

# The Debtor's Juridical Analysis of Bankruptcy Decisions as A Consequence of Homologation Violations in Suspension of Payment

(The case study decision numbers 20/Pdt.Sus-Pailit/2019/PN.Smg, jo. Numbers 23/Pdt.Sus-PKPU/2018/PN. Smg)

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## Abstract

Despite a peace agreement being legally enforceable and officially recognized and accepted by both parties, the debtor may choose not to proceed with it. If the debtor fails to meet their obligations, the creditor has the right to demand that the peace agreement be terminated and declare the debtor insolvent. When petitioning for the termination of this peace agreement, the judge will naturally consider the provided information as well as the relevant bankruptcy and PKPU laws, notably Law Number 37 of 2004. This research utilizes a normative juridical approach, which includes analytical and descriptive aspects. The research aims to scrutinize and analyze the legal factors considered by the Commercial Court judges at the Semarang District Court during the invalidation of the peace agreement 23/Pdt.Sus-Pkpu/2018/Pn. Smg, as well as the ratification of peace agreement number 24/Pdt.Sus-PKPU/2018/Pn. Smg, as indicated in Decision Number 20/Pdt.Sus-Pailit/2019/Pn. Smg and Jo. Number 23/Pdt.Sus-Pkpu/2018/Pn. Smg. The research findings indicate that the Case Examining Panel of Judges invalidated the approved peace agreement due to evidence of the debtor's violation of contract or negligence. This led to the declaration of the debtor's insolvency and the termination of the corresponding peace agreement.

**Keywords:** bankruptcy, homologation, peace agreements, and commercial courts.

## Introduction

As the economy and trade grow at a rapid pace, debt, and receivable problems increase. According to data obtained from the Supreme Court's case tracking information system (SIPP) and data from Indonesia's five commercial courts (Central Jakarta, Medan, Surabaya, Semarang, and Makasar Commercial Courts), the number of cases of bankruptcy and Suspension of payment has increased annually since the promulgation of Law Number 37 of 2004.

Bankruptcy and deferment of debt payment responsibilities are more prevalent in society. This is not without justification since restructuring, and Suspension of payment serve as viable alternatives for addressing debt and receivable issues in the business sector. The Central Jakarta, Medan, Surabaya, Semarang, and Makasar Commercial Courts collectively documented a total



of 732 Suspension of payment cases in the year 2021. Furthermore, this statistic showed an increase of 95 cases compared to 2020, when there were only 637 Suspension of payment. There is a belief that the number of PKPU cases will continue to rise. The increase in this statistic also indicates growing public confidence in the Suspension of payment mechanism as a viable option for settling debt disputes. The surge in Suspension of payment cases in the business sector has sparked the author's curiosity about investigating pertinent topics concerning Suspension of payment regulations in bankruptcy law.

The act of ceasing to make debt payments can arise from either an inability or a lack of desire to fulfill the financial obligation. Law Number 37 of 2004 governs the resolution of legal problems related to bankruptcy and debt payment obligations. This law aims to address these issues and protect the interests of creditors, who may incur financial losses as a result. According to the Bankruptcy Law and PKPU, filing for a Suspension of payment is a method to address the state of being unable to repay debt (insolvency). PKPU, or the Suspension of Payment Obligations, serves as a viable solution to avert the bankruptcy of a debtor who is currently unable to meet their financial obligations but potentially possesses the means to do so in the future. The PKPU mechanism offers provisional respite to debtors confronted with creditors that exert pressure on them, with the objective of facilitating the reorganization and ongoing operation of their firm, ultimately enabling the debtors to meet their commitments towards the creditors' claims.<sup>1</sup>

The 2004 Law Number 37 on Bankruptcy and Suspension of payment (PKPU) offers a means of achieving fairness for those involved in debt and receivable legal relationships, enabling both creditors and debtors to file PKPU applications. This is governed by Article 222, paragraph 1 of Law Number 37 of 2004, which deals with Bankruptcy and Suspension of payment (PKPU). The statement indicates that *creditors have the option to request a deferral of debt payment responsibilities if they believe the debtor would be unable to fulfill their outstanding debts. This deferral allows the debtor to provide a peace plan that includes an offer to repay the debt partially or fully to their creditors.* According to the article, creditors have the right to petition the debtor for PKPU (Suspension of Payment), allowing them to provide a peace plan that includes an offer to settle a portion or all the debt.

