequences apply once again, if the proposal to terminate the settlement is accepted and gives legal force.

In this case, the creditor submits a cancellation of the settlement because the debtor does not fulfill his obligations. It can be interpreted that not fulfilling obligations is a form of not being able to carry out the peace. The cancellation of the settlement was granted, but the facts in the trial stated that the debtor never attended the trial even though he had been summoned 3 (three) times. The decision of the Commercial Court also stated that due to the absence, the burden of the court fees was given to the Petitioners. This certainly creates an imbalance in the sense of justice for creditors who are trying to fight for their rights. Based on the statement above, Cancellation of Peace in Insolvency Cases Of KSPPS BMT CSI Syariah Sejahtera is a study regarding the problem of bankruptcy petitions made by creditors to debtors. The novelty of this research is the verdict of this cancellation of peace proposal observed on Verdict 40/ Pdt.Sus-Cancellation Peace /2022/ PN. Niaga. Jkt. Pst . Jo. Number 35/ Pdt.Sus -PKPU/2017/ PN.Niaga.Jkt.Pst where there are no other researchers do research on this verdict.

2. Problem

The problem in this research happened when the debtor failed to fulfill their obligations towards the creditors. Although there is a proposal of peace made by them, the debtor still did not walk their talk. So, it is a *wanprestatie* of their agreement. In the other hand, the judge's verdict did not do right for the creditors since it does not have justice for creditors. In that case, creditors should pay more for the case and the debtor still do not fulfill their obligations.

3. Method

Law studies own *sui generis* quality to differ from other studies, that cannot be similiar type than other studies [6] . This research method is doctrinal legal research, sometimes called normative juridical research [7]. This inquiry is understood in terms of what is stated in laws and regulations (law in books) or laws as standards and rules that form the

basis of acceptable human behavior. Case study techniques and legislative approaches are used in this study.

Descriptive analysis parameters were used in this investigation. The purpose of descriptive analysis is to be able to convey information about research subjects by describing a continuous situation or scenario [8]. Documents that explain further and provide ideas regarding Cancellation of Peace in Insolvency Cases of KSPPS BMT CSI Syariah Sejahtera is the source of the data used in this study. Secondary data is used to explain primary data.

The authors used library research methods to obtain secondary data for their research. When conducting research, books, documents, laws and regulations, scientific papers, and other materials relating to the issue at hand are collected, read, browsed online, and tracked. These sources are then identified and examined as a cohesive whole. Research findings are presented as narrative texts, which are descriptions of claims that are methodically and progressively arranged from broad (deductive) to specific (inductive) topics, all with logical, convincing, and consistent considerations. To explain the data in a language format that is comprehensive and easy to understand, narrative data presentation is used. The presentation emphasizes qualitative information.

The legal information received is then subjected to qualitative normative analysis, which includes understanding and compiling legal information that has been collected, compiled and disclosed methodically with high quality using orderly, coherent and logical words. The next stage is to make an assessment. We used qualitative analysis techniques to thoroughly review all of the material we had collected from our additional investigations. In order to be able to explain the difficulties scientifically and not numerically, the qualitative research data are linked systematically from legal theory, legal postulates, and positive laws and regulations. Anticipation of Cancellation of Peace in Insolvency Cases of KSPPS BMT CSI Syariah Sejahtera can be studied and analyzed from the findings of this systematic research using qualitative normative analysis.

4. Discussion

4.1. Verdict Status Court Niaga 40/ Pdt.Sus-Cancellation Peace /2022/ PN. Niaga. Jkt. Pst . Jo. Number 35/ Pdt.Sus -PKPU/2017/ PN.Niaga.Jkt.Pst

a. Parties of the dispute:

	Petitioners/ Pleaders	Respondent
1	Suhaelih (Petitioner I)	KSPPS BMT CSI SYARI'AH SEJAHTERA (Cooperative Legal Entity headquartered in Cirebon Regency, West Java)
2	Kartija (Petitioner II)	
3	Muktar (Petitioner III)	
4	Nastiyo (Petitioner IV)	
5	Muhammad Harun (Petitioner V)	
6	Marjuki (Petitioner VI)	

