

INVESTIGATION THE INTEREST OF CREDITOR AND DEBTOR IN SUSPENSION OF DEBT PAYMENT OBLIGATIONS

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Abstract

The purpose of this research is to determine what interests underlie debtors in proposing debt settlement through PKPU institutions and to analyze the legal position of separatist creditors in the PKPU process. This study uses a juridical normative research method by utilizing the statutory regulatory approach. An alternative way to settle debt payment obligations for debtors is by submitting a suspension of debt payment obligations. The essence of using this institution is to direct the parties in carrying out debt restructuring. In theory, the use of the suspension of debt payment obligation (PKPU) will protect the interests of the parties effectively and fairly. But in practice, this PKPU institution became ineffective and was only used by one party to achieve its own interests. Including the interests of separatist creditors which are limited through SKMA 3/KMA/SK/I/2020, it is implied that there is an injustice for the separatist creditors in submitting PKPU submissions, then the Supreme Court issued SKMA 3/KMA/SK/IV/2020 which revoked the previous regulation while providing legal protection for separatist creditors in the PKPU process. The result of this research is that the debtor's interest in PKPU submission is 1. That debtor wants to restructure its debt 2. Debtor is no longer able to compete with the market. It was also found that the settlement of PKPU cases could be faster than the time period provided by Law 34/2007. Separatist creditors must be included in the PKPU settlement process, because their voting rights will determine the outcome of the agreement and the interests of creditors in a fair and balanced manner, in addition to debt settlement through PKPU institutions based on article 222 Law 34/2007 there is no difference in criteria for creditors.

Keywords: creditors; debtors; suspension of debt payment

Abstrak

Tujuan dari penelitian ini adalah untuk menentukan kepentingan apa saja yang mendasari debitor dalam mengajukan pemberesan utang melalui lembaga PKPU dan menganalisa kedudukan hukum kreditur separatis dalam proses PKPU. Penelitian ini menggunakan metode penelitian normatif yuridis dengan memanfaatkan metode pendekatan peraturan perundang-undangan. Jalan alternatif dalam penyelesaian pembayaran kewajiban utang bagi debitor adalah dengan cara mengajukan penundaan kewajiban pembayaran utang. Inti dari penggunaan lembaga ini untuk mengarahkan para pihak dalam melakukan restrukturisasi utang. Secara teori penggunaan lembaga penundaan kewajiban pembayaran utang (PKPU) akan melindungi kepentingan para pihak secara efektif dan adil. Tapi pada praktiknya, lembaga PKPU ini menjadi tidak efektif dan hanya dimanfaatkan oleh salah satu pihak untuk mencapai kepentingannya sendiri. Termasuk kepentingan kreditur separatis yang dibatasi melalui SKMA 3/KMA/SK/I/2020, tersirat bahwa terjadi ketidakadilan bagi kreditur separatis dalam melakukan pengajuan PKPU, kemudian Mahkamah Agung mengeluarkan SKMA 3/KMA/SK/IV/2020 yang mencabut aturan sebelumnya sekaligus memberikan perlindungan hukum bagi kreditur separatis dalam proses PKPU. Hasil dari penelitian ini adalah bahwa kepentingan debitor dalam pengajuan PKPU adalah 1. Bahwa dirinya ingin melakukan restrukturisasi utang 2. Sudah tidak mampu lagi bersaing dengan pasar. Ditemukan pula dalam penyelesaian perkara PKPU bisa lebih cepat dibandingkan periode waktu yang diberikan oleh UU 34/2007. Kreditur separatis harus diikutsertakan dalam proses penyelesaian PKPU, karena hak suaranya akan menentukan hasil kesepakatan dan kepentingan para kreditur secara adil dan seimbang, selain itu dalam pemberesan utang melalui lembaga PKPU berdasarkan pasal 222 UU 34/2007 tidak ada perbedaan kriteria pada kreditur.

