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Postponement of Debt Payment Obligations of Separate Creditors Related to the Entry of New Investors that Override the Validity of the Creditors' Meeting (Case Study of Judgment of Reconsideration Number 6 PK/PDT.SUS-PAILIT/2015)

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ABSTRACT: This study aims to analyze how the PKPU settlement of Separate Creditors by the Judge related to the waiver of the validity of the Creditors' Meeting due to the entry of new investors in the case of Judicial Review decision number 6 PK/PDT.SUS-PAILIT/2015 and how legal protection for Separate Creditors related to the issue of new investors in the PKPU process that provides justice and legal certainty. The approach method in this research is *normative juridical.* The research specifications used are descriptive analytical. The data source consists of secondary data which is divided into primary and secondary legal materials. Data collection used is literature, documentary. Based on the approach, it can be concluded that the actions of the Judge in extending the peace plan should follow the quorum and voting procedures in accordance with 281 paragraph (1) b Jo 285 of the Bankruptcy and PKPU Law should not be able to extend the peace plan, where Justice and Legal Protection for separatist creditors are not realized when the extension of the peace plan is carried out because the right of execution cannot be exercised in accordance with Article 55 paragraph (1) of the Bankruptcy and PKPU Law.

KEYWORDS: validity of creditors' meeting, legal protection, secessionist creditors, postponement of debt payment obligations.

I. INTRODUCTION

Economic and trade growth encourages companies to grow, and for that, capital is essential. Often, companies face the challenge of limited capital. This capital requirement can be in the form of assets or cash, which can come from within the company or loans from external parties.

When internal capital is insufficient, companies rely heavily on loans from third parties. Banks are one of the main credit providers, especially for large loans. Lending by banks is one of the important functions that support economic growth and help the debtor's business run smoothly.[1]

This loan is obtained through a debt or borrowing agreement between the company (debtor) and the lender (creditor). Sources of loans can vary, ranging from banks, non-bank institutions, to individual loans. The funds obtained through this credit are then used by the debtor to run and develop their business.

In modern economic activity, taking on debt-both in the form of short- and long-term loans-has become so commonplace that it is hard to find an individual or company that has never taken one. For centuries, banks have been providing debt or credit to customers, and this is inseparable from the business world.

Lending by banks is actually a form of trust. When a person or company receives credit from a bank, it shows that they are trusted. According to **Article 1 number 2 of Law Number 10 of 1998 concerning Banking**, credit is defined as: "Credit is the provision of money or bills that can be equated with it, based on an agreement or loan and borrowing agreement between the Bank and another party which requires the borrower to repay the debt after a certain period of time with interest".[2]

Given the crucial role of credit funds, it is important to ensure that all parties involved-both credit grantors and recipients, as well as other related parties-get legal protection through a strong security rights institution, which is also able to provide legal certainty. Therefore, there is a need for a legal framework for collateral that can regulate the juridical construction, allowing the granting of credit facilities using the object to be purchased as collateral. Such a regulation should be able to convince and provide legal certainty for institutions providing credit, both at home and abroad.

[1] Kasmir, 2014, *Dasar-Dasar Perbankan* (Edisi Revisi). Jakarta: RajaGrafindo Persada.

[2] *Indonesia, Undang-Undang Nomor 7 Tahun 1992 Tentang Perbankan*

In practice, banks as creditors always ask debtors to submit collateral based on previously agreed terms. This guarantee will be used by the bank to ensure the repayment of the debtor's debt in the event of a default. Collateral itself is a guarantee that the debtor submits to the bank as part of the credit facility, and is an important element of assessment by the bank before approving the loan.

For banks, land is often considered to be the most secure collateral that is commensurate with the amount of credit granted. Land is seen as a relatively safe collateral object, provided there are no legal issues related to its ownership. In addition, land is also very profitable for banks because it has a high resale value and tends to increase over time, without experiencing a significant decline in value.

Based on Law Number 4 of 1996, Article 1 Paragraph 1 concerning Mortgage Rights on Land and Objects Related to Land, what is meant by Mortgage Rights is: "Mortgage Rights on land and objects related to the land, hereinafter referred to as Mortgage Rights, are security rights imposed on land rights as referred to in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, including or excluding other objects that are an integral part of the land, for the repayment of certain debts, which give priority to certain creditors against other creditors".[3]

From the quotation of the article above, the general explanation that can be concluded is that Hak Tanggungan is a security right over land for the repayment of certain debts, which gives the main position to the creditor. Which means that if the debtor breaks his promise, the creditor holding the Mortgage Rights has the right to sell through a public auction the land used as collateral according to the provisions of the relevant laws and regulations, with the right to precede other creditors.

However, in reality, credit funds used for business often do not generate profits. As a result, debtors can suffer severe financial losses to the point where they are no longer able to repay their debts. This insolvent situation, where the debtor is unable to pay, can lead to the threat of bankruptcy.

The inability of companies to fulfill these financial obligations often triggers various lawsuits. Many defaulting debtors end up being sued, or even filed for Postponement of Debt Payment Obligations (PKPU), or declared bankrupt by the Commercial Court at the request of creditors.

PKPU, which is regulated in Chapter I of Law Number 37 Year 2004 on Bankruptcy and PKPU, is a legal procedure that allows debtors and creditors to apply for a postponement of debt payments. The aim is to propose a peace plan that includes an offer of repayment of all or part of the debt to creditors, especially for debts that are due and collectible. Both PKPU and bankruptcy are legal solutions for companies facing financial or debt problems, with applications submitted to the Commercial Court.