7	Moh. Riza Faozi (Petitioner VII)
8	Rizki Adinda (Petitioner VIII)
9	Cecep Muharto (Petitioner IX)
10	Nur'aeni (Petitioner X)

b. Chronology

Respondent will undergo suspension of debt payment (PKPU) up to hearing end in an agreement of peace. KSSPS BMT CSI SYARIAH PROSPEROUS has sign Agreement Peace that by State Court of Central Jakarta No. 35/ Pdt. Sus -PKPU/ 2017/ PN. Niaga. Jkt.Pst validated (homologation) based on Decision Court Commerce.

Based on Agreement Homologated Peace, Respondent _ must obey conditions, including paying off remainder bill amounting to IDR 2,820,000,000, - (two billion eight hundred two twenty million rupiah), details:

	Creditor (Applicant)	Mark Bill
1	Petitioner I	Rp.800,000,000, -
2	Petitioner II	Rp.130,000,000, -
3	Petitioner III	Rp.300,000,000, -
4	Petitioner IV	Rp.700,000,000, -
5	Petitioner V	Rp. 125,000,000, -
6	Petitioner VI	Rp.65,000,000, -
7	Petitioner VII	Rp.50,000,000, -
8	Petitioner VIII	Rp.500,000,000, -
9	Petitioner IX	Rp.50,000,000, -
10	Petitioner X	Rp.100,000,000, -
	Total	Rp.2,820,000,000, -

However, the Respondent has never paid installments for the settlement of obligations to the Petitioners. On this basis, the Petitioners have the right to cancel the Settlement Agreement which in fact was neglected by the Respondent. Here the Respondent, according to the Petitioner, According to Article 170 paragraph (2) of the Bankruptcy Law, has the responsibility to provide evidence, and if it cannot prove that the settlement has been fulfilled, then the Respondent is deemed to have neglected reconciliation and by law must be declared bankrupt by the Court.

c. Indictment / Legal Action / Charge

1) Applicant requested that KSPPS BMT CSI Syariah Sejahtera be punished because negligent operate and violation agreement of peace dated on May 28, 2017;

2) Cancellation decision endorsement peace (homologation) based on Verdict no. 35/ Pdt. Sus -PKPU/2017/ PN. Niaga. Jkt. Pst dated on June 7, 2017;

3) Declaration of KSPPS BMT CSI Syariah Cooperatives as an insolvent cooperative; and

4) Punishing The Respondent to pay all court charges.

d. Consideration judge law

1) The case was resolved without the presence of The Respondent (*verstek*) even though he had been legally and legally summoned three times;

2) The meeting of members must declare bankruptcy in cooperative legal entities based on Article 33 letter h of Law 17 of 2012 concerning Cooperatives. However, the Members' Meeting did not meet any results; and

3) In accordance with the Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia Number 109/KM/SK/IV/2020 concerning Enforcement of the Handbook for Settlement of Bankruptcy Cases and Suspension of Obligations for Payment of Debt, "Application for Cancellation of Settlement Must Be Granted If There Are Facts or Circumstances That Merely Prove That Requirements for Cancellation of Settlement Has Been Fulfilled."

e. Judge 's verdict

1) Rejecting the applicant's attempt to withdraw the settlement because the defendant was summoned legally and was not supposed to appear in court; and

2) Ordered the Petitioners to pay court costs of Rp. 5,490,000.00 (five million four hundred and ninety thousand rupiah).

4.2. Analysis Judge's Decision

According to Subekti, agreement is something where some people or parties tie themselves. Based on author's understanding of this case, an agreement is a connection in result of making law bonding between two people or two parties, where one party has right to demand something from the other party and the other party is obligated to fulfill it. This definition raises a connection between second split known party in term of agreement According to different point of view, an agreement is a consensus between debtor and creditor about treasure wealth. Every agreement is stated to be made either because of the consensus or because of the law based on Article 1233 of KUH Perdata. These are the conditions listed in Article 1320 of KUH Perdata for an agreement to be valid: There is a valid reason, b) power to enter into an agreement, c), regarding a certain subject, and d) agreement from those who are bound.