The Commercial Court must approve or ratify the peace agreement in a hearing known as homologation if the creditors approve it. All creditors to whom the payment delay applies are subject to the ratified peace. PKPU ends immediately after the decision to approve the peace agreement has permanent legal force, and the management has announced this termination in the official gazette of the Republic of Indonesia and at least 2 (two) daily newspapers.<sup>2</sup>

<sup>1</sup> Jerry Hoff, 2000, UU Kepailitan di Indonesia, Jakarta, (Indonesia Bankruptcy Law) Terjemahan Kartini Muljadi, Tata Nusa, hlm. 15.

<sup>2</sup> Rudy A. Lontoh, 2001, *Penyelesaian Utang-Piutang Melalui Pailit atau Penundaan Kewajiban Pembayaran Utang*, Bandung, Alumni, hlm. 275



A settlement is a legal agreement between a debtor and their creditors in which the creditors agree to accept partial or full payment of the claims owed to them.<sup>3</sup> If the bankrupt debtor is unable to maintain peace for any reason, the provisions stated in Article 170, Paragraph 1, of Law Number 37 of 2004 regarding Bankruptcy and Suspension of payment (PKPU) are applicable. This provision stipulates that *"if the debtor fails to fulfill the terms of a peace agreement, creditors have the right to request its cancellation."*

As per the clause, the commercial court has the authority to nullify the peace agreement if requested by any of the creditors, thus initiating the bankruptcy procedure again. According to Article 171 of Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (PKPU), *"the procedure for revoking this reconciliation is identical to the procedure for initiating a bankruptcy action. The text stipulates that the procedures outlined in Articles 7, 8, 9, 11, 12, and 13 for filing for bankruptcy must guide the submission and assessment of any requests to cancel the reconciliation."*

The court will initiate the reopening of the bankruptcy proceedings upon acceptance of the proposal to terminate the settlement, thereby imposing all its provisions and legal consequences.<sup>4</sup> Therefore, failure to meet the agreed-upon terms could lead to the cancellation of a ratified or approved peace agreement. The debtor cannot avoid bankruptcy by rescinding the court's permission. The court solely determines the debtor's bankruptcy by fulfilling the requirements of the homologation agreement without considering the debtor's financial liquidity.

A debtor's failure to fulfill their obligations as outlined in the peace agreement, officially approved at the time of its signing, is known as a peace agreement default. In this situation, there are two potential stances for the debtor. Initially, the debtor is unable to execute the commitments outlined in the peace agreement due to a lack of capability. As a result, the debtor is highly likely to declare bankruptcy, and he has no intention of fulfilling his responsibilities for any given reason. On September 24, 2019, the Registrar of the Commercial Court at the Semarang District Court officially recorded an application for cancellation of a Peace Decision (Homologation) Application for Suspension of payment. The registrar registered the case under the numbers 20/Pdt.Sus-Pailit/2019/ Pn.Smg, jo. Nomor 23/Pdt.Sus-PKPU/2018/Pn. Smg.

The Commercial Court of the Semarang District Court initially declared that the respondent/debtor was in a state of Suspension of payment for a duration defined by the court. As part of the Suspension of payment process, the Debtor presented a peace plan to the Creditors' Meeting for discussion on June 20, 2019. Subsequently, the Respondent/Debtor, the Petitioner/Creditor, and other creditors reached a consensus on a peace accord (*Acte Van Dading*) on the same date.

The settlement agreement stipulates that the responder or debtor has committed to satisfying its outstanding obligations to the petitioner or creditor (specifically, a separatist creditor) by the following means:

<sup>3</sup> Faisal Santiago, 2012, *Pengantar Hukum Bisnis*, Jakarta, Mitra Wacana Media, hlm. 99.

<sup>4</sup> Munir Fuady, 2014, *Hukum Pailit dalam Teori dan Praktek*, Bandung, Citra Aditya, hlm. 30.