In the realm of civil law, there are three categories of creditors: concurrent, preferred, and separatist. This categorization is based on the nature of the debt or the type of security held. Although the Civil Code and works such as Subekti's book on Principles of Civil Law do not explicitly mention these terms, these types of creditors are commonly found in literature discussing property law and security law.

In general, concurrent creditors are those who do not have property security rights. Meanwhile, preferred creditors take precedence due to the privileged nature of their debts. Finally, separatist creditors are creditors who hold property security rights. In Indonesia, currently recognized property security rights include pawn, mortgage, fiduciary, warehouse receipt, and mortgage.

Regulations regarding various types of creditors are regulated in Book II of the Civil Code, precisely in Chapter Eleven which discusses Privileged Debts. Article 1131 of the Civil Code generally stipulates that all assets of the debtor are legally collateral for his debts.

Furthermore, Article 1132 of the Civil Code begins to detail the types of security, stating that the debtor's assets will become collateral for general (concurrent) creditors who collectively have claims on the debtor's assets. The proceeds from the sale of the debtor's assets will be distributed proportionally to the general creditors, unless there are valid reasons to prioritize payment to certain creditors. Then, Article 1133 of the Civil Code explains that the right to precedence for a creditor can arise from the existence of privileges, liens, and mortgages.

Privilege in Civil Law Article 1134 of the Civil Code regulates privilege, defining it as a right granted by law to a creditor, placing him at a higher level than other creditors, solely because of the nature of his debt.

According to Subekti, the position of liens and mortgages is actually stronger than privileges, unless the law determines otherwise. This privilege is not a property right, because it does not give direct power over an object. This right only arises when there is a confiscation of the debtor's assets and the debtor's wealth is not sufficient to pay off all his debts. In other words, this privilege is generally relevant when the debtor is declared bankrupt. The privilege granted by this law allows collection based on the nature of the debt.[4]

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[3] Indonesia, Undang-Undang Nomor 4 Tahun 1996 ketentuan Pasal 1 Ayat 1 tentang Hak Tanggungan Atas Tanah Beserta Benda-Benda Yang Berkaitan Dengan Tanah.

[4] Subekti, 2001. Pokok-Pokok Hukum Perdata. Jakarta: Intermasa.

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Postponement of Debt Payment Obligation (PKPU) is a legal mechanism available to debtors to avoid bankruptcy. Based on Article 222 paragraph (2) of Law Number 37 Year 2004 on Bankruptcy and Postponement of Debt Payment Obligations (KPKPU Law), a debtor who feels unable or estimates that he will not be able to pay off his debts that are due and collectible, is entitled to submit a PKPU application. The main purpose of filing for PKPU is to give the debtor the opportunity to compile and submit a peace plan to its creditors-both preferred creditors and concurrent creditors-which contains an offer to pay part or all of the debt.

If a bankruptcy petition and a PKPU petition are filed and examined simultaneously, the PKPU petition must be decided first. If the PKPU petition is filed after the bankruptcy petition, it must be submitted at the first hearing of the bankruptcy petition examination. It is important to note that during the PKPU process, the debtor cannot be filed for bankruptcy. [5]

PKPU can be filed by a debtor who has more than one creditor, or even by one of the creditors itself. The application for PKPU must be submitted to the Commercial Court, signed by the applicant and also by his/her advocate. Further procedures regarding PKPU applications are regulated in Article 224 of the KPKPU Law, as follows:

"The application for postponement of debt payment obligations as referred to in Article 222 shall be submitted to the Court as referred to in Article 3, signed by the applicant and by his advocate.

In the event that the applicant is a Debtor, the application for postponement of debt payment obligations must be accompanied by a list containing the nature, amount of receivables, and debts of the Debtor along with sufficient evidence.

In the event that the applicant is a Creditor, the Court shall summon the Debtor through a bailiff by registered express mail at least 7 (seven) days before the hearing.

At the hearing as referred to in paragraph (3), the Debtor submits a list containing the nature, amount of receivables, and debts of the Debtor along with sufficient evidence and, if any, a peace plan.

The application letter as referred to in paragraph (2) may attach the peace plan as referred to in Article 222.

The provisions as referred to in Article 6 paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5) shall apply mutatis mutandis as procedures for filing an application for postponement of debt payment obligations as referred to in paragraph (1)".

In Decision Number 6 PK/Pdt.Sus-Bankruptcy/2015 special civil case objecting to the ratification of peace in PKPU at the review examination in the case between BANGKOK BANK PUBLIC COMPANY LIMITED JAKARTA BRANCH as the Review Petitioner formerly Cassation Petitioner I / Separate Creditor / PKPU Petitioner against PT SARIPARI PERTIWI ABADI as Reconsideration Respondent formerly Cassation Respondent/Debtor in PKPU/ PKPU Applicant has decided as follows that rejecting the request for reconsideration from the Reconsideration Applicant BANGKOK BANK PUBLIC COMPANY LIMITED JAKARTA BRANCH. That previously from these letters it was found that the Supervisory Judge had given a report before the trial of the Commercial Court at the Central Jakarta District Court dated November 4, 2013 and CIMB Niaga's attorney had also submitted a letter dated November 4, 2013 Number 379/CIMB.110/ DMP.K/XI/13 regarding the request for an appraisal of the value of all collateral objects pledged by PT Saripari Pertiwi Abadi (in PKPU) & that the collateral objects be excluded from the Peace Proposal. That upon CIMB Niaga's request, the Debtor agreed to the request, until in the voting process CIMB Niaga was not included.