The principles of consensualism, binding force, and freedom of contract are all found in classical contract law, along with the idea of balance. Another view of Badrulzaman is that the principles of freedom of contract, consensualism, trust, equality of law, and force majeure must be upheld, the principle of balance, the principle of legal

certainty, and the principle of decency.

The demands of charge expressed by the parties constitute an agreement. Such statements or intentions must be intended to produce the desired legal effect, namely, to convince the other party that the other party's actions were motivated by entering into an agreement. Articles 1332-1328 of the Indonesian Civil Code regulate this issue, among other things, stipulating that a legal act can be terminated even if the testament and statement cannot be separated:

a. bedreiging, dwang.

b. if there is a place to live; if there is fraud (bedrog);

c. if any of the following: or

d. If the situation involves abuse of circumstances.

All of the factors mentioned above are the result of defects on the part of the party filing the lawsuit. Because of the possibility that an agreement can be made in such circumstances and is still considered appropriate, an agreement that is flawed due to the will of the parties does not always result in losses for the parties. Therefore, wrongful legal actions are considered null and void, and those who are harmed can apply for annulment based on the principle of balance.

A peace proposal from the debtor in a suspension of obligations debt payment is one of agreement forms. In this case, the debtor failed to fulfill any demands from creditors, and it is a *wanprestatie*. So that the creditors have rights to cancel their peace proposal. Articles 1446–1456 of KUH Perdata regulate the annulment of engagements/ peace, and are briefly summarized as follows:

a. Cancellation of agreements made by those who do not have legal capacity, such as minors in guardianship or legally bound married women;

b. If the agreement violates law, public order, or decency; and

c. If the agreement has an element of coercion, error, or fraud.

Gustav Radbruch identified three factors—justice (*gerechtigkeit*), legal certainty (*rechtssicherheit*), and expediency (*zweckmassigkeit*)—which must be taken into account in order to achieve legal objectives. The decision on the case above has fulfilled the legal objectives of legal certainty with the existence of statutory regulations that regulate sanctions but has not been able to fulfill justice for the Petitioners.

The fact that the trial stated that the Respondent did not fulfill a legal and proper summons from the court, it is fitting for the judge to decide *verstek*. The existence of a Gathering Decision at least has legal consequences, because the Debtor (Respondent) is obliged to pay off his debts to the Creditor (Applicant), and the Creditor is entitled to

receive payment from the Debtor in accordance with the amount to be paid and the method of payment described in the Agreement. [9]

Subpoena will execute Debtors and Creditors. The parties will be ordered by the court to appear before him on the day and time specified. All parties, including debtors and creditors, must be present at the hearing after receiving a court summons. As proof that the Debtor and Creditor have been summoned, the bailiff must show the judge the minutes of the summons (relaas) after carrying it out. The validity of summons and court notifications has a significant impact on whether the trial examination process is good or bad. If the parties have received a valid summons, the debtor needs to be present at the hearing, especially the first trial. Because the Debtor is deemed to have not shown his seriousness with respect to the lawsuit filed, the Judge may decide to cancel the case if the Debtor is not present.[10]: 522–531.The debtor's actions result in default. The authors compare this with Article 170 paragraph (1) UUK-PKPU which regulates the conditions for submitting an application for cancellation of peace by requiring the debtor to explain the reasons for his negligence in carrying out the terms of peace. According to Article 170 Paragraph 1 UUK-PKPU:

> *"If the debtor does not comply with the agreed terms of settlement, the creditor may request that the settlement be cancelled."*

An act that violates Article 1233 of the Civil Code is considered a default. According to Article 1233 of the Civil Code:

> *"Every agreement arises either as a result of the agreement or as a result of the law."*

The existence of this default condition can be a sign that the debtor is struggling to meet the needs of creditors. Several legal doctrines extend the definition of a "stop-paying state"[11], as follows:

(a) The scenario of termination of payment is different from the situation where the debtor does not pay his obligations, even though they have become receivables, because the debtor does not pay his debts.