Keywords: keringanan pembayaran; kreditor; debitor

Introduction

The existence of an economic decline in all aspects of Indonesia, especially in the aspect of the international business, clearly does not apply to various parties. In the business approach, we can see that many companies have collapsed in every field of business because

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of the uncertainty of profit which makes it difficult for this company to pay off its debt obligations, if the debt accumulates there will be no profit at all, even though the company is actually a legal entity or non law seeking profit. As Kliestik stated that the business model has changed, for this purpose, is requires correlated research between a debtors financial health and external factors, including business regulation and its solvency.³

The debt is obtained from borrowing by the debtor in order to increase his capital to carry out business activities. Difficulties in fulfilling these obligations may lead to the possibility of a creditors submitting a bankruptcy request to the commercial court due to the inability to pay debt obligations,⁴ although systematically there is still time for the debtor, in this case the company, to fulfill its debt payment obligations in accordance with the Bankruptcy and Suspension of Debt Payment Obligations Law.

An alternative that can be taken in overcoming delays in fulfilling obligations in running a business is holding a Suspension of Debt Payment Obligations, clearly as Immanuel proposed that suspension of debt payment institution is a time period given to debtors by commercial court based on law to settle all debts to creditors by way of deliberation.⁵ It means that the debtor in question submits a request to the creditor to postpone the payment of his debt until a certain period of time. In Law No. 37 of 2004, states that the Suspension of Debt Payment Obligations (referred to as PKPU) is a period given by law through a commercial judge ruling, when that period is given to Creditors and Debtors to be given the opportunity to deliberate on methods payment of the debt by providing a payment plan in whole or in part of the debt, including if necessary to restructure the debt. Suspension of debt payment obligations is regulated in chapter III, starting from Article 222 to Article 294 Law of Bankruptcy and suspension of debt payment obligations. Procedure for Filing it under Article 222.

The objective of the provisions concerning suspension of debt payment obligations is to provide opportunities and time for debtors to continue running their business activities. That way, all assets and assets belonging to the company will remain, so that later this debtor will have a handle to convince creditors in the form of guarantees to pay off their debts. In addition, Ginting proposed that it can provide opportunities for Debtors to restructure their debts, while for Creditors, suspension of debt payment obligations which has been given to Debtors is also intended so that Creditors have certainty regarding their claims, their debts will be able to be repaid by Debtors.⁶ According to Rachma, the bankruptcy law provides the time for debtors whether their assets will be used up for the distribution of debt repayments or the achievement of a peace agreement(to discuss ways of paying their debts) with creditor.⁷

³ T. Kliestik and others, 'Bankruptcy Prevention: New Effort to Reflect on Legal and Social Changes', *Science and Engineering Ethics*, 24.2 (2018), 791–803.

⁴ I Made Dermawan, 'Upaya Hukum Terhadap Kreditor Atas Objek Hak Tanggungan Dari Upaya Sita Jaminan Oleh Pihak Ketiga Dalam Kepailitan', *Jurnal Surya Kencana Satu*, 9.2 (2019), 15–30.

⁵ Immanuel Rivanda Sibagariang, 'Kepastian Hukum Terhadap Putusan Penundaan Kewajiban Pembayaran Utang (Studi Putusan No. 20/Pdt.Sus- Pkpu/2018/Pn.Medan Dan No. 21/Pdt.Sus-Pkpu/2018/Pn.Medan)', *Jurnal Darma Agung*, 29.1 (2021), 1–10.

⁶ Elyta Ras Ginting, *Hukum Kepailitan: Teori Kepailitan* (Jakarta: Sinar Grafika, 2018). p 96

⁷ Rachmasarinigrum, 'Perlindungan Hukum Bagi Debitor Atas Proses Kepailitan', *Mahkamah: Jurnal Kajian Hukum Islam*, 5.2 (2020), 160–73.

Law No. 37 of 2004 states that the debtor has the right to declare himself bankrupt, besides that the creditor is also entitled to apply for bankruptcy to the debtor. Based on the criteria, Creditors consisted of Separatist Creditors, Preferent Creditors and Concurrent Creditors,⁸ of the three criteria for creditors, the provisions regarding Suspension of Debt Payment Obligations are aimed at protecting the interests of the debtor itself and the interests of concurrent creditors, however creditors with other criteria continue to participate in the negotiation process for suspension of debt repayment. In fact, there are respective portions of the criteria for creditors, including Separatist creditors with guarantees, concurrent creditors depending on the size of the accounts receivable and preferred creditors with special privileges. Of course this is unfair to concurrent creditors even though in fact each party has the same big interests.