At the time of the examination, the Bangkok Bank Separate Creditors did not have their proxies present and those present were not equipped with power of attorney / letter of assignment so they could not participate in the voting process. The Bangkok Bank Separate Creditors at the trial stated that they objected to the change of votes made by three Separate Creditors and two Concurrent Creditors who initially did not approve the voting results on the peace proposal but subsequently by three Separate Creditors and two Concurrent Creditors changed to approve the voting results on the peace proposal.[6]

Starting from the foregoing, the author formulates the problem, namely how is the PKPU settlement of Separate Creditors by the Judge regarding the validity of the Creditors' Meeting related to the issue of new investors in the case of Judicial Review decision number 6 PK/PDT.SUS-PAILIT/2015? And How is legal protection for Separate Creditors related to the entry of new investors in the PKPU process that provides justice and legal certainty? With the objectives of this study, namely to analyze and understand the PKPU settlement of Separate Creditors by the Judge regarding the validity of the Creditors' Meeting related to the entry of new investors in the case of Judicial Review decision number 6 PK/PDT.SUS-PAILIT/2015 and to identify and examine the form of legal protection for Separate Creditors related to the entry of new investors in the PKPU process that provides justice and legal certainty.[7]

[5] Sutan Remy Sjahdeini, 2010, *Hukum Kepailitan*. Jakarta: RajaGrafindo Persada.
[6] Zulkifli, M, 2016, *Hukum Kepailitan: Prinsip, Norma, dan Praktik di Indonesia*. Yogyakarta: UII Press.
[7] Pratama, A. Y, 2020, Perlindungan Hukum Kreditor Separatis dalam Proses PKPU terhadap Masuknya Investor Baru. *Jurnal Hukum dan Pembangunan, Volume 50 Nomor 2, hlm 6*

II. RESEARCH METHODS

The method that researchers use is Normative Juridical. Then in a legal research there are only a number of approaches, where through this approach the researcher can obtain information from various issues used in an effort to find answers. The approaches that can be used for legal research include the *statutory* approach, *historical* approach, *case* approach, *conceptual* approach, and *comparative* approach.[18] Researchers here will use a *statutory* approach or statutory approach, which is carried out by examining all regulations and legislation related to the legal content discussed. Then this approach will also provide an opportunity for researchers to see whether there is consistency and harmony between explaining the Basic Law and regulations related to the law. So that the results of what has been done will provide arguments in resolving existing issues. Then what is used in this approach is Law No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations.

The research used in this work is descriptive analytical, which describes the current legislation related to legal theory and positive legal practice in relation to the existing problems. The approach used in this research is a normative legal approach, so the main material of this research is secondary data. Secondary data is information obtained during library research and recording of legal materials related to the writing of this thesis. This secondary information can be divided into secondary legal materials, primary law, and tertiary law.

III. DISCUSSION AND RESULT

A. *Settlement of PKPU on Separate Creditors by Judges related to the validity of the Meeting of Creditors and the entry of new investors in the case of Judicial Review decision number 6 PK/PDT.SUS-PAILIT/2015*

Azriadi, Mairu, argues that[9] "Children are creatures of God Almighty and therefore, have human rights or basic rights from birth, namely the guarantee to grow and develop fully both physically, mentally and socially. It is important to make efforts to protect and realize the welfare of children, which guarantees the fulfillment of their rights and discriminatory treatment so that no human being or other party can deprive them of these rights".

1. Case Position

The following is a summary of the case of PT Saripari Pertiwi Abadi in the postponement of debt payment obligations (PKPU) process. PT Saripari Pertiwi Abadi, domiciled in Jakarta, filed for PKPU with the aim of obtaining legal protection against creditors. The PKPU process began with a creditors' meeting on July 19, 2013 to discuss the peace plan proposed by the debtor. On September 4, 2013 a vote was held for the extension of PKPU, where the majority of the secessionist creditors approved the extension with additional time requirements.

Separatist creditors consist of five creditors who voted to grant additional time of 45-60 days based on the presentation of their votes. On the other hand, concurrent creditors, totaling 68 creditors, cast their votes regarding the peace plan on November 4, 2013. The result showed that the majority supported the peace plan, although there were some creditors who disagreed. On November 26, 2013, after revisions, most of the secured and concurrent creditors supported the peace plan.

However, in October 2013, the lead investor, Ocean Investments Pte., Ltd. officially withdrew as a potential investor. In 2015, PT Bangkok Bank's attempt to seek judicial review of the verdict was granted, but the Supreme Court rejected it, upholding its earlier decision in favor of the peace plan. This ruling confirmed that the peace plan was valid and enforceable, although some creditors disagreed.