(b) Even if the debt is not collectible at that time, the debtor can be considered to be in a position to stop paying.

Based on the provisions of Article 170 paragraph (1) Law no. 37 of 2004, the Panel of Judges has determined that the Debtor does not fulfill the terms of the agreed Agreement. The element of carelessness in the provisions of Article 170 paragraph (1) of Law No. 37 of 2004 is fulfilled by default by the debtor. However, the judge has reasons for refusing to grant the request for annulment of the settlement, which is in line with Law Number 17 of 2012 concerning Cooperatives, which is generally considered to be a law, namely that the authority to decide on the bankruptcy of cooperatives is a meeting of members. There must be an effort to submit the Petitioners to propose the Member

Meeting.

Finally, the debtor loses his legal rights to manage and control his assets as a result of the decision to cancel the peace, according to the law. After the bankruptcy case is reopened and the debtor is declared bankrupt, the offer of repayment is no longer permitted, and the curator must immediately liquidate the bankrupt assets. Old creditors (those whose debts were recognized before the debtor was declared bankrupt) and new creditors (those whose debts were recognized after the debtor's bankruptcy declaration) are each entitled to a pro rata share of the remaining bankrupt assets after all amounts owed have been settled. minus some of the payments made by the debtor.

The requirements of Law Number 37 of 2004 which apply in terms of the revocation of the peace agreement have legal consequences for the debtor. According to the first paragraph, the debtor by law loses the ability to manage and control all assets included in the bankrupt assets from the date the bankruptcy decision is taken. The bankruptcy date is calculated starting at 00.00 local time. In other words, the Curator is now authorized to supervise and manage the assets of bankrupt persons.

The curator must be appointed as the defendant in any legal action arising from the rights and responsibilities for the bankrupt debtor's assets. If the bankrupt debtor is subject to sanctions because of lawsuits that have been filed or are still pending against him, the sanctions are not legally binding on property placed in bankrupt assets (boedel bankrupt), according to Article UUK and PKPU.

This is a debtor in the PKPU procedure, so that the Management has the authority to supervise and manage its assets. The Management Team is in charge of paying all bills. To safeguard the interests of the parties (debtors and creditors), PKPU is an option to stop a business from being declared bankrupt, especially based on the Bankruptcy Law No. 37 of 2004 which allows creditors to submit PKPU on behalf of the debtor , for the sake of safety them , creditors only can use bankruptcy as effort final If deliberate approach _ fail finish problem they with loan debtors who have due . Although must acknowledged that creditor also have interest other to debtor as partners effort, however introduction ability creditor For submit PKPU for the debtor Already become debtor order technique no broke.Teguh Handoko, Analysis of Peace Agreement After Homologation of Postponement of Debt Payment Obligations [12] [13]

5. Conclusion

Based on discussion and analysis of Cancellation Of Peace In Insolvency Cases Of KSPPS BMT CSI SYARIAH SEJAHTERA, it can be conclude as following: The author determines that the debtor has violated the terms of the peace agreement after analyzing the Court Decision Number: 40/Pdt.Sus-Cancellation of Peace/2022/PN.Niaga.Jkt.Pst. Jo. Number 35/Pdt.Sus-PKPU/2017/PN.Niaga.Jkt. Pst. (homologation) that has been agreed with the creditor. The result for this cancellation is the debtor loses its rights on their

properties. However, the creditor must still consider the common interests of the debtor as a business partner so that they are not declared bankrupt due to a transfer of authority to the Curator (in PKPU).

Based on the conclusion findings above in Cancellation of Peace In Insolvency Cases Of KSPPS BMT CSI SYARIAH SEJAHTERA, then can be advised as following: For enforcer law to enforce action firm for default debtor from calling and grant impartial decision on creditor and for creditors to join help step procedure enforcement law order rights creditor on debtor can enforced in a manner effective.

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