This article refers to previous research, the article written by Irfan Idham et al focuses on the position of concurrent creditors in suspension of debt payment,⁹ while in this article focus on what is the interest of general creditors underlie to agree on peace agreement. The article written by Prio Wijayanto focuses on creditors legal protection in filing bankruptcy for debtors,¹⁰ while in this article focus on the interest and roles of general creditors (especially concurrent creditors) in filing bankruptcy form and examine the interest of debtors in filing peace agreement and/or suspension of debt payment obligation. The article written by Febri Casanova focuses on the extent to which the bankruptcy law is effective in providing legal protection for debtors and creditors,¹¹ while in this article focus on what interests underlie the suspension of debt payment obligation from creditors and debtors.

The Suspension of Debt Payment Obligation is not only to provide opportunities and time for debtors to be able to pay off all their debts, but basically suspension of debt payment obligations institution wants to provide debtors and creditors with "peace" between the two. As Hans Tijo stated that today there is a need to maintain the balance between debtors and creditors,¹² if there is no way both parties to solve the problem, hopefully, this peace will eliminate and resolve the debtor's bankruptcy, provided that this peace is followed and approved by all creditors. Susanti Nugroho stated that if all creditors do not participate in the peace proposal, the debtor's bankruptcy cannot be ended.¹³ From the description above, the problem is whether the provision of temporary suspension of debt payment obligations

⁸ Susanti Adi Nugroho, *Hukum Kepailitan Di Indonesia: Dalam Teori Dan Praktik Serta Penerapan Hukumnya* (Jakarta: Prenadamedia Group, 2018). p 148

⁹ Irfan Idham, Syahrudin Nawi, And Hamza Baharuddin, 'Perlindungan Hukum Kreditor Konkuren Dalam Kepailitan: Studi Putusan Nomor. 04/Pdt.Sus-Pkpu.Pailit/2018/Pn.Niaga Mks', *Journal Of Lex Generalis*, 1.5 (2020), 745-58.

¹⁰ Prio Wijayanto, Erna Widjajati, And Yessy Kusumadewi, 'Upaya Hukum Bagi Kreditor Apabila Debitor Pailit Tidak Mengakui Atau Menolak Tagihan Utangnya', *Jurnal Krisna Law*, 2.2 (2020), 181-88.

¹¹ Febri Yanti Casanova, Lindati Dwiatin, And Dianne Eka, 'Analisis Homoligasi Dalam Penundaan Kewajiban Pembayaran Utang (Pkpu) Sebagai Upaya Pencegah Kepailitan (Studi Putusan No.59/Pdt.Sus- Pkpu.Pn.Niaga.Jkt.Pst)', *Pactum Law Journal*, 1.2 (2018), 90-98.

¹² Hans Tijo, 'Rethinking Share Repurchases', *Capital Markets Law Journal*, 16 (2021), 1-15.

¹³ Nugroho. Supranote 1

is beneficial for the debtor and why is the separatist creditors included in determining the suspension of debt payment obligations extension.

Method Research

In this study, the authors use normative juridical legal research, legal principles, namely research that is focused on examining the application of norms in positive law.¹⁴

Results and Discussion

The Concept of Bankruptcy and Suspension Of Debt Payment Obligation

Lestari and Kurniawan proposed that bankruptcy is a process in which a Debtor who has financial difficulties to pay his debt is declared bankrupt by the Court (in this case the Commercial Court) because the Debtor is unable to pay his debt. Debtor's assets can be distributed to Creditors in accordance with national regulations.¹⁵ The suspension of debt payment obligations institution in commercial law known as *surseance van betaling* or suspension of payment is a period given by law through a commercial judge's decision during which the creditors and debtors are given the opportunity to discuss ways of paying their debts by providing plans to repay all or part of the debt, including if necessary to restructure the debt.¹⁶ According to Hartini, in order to be declared bankrupt, a debtor must meet the following requirements¹⁷ debtors have two or more creditors; not paying at least one debt is due and collectible; and at his own request or at the request of one or more creditors.

Requirements for the request for bankruptcy by creditors are that the debtor has two or more creditors and does not pay at least one debt that is due and is already collectible. The bankruptcy law takes the position that judges may only grant a bankruptcy request if the request is approved by the majority creditors. So debtors must consider it's solvency as the ability of debtors to cover all obligations in long- term and shot-term perspectives,¹⁸ as it is will affect the legal action.