2. Discussion

Business actors in supporting and maintaining the continuity of their business activities in the business world require basic needs, namely funds that must be met, in overcoming this problem, business actors find a solution, namely by taking a capital loan in the form of debt and credit. The funds or capital needed by business actors to run their businesses are obtained from debt facilities (loans or credits) obtained through individuals and financial institutions. In the activities of borrowing money with credit that occurs in the business world, it is generally often required to submit debt collateral by the borrower to the lender. Debt collateral can be in the form of goods (objects) so that it is a material guarantee and or in the form of a debt guarantee promise so that it is a personal guarantee. A material security gives the holder of the security a property right. Material debt collateral in principle has priority rights, namely getting first priority over the proceeds of the execution of collateral goods for debt payment first before other debts. The holder of a property guarantee has the right to obtain repayment directly from the property. Although at first the debt payments went smoothly, in the future problems often arise where at the predetermined time or maturity the debtor cannot return the loan to the creditor or does not have the will to return the loan, either the principal interest that has been determined to one or several

[8] Peter Mahmud Marzuki, 2010, "*Penelitian Hukum*", Jakarta, Pranda Media, Hlm 11

[9] Azriadi, Mairul, 2019, *Peran Pembimbing Kemasyarakatan dan Pekerja Sosial Profesional Dalam Upaya Diversi Terhadap Anak di Bukittinggi, Fairness and Justice*: Jurnal Ilmiah Ilmu Hukum, Volume 17 Nomor II Bulan November, hlm.2.

creditors, where this is detrimental to the creditors who have given debt to the debtor. If this happens, it will lead to a debt and credit dispute between the debtor and the creditor or creditors.

Debt and credit disputes can be resolved by way of a civil lawsuit or by way of bankruptcy. According to the provisions of Article 2 Paragraph 1 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. If within a predetermined time limit the debtor cannot pay off two or more of his debts and has at least one debt that has matured, the debtor can be declared bankrupt. Meanwhile, Article 1 Paragraph 1 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. Bankruptcy is a general confiscation of all assets of a bankrupt debtor whose management and management is carried out by a curator under the supervision of a supervisory judge as regulated in this law. From this, problems arise that creditors in bankruptcy often have to face in order to obtain repayment of their debts against debtors who have been declared bankrupt, due to the bad faith of the debtor to transfer his assets or all efforts by the bankrupt debtor to hinder the management and administration of bankruptcy assets (budel bankrupt) by the curator. This is very detrimental to creditors to get the repayment of their debts. In bankruptcy, not all creditors have the same position. The difference in creditors is solely determined by the type or nature of their respective receivables.[10]

Creditors who have the highest right to recover their debts are known as Separate Creditors. What is meant by a separatist creditor in accordance with Article 55 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations is a creditor who has a material debt guarantee (security right), such as holders of Mortgage, Mortgage, pawn, Fiduciary Guarantee and others. It is said to be separatist which connotes "separation" because the position of the Creditor is indeed separated from other Creditors, in the sense that the Creditor can sell itself and take its own from the proceeds of the sale, which is separate from the general bankruptcy property. In this case PT Saripari Pertiwi Abadi, a limited liability company born under the laws of the Republic of Indonesia, domiciled at Wisma BSG Lt 9 Jalan Abdul Muis No. 40 Jakarta 10160, filed an application for postponement of debt payment obligations (PKPU) through the Central Jakarta Commercial Court.[11]

that in the Report of the Supervisory Judge in the Suspension of Fixed Debt Payment Obligations, the following matters have been presented:

a. On July 19, 2013 at 09.00 WIB a meeting of creditors was held with the agenda of the presentation of the peace plan;
b. July 22, 2013, August 15, 2013, August 26, 2013;
c. At these meetings, it was conveyed by the Debtor that there were investors who had intended to PT Sari Pari Pertiwi Abadi and would conduct Due Diligence, therefore the Debtor requested an extension of time in PKPU for 60 days;
d. On September 04, 2013 a vote for the extension of the PKPU was held with the following results:

Separate Creditors

a. The number of Separate Creditors registered in the temporary List of Creditors of PT Saripari Pertiwi Abadi (Under PKPU) is 5 Creditors;
b. The number of Separate Creditors with voting rights who attended the voting was 5 Creditors with a total of 44705 (votes) with a percentage of 100%;
c. The number of Separate Creditors with voting rights present and approving the extension in PKPU remains 3 Creditors with a presentation of 60% with a total number of votes of 13463 with a percentage of 30% agreeing with the note:
    1) Bank DBS Indonesia, to grant a 45-day extension;
    2) Rabobank to grant a 30-day extension;
    3) Bangkok bank to grant an extension of 40 days;
d. The number of Separate Creditors with voting rights who attended and did not approve the extension in the PKPU remained 2 Creditors with a presentation of 40% with a total number of votes of 31242 with a percentage of 70%.

Concurrent **Creditors**

a. The number of Concurrent Creditors with voting rights who attended the voting was 68 Creditors with a total of 10709 votes with a percentage of 100%.
b. The number of Concurrent Creditors with voting rights who attended and approved the Extension in the permanent PKPU was 67 Creditors with a presentation of 99% with a total of 8584 votes with a percentage of 80%.
c. The number of Concurrent Creditors with voting rights who attended and did not approve the Extension in PKPU was 1 Creditor with a percentage of 1% with a total of 2125 votes with a percentage of 20%.

[10] Rado Fridsel Leonardus dan Novitasari, 2020, Kedudukan hukum kreditur yang tidak terverifikasi dalam undang-undang kepailitan. Jurnal Tera (Tata Hukum dan Peradilan), Vol 6 No 3

[11] Judistira Yusticia, Joni Emirzon dan Iza Rumesten RS, 2020, Limitasi hak kreditor separatis atas pelunasan piutang setelah lampau waktu penjualan jaminan kebendaan dalam proses penyelesaian kepailitan di Pengadilan Niaga. Lexlata, Volume 2 Nomor 1

That based on the voting results, it is actually not allowed for the extension of the Second Permanent PKPU, because the number of votes of the seperatis creditors is less than 50%, but the Supervisory Judge considers that because there is progress from the debtor and there is one investor who has approached the separatist creditors so that it is hoped that the acquisition efforts of the investor can make payments to the creditors. Therefore, the Supervisory Judge recommends that the bankruptcy be extended for 60 (sixty) days, however, we leave the decision to the Panel of Judges.

The provisions regarding the Postponement of Debt Payment Obligations (PKPU) are regulated in CHAPTER III Article 222 to Article 294 of Law Number 37 Year 2004 concerning Bankruptcy and Postponement of Debt Obligations and Payments. These provisions explain that the existence of PKPU is an offer of debt payment for debtors to creditors, whether paid in part or in full, to resolve bankruptcy disputes. Therefore, the purpose of PKPU is different from the purpose of bankruptcy.

According to Kartini Mulyadi, the definition of PKPU is the provision of opportunities for debtors to restructure their debts, which include payment of all debts or some of their debts to sparatis creditors and concurrent creditors. If this can be done well, then in the end the debtor can continue his business. Fred B.G. Tumbuan argues that PKPU is not a situation where the debtor is unable to pay his debts or is insolvent. PKPU is an economic juridical vehicle provided for debtors to resolve financial difficulties in order to continue their lives.[12]

Meanwhile, based on Article 281 (1) of Law Number 37 of 2004:

a. The peace plan is acceptable based on:
    1) approval of more than 1/2 (one-half) of the total number of concurrent creditors whose rights are recognized or temporarily recognized present at the Creditors' meeting as referred to in Article 268 including the Creditors as referred to in Article 280, which together represent at least 2/3 (two-thirds) of the total recognized or temporarily recognized claims of the concurrent creditors or their proxies present at the meeting; and
    2) approval of more than 1/2 (one-half) of the total number of Creditors whose receivables are secured by pledge, fiduciary guarantee, mortgage, or other property collateral rights present and representing at least 2/3 (two-thirds) of the total receivables of such Creditors or their proxies present at the meeting.
b. Creditors as referred to in paragraph (1) letter b who do not approve the peace plan shall be compensated at the lowest value between the value of collateral or the actual value of loans directly secured by collateral rights over property.
c. The provisions as referred to in Article 152 and Article 153 shall also apply in the voting to accept the peace plan as referred to in paragraph (1).

The most important thing in temporary PKPU after the granting of temporary PKPU is the immediate occurrence of a state of stay or standstill. A standstill in temporary PKPU is a situation in which the debtor makes an agreement with creditors about a peace plan effectively. This is in accordance with Article 225 paragraph (2) and paragraph (3) of Law Number 37 Year 2004 which states that the time limit for granting a request for temporary PKPU by the Commercial Court is 3 days after the application is registered by the debtor and 20 days if submitted by the creditor. Therefore, if the debtor has fulfilled the conditions listed in Article 222 to Article 224 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, the court must automatically grant or grant temporary PKPU before giving a permanent PKPU decision after an examination. The temporary suspension of debt payment obligations (PKPU) decision is effective from the date the decision is pronounced and lasts until the date of the hearing planned by the court. Temporary PKPU ends if :

1) Creditors do not agree to the granting of permanent PKPU, or
2) When the time limit for the extension of the PKPU expired, it turned out that the debtors and creditors had not reached an agreement on the proposed peace plan.

That based on the case of PT Saripari Pertiwi Abadi, the voting results are actually not allowed for the extension of Permanent PKPU II, because the number of votes of the seperatis creditors is less than 50%. If connected with Article 285 as follows:

a. The court shall give a decision on the validation of the settlement along with its reasons at the hearing as referred to in Article 284 paragraph (3).
b. The court shall refuse to validate the settlement, if:
    1) the Debtor's property, including the property for which the right to retain property was exercised, is much larger than the amount agreed in the settlement;
    2) the implementation of the peace is not sufficiently secured;
    3) the settlement was achieved by fraud, or conspiracy with one or more Creditors, or by the use of other dishonest means and regardless of whether the Debtor or any other party cooperated in achieving this; and/or

[12] Mulyadi, K, 2023, Pengantar Penundaan Kewajiban Pembayaran Utang (PKPU): Teori, Praktik, dan Kasus-Kasus Nyata. Jakarta: Salemba Empat.

4) compensation for services and expenses incurred by experts and administrators have not been paid or no guarantee has been given for their payment.

c. If the Court refuses to ratify the settlement then in the same decision the Court shall declare the Debtor Bankrupt and such decision shall be published in the State Gazette of the Republic of Indonesia and at least 2 (two) daily newspapers as referred to in Article 226 with a period of no later than 5 (five) days after the decision is received by the Supervisory Judge and the Curator.

The provisions as referred to in Article 11, Article 12, and Article 13 shall apply mutatis mutandis to the ratification of peace, but shall not apply to the rejection of peace.