One of the legal protections provided by the bankruptcy law for creditors is the *actio paulina*. Since the beginning, *actio paulina* has been regulated in Article 1341 of the Civil Code, which gives creditors the right to file a cancellation for any legal action that is not obliged to be taken by the debtor, whether under any name that can harm the creditor. The provisions of *actio paulina* in Article 1341 of the Civil Code are related to the provisions of Article 1131 of the Civil Code which regulates the principle of *creditorium Parity*. Article 1131 of the Civil

¹⁴ Jihan Amalia, 'URGENSI IMPLEMENTASI UNCITRAL MODEL LAW ON CROSS-BORDER INSOLVENCY DI INDONESIA: STUDI KOMPARASI HUKUM KEPAILITAN LINTAS BATAS INDONESIA DAN SINGAPURA', *Jurnal Hukum Bisnis Bonum Commune*, 2019 <<https://doi.org/10.3-0996/jhbbc.v2i2.2499>>.

¹⁵ Sri Lestari and Rizki Kurniawan, 'Pembaharuan Utang Kreditur Kepada Debitur Sebagai Bentuk Penjatuhan Putusan Pailit', *Jurnal Penelitian Bidang Hukum Universitas Gresik*, 8.2 (2019), 276-90.

¹⁶ Kartini Muljadi in Stevi G. Tampemawa, 'Prosedur Dan Tatacara Penundaan Kewajiban Pembayaran Utang (Pkpu) Menurut Undang-Undang No.37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang', *Lex Privatum*, 7.6 (2019), 5-11.

¹⁷ Hartini Rahayu in Ginting. Supranote 1, p 56

¹⁸ Inese Mavlutova and others, 'Business Restructuring as a Method of Strengthening Company ' s Financial Position', *Journal of Optimization in Industrial Engineering*, 2021, 105-15 <<https://doi.org/10.22094/JOIE.2020.677839>>.

Code stipulates that all assets of the debtor by law become collateral for debtors' debts, thus debtor in this case is not free from his assets when he has a debt to the creditor.¹⁹

The Perspective of Suspension of Debt Payment Obligations is Favorable for The Debtor

The suspension of debt payment obligations institute is considered ineffective. There are doubts from business entity about the suspension of debt payment obligations institution. It is not impossible that this is also the case for most business people in Indonesia. It is possible for such a thing to happen to the debtor, the regulations contained in Law No. 34/2007 implicitly do not reflect justice, as if it further protects the interests of creditors.²⁰ One example is in several articles which state, if ½ of the creditors do not agree to the peace agreement of the debtor, the debtor will immediately be declared bankrupt.

The suspension of debt payment obligations process, the commercial court after receiving a suspension of debt payment obligations application from a creditor or an authorized party, before entering into a permanent suspension of debt payment obligations decision, must pass and decide the previous temporary suspension of debt payment obligations. The objective of the commercial court in deciding a temporary suspension of debt payment obligations is an effort to give the debtor the opportunity to make the strategies and preparations needed in order to fulfill the requirements for filing a permanent suspension of debt payment obligations, besides that the existence of this temporary suspension of debt payment obligations will cause the position of both parties to have the same goal, namely peace in the payment of the debtor's debt obligations, in other words there will be a state of standstill, with the hope of facilitating the merger of the agreement between the two parties in an effort to fulfill the suspension of debt payment obligations.

The existence of this suspension of debt payment obligations is actually shown to the debtor who is truly unable to pay his debt obligations to the creditor. The first is a debtor who does not want to pay his debt obligations, when in fact the debtor with this criteria is the wealth and assets that can pay off all his debts. Another criteria for debtors is those who are truly unable to pay, due to unfavorable financial conditions. This relevant to Ace Hardware case (329/Pdt.Sus-PKPU/2020/PN.Niaga.JKT.Pus), it was found that there is no financial problem with Ace Hardware according to Sugianta Wibawa,²¹ but the fact that it chose not to comply its agreement with plaintiff until maturity, thus confirming the theory.

Law Number 37 of 2004 does not regulate matters on the insolvency test. When in fact, the insolvency test is an essential step in the Law on Bankruptcy, as it can help judges to consider the law.²² The act of proofing is intended to ascertain the extent to which the debtor

¹⁹ Rai Mantili, 'Actio Pauliana Sebagai Upaya Perlindungan Bagi Kreditor Menurut Kitab Undang-Undang Hukum Perdata Dan Undang-Undang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang (PKPU)', *Jurnal Hukum Acara Perdata*, 6.2 (2020), 21–38.

²⁰ Izzy Al Kautsar and Danang Wahyu Muhammad, 'Urgensi Pembaharuan Asas-Asas Hukum Pada Undang-Undang No 37 Tahun 2004 Berdasarkan Teori Keadilan Distributif', *Jurnal Panorama Hukum*, 5.2 (2020), 182–92 <<https://doi.org/https://doi.org/10.21067/jph.v5i2.4529>>.

²¹ Yohana Artha, 'Sederet Kasus Perusahaan Yang Tersandung PKPU Dan Kepailitan', *Kompas.Com*, 2021.

²² Rebecca Lee and Eric C Ip, 'Judicial Diplomacy in the Asia-Pacific: Theory and Evidence from the Singapore-Initiated Transnational Judicial Insolvency Network', *Journal of Corporate Law Studies*, 20 (2020), 389–420.

has the ability to fulfil its obligation to repay the debts to the creditors. The condition when the debtor is unable to pay should not be based solely on the assumptions constructed on legal presupposition. Instead, there should be evidence indicating that the debtor is actually in a state of insolvency or specific reasons that cause the debtor unable to perform his/her obligations to the creditors.²³ It would be wise when the creditor or the party authorized to bankrupt the debtor if he knows that the debtor is able and does not want to pay, it can be resolved in civil terms, in other words demanding his rights through legal action of a default lawsuit to the District Court, not directly requesting bankruptcy of the debtor, because it will only result in losses if the debtor is in a peace effort when suspension of debt payment obligations demands that his debt payment be reduced by a certain amount. With this effort of default, it is possible for the debtor to really fulfill all his debts in full whose debt fulfillment is supervised by the State or the court.

According to Febri, in suspension of debt payment obligations, after it has been decided and stipulated regarding the temporary suspension of debt payment obligations, then both parties have a maximum period of 45 days to prepare all plans in terms of achieving peace in the implementation of the permanent suspension of debt payment obligations, before the suspension of debt payment obligations session is determined, it will still be counted since the temporary suspension of debt payment obligations is established.²⁴ While in the case of Ace Hardware, it only takes 14 days to settle the suspension of debt payment obligation application. Suspension of debt payment obligations will still be born after going through the provisional suspension of debt payment obligations determination and decision process as described above, after the existence of suspension of debt payment obligations, it must still get approval from creditors so that the peace agreement between the parties can be carried out, may not exceed the time limit of 270 days including the extension count since the temporary suspension of the debt payment obligation has been established.²⁵

From the explanation above, basically suspension of debt payment obligations is still an agreement, and as agreement from the parties regarding the peace agreement. The commercial court only confirms and gives a decision on the agreement, and it is forbidden to decide outside the agreement between the debtor and the creditor.

Often there are misinterpretations as if the 270-day deadline for suspension of debt payment obligations is still given as the deadline for debtor debt settlement to all its creditors, knowing this is not the case, it must be observed that suspension of debt payment obligations is still different from the term debt rescheduling time as that term is known in the banking. From this explanation we can understand that the 270-day period in suspension of debt payment obligations can still be used for negotiations over the repayment period or rescheduling between debtors and creditors concurrent, not used for the period of repayment of debt obligations from the debtor.

Permanent suspension of debt payment obligations, determined by the commercial court. It is based on the approval of more than half of the number of concurrent creditors

²³ Isis IkhwanSyah and Lambok Marisi Jakobus Sidabutar, 'The Implementation of Insolvency Test on Debtors' Bankruptcy in Performing the Principle of Justice', *Jurnal Media Hukum*, 26.2 (2019), 240-51 <<https://doi.org/10.18196/jmh.20190137>>.

²⁴ Casanova, Dwiatin, and Eka. Supranote 1

²⁵ Hasdi Hariyadi, 'Restrukturisasi Utang Sebagai Upaya Pencegahan Kepailitan Pada Perseroan Terbatas', *Sign Jurnal Hukum*, 1.2 (2020), 119-35.

present and representing at least 2/3 of all claims that are recognized or temporarily recognized and if a dispute arises over this creditor's voting rights, the settlement is decided by the supervisory judge.