B. Legal Protection for Separate Creditors related to the entry of investors in the PKPU Process Related to the Entry of New Investors that Provide Justice and Legal Certainty

1. Legal Protection for Separate Creditors related to the entry of investors in the PKPU Process

Legal protection is to provide protection to human rights that are harmed by others and this protection is given to the community so that they can enjoy all the rights provided by law or in other words, legal protection is a variety of legal efforts that must be provided by law enforcement officials to provide a sense of security, both in mind and physically from interference and various threats from any party.[13]

Legal protection is the protection of dignity, as well as recognition of human rights owned by legal subjects based on legal provisions from arbitrariness or as a collection of rules or rules that will be able to protect one thing from another. In relation to consumers, this means that the law provides protection for the rights of customers from something that results in the non-fulfillment of these rights.

Legal protection is a narrowing of the meaning of protection, in this case only protection by law. Protection provided by law is also related to the existence of rights and obligations, in this case owned by humans as legal subjects in their interactions with fellow humans and their environment. As a legal subject, humans have the rights and obligations to carry out a legal action.[14]

Legal protection, according to Setiono, is an effort made to protect the community from arbitrary actions taken by the authorities that are not in accordance with applicable legal provisions. The purpose of this protection is to create order and tranquility in society, so that every individual can live properly and enjoy their dignity as human beings.[15]

According to Muchsin, legal protection is an effort made to maintain and protect individuals through adjustments between values or norms that are reflected in human attitudes and actions, with the aim of creating order in social life and human relations.[16]

Based on Article 1 point 6 of Law Number 13/2006 on Witness and Victim Protection, protection is defined as all forms of efforts to fulfill the rights and provide assistance to ensure a sense of security for Witnesses and/or Victims, the implementation of which is the responsibility of the Witness and Victim Protection Agency (LPSK) or other authorized institutions in accordance with the provisions in the law.

Justice is the result of right thinking, fair and honest actions, and full accountability for every action. The enforcement of justice and law must be based on **Positive Law** to match the reality of a society that craves security and peace. It is important to ensure that justice is served based on the **ideals of law (Rechtidee)** in a **state of law (Rechtsstaat),** not through power alone (**Machtsstaat**). At its core, the law aims to protect human interests, and its enforcement must consider four crucial elements:

a. Legal certainty (Rechtssicherkeit)
b. Benefit of law (Zeweckmassigkeit)
c. Legal justice (Gerechtigkeit)
d. Legal guarantee (Doelmatigkeit).[17]

Law enforcement and justice must be based on proper thinking, supported by tools and evidence to achieve substantive justice, and driven by ethical beliefs about the justice of a case. Legal problems can be resolved if law enforcement officers carry out their duties properly and comply with applicable rules, so that deviations from the law and rules can be avoided. Thus, the systematic use of legal codification and unification is very important to realize legal certainty and justice.[18]

The law serves to protect human interests, and for this reason, its implementation must be professional in order to maintain order, peace and normality. When the law is violated, law enforcement must be carried out to ensure legal certainty. This legal certainty is important because it protects the public from arbitrary actions and creates order, security, and peace that is the hope of the public.

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[13] Satjipto Raharjo, 2000, Ilmu Hukum, PT. Citra Aditya Bakti, Cet-IV, Bandung, hlm 53
[14] C.S.T. Kansil, Opcit, hlm 102.
[15] Setiono, 2004, Rule of Law (Supremasi Hukum), Surakarta: Tesis, Universitas Sebelas Maret.
[16] Muchsin M, 2003, Perlindungan dan Kepastian Hukum bagi Investor di Indonesia, Surakarta: Universitas Sebelas Maret, hal 15
[17] Ishaq, Opcit, hlm 43
[18] *Ibid*

People expect that law enforcement will provide real benefits and usefulness for their lives, instead of causing unrest. Because the law is created for human beings, its implementation must aim to create conditions of tata tentrem raharja, where people feel good and right treatment, so as to create order, tranquility and prosperity.

Law functions to protect the rights and obligations of each individual in a concrete manner, and through strong legal protection, the general objectives of law - namely **order, security, tranquility, welfare, peace, truth** and **justice - can be** realized. Both laws and unwritten laws contain general rules that guide the behavior of individuals in society, both in their interactions with each other and with society at large. These rules also limit how society can impose burdens on or act towards individuals, and the existence and enforcement of these rules results in **legal certainty.**[19]

Therefore, legal certainty has two main dimensions: first, individuals are clear about the limits of behavior permitted or prohibited by general rules; second, individuals are protected from arbitrary government actions because they know the limits of the state's authority in burdening or acting against them. More than just articles in the law, legal certainty is also realized through the consistency of judicial decisions, where similar cases are decided uniformly.

2. **Discussion of Legal Protection for Separate Creditors related to the entry of investors in the PKPU Process that Provides Justice and Legal Certainty**

According to Muchsin, legal protection is an effort to protect legal subjects through applicable laws and regulations and enforced with sanctions, which are divided into two types. Preventive legal protection aims to prevent violations before they occur, where the government provides restrictions and guidelines through regulations. Meanwhile, repressive legal protection is the final action in the form of sanctions such as fines, imprisonment, or additional penalties, which are applied after a violation or dispute occurs. In line with this, Philipus M. Hadjon added that there are also two kinds of legal protection means, with preventive legal protection providing an opportunity for legal subjects to submit objections before the government's decision is definitive in order to prevent disputes. This protection encourages the government to be more careful in using discretion, although in Indonesia there is no specific regulation on preventive legal protection.

Repressive legal protection focuses on dispute resolution, as seen in the handling of cases by the General Courts and Administrative Courts in Indonesia. The main principle underlying legal protection against government action stems from the recognition and protection of human rights, a concept historically aimed at limiting the power of government and society. In addition, the principle of the rule of law serves as a second foundation, where human rights take center stage and are aligned with the purpose of the rule of law itself.[20]

Normative legal certainty is realized when regulations are made and promulgated clearly and logically, meaning that they do not cause doubts or multiple interpretations, and systematically do not conflict with other norms, thus preventing norm conflicts such as contestation, reduction, or distortion. In the context of postponement of debt payment obligations (PKPU), peace is the essence and main goal, so PKPU is only relevant if the parties truly intend to achieve peace through the plan proposed by the debtor. The initial intention of filing for PKPU, both by the debtor and the creditor, is to provide an opportunity for the debtor to propose peace in the PKPU process itself, which is the most important part of the granting of the application, because the core of PKPU is a period of deliberation and negotiation between the debtor and the creditor. The hope is that through this peace, the debtor is not declared bankrupt and the debt dispute ends with the payment of part or all of the debt to creditors. Peace begins with an offer of a payment plan from the debtor, with the condition of release from the remaining debt if the payment is made, so that the peace agreement in PKPU is binding on both parties and, if implemented, will end the bankruptcy.

The hope is that the debtor will not be declared bankrupt by paying some or all of his debts to creditors, so that this action can end the debt dispute that occurs by making peace. This peace begins with the debtor offering a peace plan or payment to creditors on the condition that if the payment is made, the debtor is released from the remaining debts. Therefore, the settlement made between the debtor and creditors in the framework of PKPU is an agreement that contains rights and obligations, where each party is bound by the agreement and if the agreement is implemented, the bankruptcy will end.[21]

The procedure for submitting a peace plan in the context of PKPU has been clearly regulated in Law Number 37 of 2004, among other provisions are:

a) The peace plan can be submitted at the same time as the first PKPU application is submitted.
b) The debtor has the right at the time of filing a petition for postponement of debt payment obligations or thereafter to offer a settlement to creditors.

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[19] *Ibid*
[20] Philipus M. Hadjon. *Op Cit*. hlm. 30
[21] Anita Afriani & Rai Mantili, 2017, Implementasi perdamaian (accord) pada Pengadilan Niaga dalam penyelesaian perkara kepailitan di Indonesia, Jurnal, Universitas Padjajaran, Volume 2 Nomor 2

c) The peace plan is submitted after the PKPU application is filed no later than 45 (four-five) days after the debtor has proposed peace.
d) If the peace plan has been accepted, the date and time in the peace plan will be discussed and will be decided together through a meeting of creditors chaired by the supervisory judge.
e) The appointed administrator is obliged to notify all creditors of matters relating to the peace plan either by letter or by courier.
f) If in the event that the creditors have not given an opinion on the proposed peace plan submitted by the debtor, the debtor can ask the creditors to determine whether the proposed peace plan is accepted or rejected.
g) The peace plan will be null and void if before the PKPU decision becomes legally binding, the PKPU is terminated.

The peace plan can be decided after the debt verification meeting held by the debtor, after the debt verification is complete and clear, the peace proposal can be made by offering an amount to be paid in order to make peace. The contents of the peace plan in the form of possible payments are:

1. The debt will be partially paid;
2. The debt will be paid in installments;
3. The debt will be partially paid in installments;
4. Debt will be paid in parts and the rest in installments

As explained above, the purpose of postponing debt payment obligations is to achieve a peaceful settlement, among others, through debt restructuring to creditors.123 The purpose of debt restructuring is to make peace which includes an offer to pay all or part of the debt to creditors. Usually debt restructuring programs consist of:

1. Moratorium, which is a delay in the payment of overdue debt.
2. Haircut, which is a cut or reduction in principal and interest.
3. Interest rate reduction.
4. Extension of repayment period.
5. Debt to share conversion.
6. Debt Forgiveness, is debt relief.
7. Bailout, which is the takeover of debts, for example the takeover of private debts by the government.
8. Write-off, i.e. write-off of debts.

In addition to the above forms of debt restructuring, agreements between debtors and creditors regarding the contents of the peace plan can take various other forms of debt restructuring such as:

1. Rescheduling of debt repayment, including the granting of a new grace period or moratorium to the debtor;
2. Reconditioning of debt agreements;
3. Reduction of principal debt amount (haircut);
4. Reduction or waiver of outstanding interest, penalties, and other fees;
5. Interest rate reduction;
6. Provision of new debt;
7. Conversion of debt into company capital (debt for equity conversion or debt equity swap)
8. Sale of unproductive assets or assets that are no longer needed for the debtor company's business activities to pay off debts;
9. Other forms as long as they do not conflict with applicable laws.

According to the Bankruptcy and PKPU Law, PKPU can be filed by both the debtor and the creditors, but a peace plan related to the PKPU application can only be filed by the debtor. This can be seen from the provisions of Article 222 paragraph (2) and paragraph (3) of the Bankruptcy and PKPU Law. The law does not clearly regulate why only debtors are allowed to submit peace plans and the law also expressly does not prohibit creditors from submitting peace plans. Therefore, judges examining PKPU applications should not immediately reject the peace plan submitted by creditors. However, such a stance should only be taken when the debtor does not submit a peace plan.