The grace period given by suspension of debt payment obligations institution will be removed if the debtor can convince the creditor that it has a strong solvent capability, implied in the Ace Hardware case. But this also depends on the hidden interests of the debtor, whether it is no longer able to keep up with market developments so that it experiences a slow innovation process causing insolvency or is it deliberately eyeing the rescheduling of debt payments through suspension of debt payment obligations process as stipulated in articles 222 Bankruptcy Law.

Separatist Creditors Participated in Determining the Suspension Of Debt Payment Obligations Extension

The Supreme Court issued the Decree of the Chief Justice of the Supreme Court (SKMA) number 109/KMA/SK/IV/2020 officially revokes SKMA number 3/KMA/SK/I/2020 that limited the rights of separatist creditors to file for suspension of debt payment obligations. The prohibition of separatist creditors to apply for suspension of debt payment obligations clearly contradicts with Law number 37 of 2004. In articles 222 expressly grants right to debtors and creditors regardless of the type of creditor to apply suspension form.

As we know that suspension of debt payment obligations permanent is suspension of debt payment obligations which is determined after the trial based on the approval of creditors. Article 229 paragraph (1) of Law Number 37 of 2004 states regarding permanent suspension of debt payment obligations along with its extension determined by the court, namely, approved by more than 1/2 the number of concurrent creditors whose rights are recognized or temporarily recognized who are present and represent at least 2/3 of the total acknowledged or provisional claims from concurrent creditors or their proxies who are present at the hearing. And it is agreed that more than 1/2 the number of creditors whose receivables are guaranteed by pledge, fiduciary security, mortgage, or other collateral rights for property are present and represent at least 2/3 of the total claims of creditors or their proxies present at the hearing. Yudi stated, it is fitting that in the case of suspension of debt payment obligations, this creditor party referred to creditors committee was created in order to establish a communication forum between creditors, but in practice it is often found that creditors make their own defense.²⁶ Wee Meng Seng called this forum as scheme arrangement, its shareholders or a class of shareholders, and/or creditors or a class of creditors to negotiate between themselves to achieve any legitimate purpose to restructure of their own interest,²⁷ there is no insolvency requirement.

There are differences from the provisions of Article 229 paragraph (1) of Law 37 of 2004 with the previous provisions, namely Law Number 4 of 1998 concerning the position of the

²⁶ Yudi Kornelis and Florianus Yudhi Priyo Amboro, 'Implementasi Restrukturisasi Dalam Prosesi Kepailitan Dan Penundaan Kewajiban Pembayaran Utang Di Indonesia', *Jurnal Selat*, 7.2 (2020), 257-77.

²⁷ Wee Meng Seng and Hans Tjio, *Singapore as International Debt Restructuring Center: Aspiration and Challenges*, NUS Law Working Paper, 2021.

separatist creditors in the suspension of this debt payment obligation. The current positive law stipulates that separatist creditors have a stake in suspension of debt payment obligations extension, but the previous rules only stipulate that the determination of suspension of debt payment obligations extensions is determined based on the approval of the concurrent creditors, without including the approval of the separatist creditors.

There is something special about separatist creditors compared to other creditors, because with this criterion, creditors are guaranteed material guarantees and have the authority to auction these items to pay off debtors obligations. From these criteria, separatist creditors should not need to participate in the bankruptcy or suspension of debt payment obligations process because they already have material guarantees in order to pay off debtors' debt obligations.²⁸ However, there are various considerations that lead to the addition of the terms of approval from concurrent Creditors in determining the extension of suspension of debt payment obligations in the bankruptcy and suspension of debt payment obligations Law.

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

All holders of security rights who obtain priority position such as pawning, fiduciary, mortgage, referred to separatist creditors, do not apply to suspension of debt payment obligations as mentioned in Article 244 *jo* Article 246 of Law 37 of 2004. The debts and receivables of the separatist creditors have been guaranteed by material rights, so the payment is more certain in nature. Even though Article 51, Article 57 and Article 58 of Law 37 of 2004 are expressly stated to apply *mutatis mutandis* in the implementation of suspension of debt payment obligations, so it seems as if the rights of separatist creditors and the rights of preferred creditors have been intervened to carry out the execution of the assets of debtors under their control. which is postponed for a time limit of 90 days as of the stipulation of the bankruptcy decision by the commercial court. So, practically, the assets of the bankrupt that can be sold are inventory or current assets or immovable goods that are not guaranteed with the mortgage rights as mentioned above.

The existence of a suspension, it provides an opportunity for the parties to establish communication in the framework of peace efforts and for the curator to carry out his duties effectively during the suspension period, all legal claims to obtain full settlement of an receivable cannot be filed in a trial by a judicial body, and good Creditors or third parties are prohibited from executing or requesting confiscation of the collateralized goods. The explanation above shows that as a comparison, the neglect of the separatist creditors and preferred creditors for the peace plan in the case of suspension of debt payment obligations, what the legislators meant was based on the consideration of the security of the position of

²⁸ Elsa Mellinda Saputri, Waspiah, and Ridwan Arifin, 'Perlindungan Hukum Terhadap Konsumen Dalam Hal Pengembang (Developer) Apartemen Dinyatakan Pailit', *Jurnal Hukum Bisnis Bonum Commune*, 2.2 (2019), 151-61 <<https://doi.org/https://doi.org/10.30996/jhbbc.v2i2.1936>>.

creditors, so that the peace plan focused on the interests of the concurrent creditors. Unless the results of the later execution of the goods that are encumbered with collateral rights are not sufficient to pay all the creditors' claims, then for the remaining debt, the separatist creditor is still entitled to obtain full payment of the remaining bill with the position of a concurrent creditor, together with other concurrent creditors are entitled to obtain full payment from the sale of the debtor's assets which are not burdened with a security right, proportionally or on a *pari passu* basis in proportion to the amount of each debt owed by the concurrent creditors.

In accordance with Law 37 of 2004, the existence of a Suspension of Debt Payment Obligations is intended not only to provide a time delay for debtors in paying debt obligations, but also to achieve a settlement. The settlement is manifested in a plan to pay debts from debtors to creditors either partially or completely, depending on the agreement of the parties in effective way.²⁹ Such peace can end Debtor bankruptcy only if the peace is discussed and involves all Creditors. If peace is only proposed and negotiated with only one or several Creditors, then the peace cannot end the Debtor's bankruptcy.

Suspension of debt payment obligations is clearly very beneficial, because the peace made through suspension of debt payment obligations will bind other creditors outside suspension of debt payment obligations as stipulated in Article 266 of Law 37 of 2004, so that the debtor can continue to restructure his business, without fear of being interfered with by claims of creditors outside suspension of debt payment obligations . in addition, creditors should also be guaranteed through suspension of debt payment obligations, because if there is a violation of the peace agreement, the creditors can submit a request for cancellation of the peace agreement to the Commercial Court, and the debtor will automatically be declared bankrupt.

Each creditor must be bound by the other creditor, regardless of the portion of the creditor whether as a concurrent, separatist, or preferred creditor. Because if the creditors do not bind each other in the peace agreement proposed by the debtor, there is a consequence. The easiest thing to be a consequence is that one of the creditors filed for bankruptcy of the debtor, because he considers that he is not bound by the peace agreement so that he has the right to file for bankruptcy. As Lilik proposed, if this bankruptcy petition is granted by the court, the concurrent agreement between the debtor and creditors and its implementation will have to be stopped.³⁰

Of course this also depends on the existence that determines the many creditors, if the number of creditors is a concurrent majority, it would be difficult in terms of the comparison of the number of votes, of course the position of the separatist creditors can be defeated by the proposal to accept or reject the peace plan. In the 2004 Law in Article 229 it is stated that if a vote is made in the awarding of suspension of debt payment obligations and the approval is accepted, the rejection of the peace plan, the votes are won by more than $\frac{1}{2}$ the number of concurrent creditors whose rights are recognized or temporarily recognized who

²⁹ Tampemawa. Supranote 1

³⁰ Lilik Muljadi in Imanuel Rahmani, 'Perlindungan Hukum Kepada Pembeli Dalam Kepailitan Pengembang(Developer) Rumah Susun', *Jurnal Hukum Bisnis Bonum Commune*, 1.1 (2018), 73-88.

are present and represent at least 2/3 of the all recognized or provisional claims recognized by concurrent creditors or their proxies present at the hearing and approval of more than half of the creditors whose receivables are guaranteed by pledge, guarantee, fiduciary, mortgage, collateral rights over other objects present and representing at least 2/3 and all claims of creditors or proxies present at the hearing.

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

Conclusion

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

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

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