For the acceptance of the peace plan, the mechanism used is by way of voting by the concurrent creditors. Law Number 37 Year 2004 states that it only provides peace plans to concurrent creditors. Creditors who may not participate in voting on the peace plan are creditors who are concurrent creditors.

1. Lien holder;
2. Fiduciary security holder;
3. Mortgage holder;
4. Mortgage right holder;
5. Other collateral right holders;
6. Creditors who have a right of precedence that is disputed

Creditors as referred to above can participate in voting on the peace plan if they waive their right to precedence in favor of the bankruptcy estate. Consequently, they become concurrent creditors because they have waived their rights to precedence. The requirements for the acceptance of a peace plan are clearly regulated in the Bankruptcy and PKPU Law which states that:

a) The approval of more than ½ (half) of the total number of concurrent creditors whose rights are recognized or temporarily recognized who are present at the meeting of creditors as referred to in Article 268 including the creditors referred to in Article 280, which together represent at least 2/3 (two-thirds) of the total recognized or temporarily recognized claims of the concurrent creditors or their proxies present at the meeting;
b) The approval of more than ½ (half) of the total number of creditors whose receivables are secured by pledge, fiduciary guarantee, mortgages, mortgages, or other material collateral rights present represents at least 2/3 (two-thirds) of the total receivables of such creditors or their proxies present at the meeting If the vote is only attended by ½ (half) of the total number of creditors, but only represents ½ (half) of the total receivables of the creditors, the creditors' meeting to approve the peace plan will be repeated. According to the provisions of Article 281 paragraph (2) of the Bankruptcy and PKPU Law, if there are concurrent creditors who do not approve the peace plan, compensation will be given at the lowest value between collateral or the actual value of the loan directly with collateral rights to property.

The result of the creditors' meeting regarding the peace plan has two possibilities, namely that the peace plan is accepted or the peace plan is rejected. If the peace plan is accepted, the Supervisory Judge is obliged to submit a written report to the Commercial Court on a predetermined date for the purpose of ratifying the peace plan and on the predetermined date the management and creditors can submit the reasons why they want to ratify or reject the peace plan. A settlement that has been accepted or approved cannot be executed immediately, but must be homologated. Homologation is a hearing conducted by the Commercial Court to ratify the peace plan. After the ratification of the peace plan has obtained permanent legal force, the peace plan is binding on all creditors without exception, both creditors who approve and creditors who reject it. The Commercial Court in its session can approve or reject the peace plan in question.

The Commercial Court can reject a peace plan as long as it fulfills the reasons listed in Article 285 paragraph (2) of Law Number 37 of 2004 which states that the Court must reject a peace plan if:

1. The debtor's assets, including the property for which the right of retention is exercised, are much larger than the amount agreed by the settlement;
2. The implementation of peace is not sufficiently guaranteed;
3. The settlement was achieved by fraud or conspiracy with one or more creditors or by the use of other dishonest means and regardless of whether the debtor or any other party cooperated in achieving it.
4. Fees for services and expenses incurred by experts and administrators have not been paid or guarantees not provided for

Payment A peace plan that is not ratified by the Commercial Court has the same consequences as a peace plan that is rejected by creditors, namely the Commercial Court is obliged to declare the debtor bankrupt. In the event that the ratification of peace is rejected by the Commercial Court.

Sparatis Creditors

Separatist creditors are creditors who hold security rights such as liens, mortgages, and other property security rights. There are several classifications of separatist creditors, namely:

1. Lien Holder
2. Fiduciary Right Holder
3. Mortgage holder
4. Ship Mortgage Holder

The legal basis for separatist creditors is contained in Article 55 paragraph (1) of the K-PKPU Law which contains:

"With due observance of the provisions as referred to in Article 56, Article 57 and Article 58, any Creditor holding a pledge, fiduciary guarantee, mortgage, or other collateral rights may execute its rights as if bankruptcy had not occurred."

CONCLUSIONS

Settlement of PKPU on Separate Creditors by Judges related to the Validity of the Meeting of Creditors in Judicial Review Decision Number 6 PK/PDT.SUS-PAILIT/2015 shows a deviation from the procedural aspects and formalities of the validity of the creditors' meeting. In this case, the Supreme Court through the Reconsideration Decision has reviewed the previous decision by not carefully considering the requirements for the validity of the creditors' meeting related to the quorum and voting procedures in accordance with 281 paragraph (1) b Jo 285 of the Bankruptcy and PKPU Law, it should not be possible to extend the peace plan due to extending the peace with the entry of new investors.

Legal protection for separatist creditors in the PKPU process, as in Judgment of Reconsideration Number 6 PK/PDT.SUS-PAILIT/2015 faces challenges, especially Article 55 paragraph (1) of the Bankruptcy and PKPU Law, which expressly gives separatist creditors the right to execute their guarantees as if bankruptcy had not occurred, which is a form of legal certainty over property rights. However, the right of execution cannot be exercised because the peace plan is still being extended. The dynamics of the decision in this case study emphasize that non-compliance with the creditors' meeting procedure can lead to consequences that indirectly impact on efforts to protect the rights of secured creditors. Justice for separatist creditors is realized when their rights are respected and not eroded by procedural negligence, while legal certainty is reflected in the enforcement of clear rules of the game in the implementation of creditors' meetings. The extension of the peace plan approved by the Judge does not involve the approval of the secured creditors so that the new invertor can withdraw at any time to the detriment of the secured creditors.

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