1. After reading the homologation decision, the maximum debt settlement period is 60 (sixty) days.
2. The discount of 31.1% decreases the margin and ratio of arrears, which amount to IDR 1,954,388,041.04, to IDR 1,346,573,360,27656.
3. The Ta'zir, originally valued at IDR 88,455,179.66, has been discounted by 100% to IDR 0.
4. The discount of 100% reduces Ta'widh from IDR 947,655,016.19 to IDR 0.
5. The principal debt payment of IDR. 8,662,294,480.72 and the margin of IDR. 1,346,537,360.27656 will be made in two payments, with the following details:
  - a. The first payment will be made no later than 30 (thirty) days from the date the homologation decision is read, amounting to 50% of the total value of the debtor's debt to PT Separatist Creditors, Bank Victoria Syariah, or IDR 5,004,433,920.49828.
  - b. The second payment will be made no later than 60 (sixty) days from the date the homologation decision is read, amounting to 50% of the total value of the debtor's debt to PT Separatist Creditors, Bank Victoria Syariah, or IDR 5,004,433,920.49828.

The ratification of the peace deal carries enduring legal authority, precluding any further deferral of debt repayment responsibilities. Article 288 of Law Number 37 of 2004 states that *"the ratification decision of the peace agreement has permanent legal effect, requiring the management to publicly declare its termination. Article 227 mandates the official publication of this notice in the State Gazette of the Republic of Indonesia and a minimum of two (2) daily newspapers."* The Suspension of payment (PKPU) concludes that the debtor must fulfill their obligation to repay their creditors. In contrast, the creditors maintain their right to receive repayment of the debt from the debtor, as outlined in the peace agreement. Article 286 of Law Number 37 of 2004 outlines the rights and responsibilities of debtors and creditors. Article 281, paragraph (2) specifies that *"the approved peace agreement legally binds all creditors, except for those who do not consent to the peace plan."* Furthermore, this aligns with the stipulations outlined in Article 1338 of the Civil Code, which asserts that *"any legally binding agreements are enforceable as law for the parties involved."*

Nevertheless, despite the ratification or homologation of a settlement agreement, there is still a possibility of default or situations where the debtor fails to fulfill their obligations. Mr. H. FUAD, the respondent or debtor in the PT application, may commit default, negligence, or violations of the peace agreement. The Commercial Court at the Semarang District Court approved the settlement agreement, and Bank Victoria Syariah, the petitioner/creditor, expected the respondent to fulfill its obligations. However, on the first due date (30 days after the approval decision), the respondent failed to make the required payment of 50% of the applicant's claims and receivables, as well as 50% of any receivables from other creditors. Nevertheless, on August 30, 2019 (before the initial payment deadline), the respondent made a complete payment of IDR. 3,964,478,468.52 to PT. Bank BRI Syariah Tbk without obtaining the petitioner's or other creditors' approval.

The Semarang District Court Commercial Court approved and confirmed Mr. H. FUAD (Respondent) with Homologation Decision Number 24/Pdt.Sus-PKPU/2018/Pn. Smg dated July



30, 2019. The petitioner, in their capacity as a creditor, terminated the peace agreement on the grounds of negligence and breach of the agreement. The respondent, who is the debtor, as well as the petitioner and other creditors, signed this agreement.

The author intends to conduct research on the legal examination of bankruptcy decisions, with a particular focus on Decision Number 20/Pdt.Sus-Pailit/2019/Pn. Smg and Decision Number 23/Pdt.Sus-Pkpu/2018/Pn. Smg, Jo. Debtors violated homologation by deferring debt payment obligations (PKPU), leading to these decisions. As part of our investigation, we can formulate the following problems:

1. What Does the Judge Consider When Deciding on a Bankruptcy Application in Decision Number 20/Pdt.Sus-Pailit/2019/ Pn. Smg, Jo. Number 23/Pdt.Sus-Pkpu/2018/Pn. Smg?
2. What are the legal consequences arising from the cancellation of Peace Agreement Number 24/Pdt. Sus-PKPU/2018/Pn through Bankruptcy Decision Number 20/Pdt.Sus-Pailit/2019/Pn.Smg, Jo. Number 23/Pdt.Sus-Pkpu/2018/Pn.Smg?

To establish the authenticity of this research, it is necessary to draw comparisons with several previous studies that share similarities with the issues addressed in this study. The first was research conducted by Efendi Simbolon for his 2018 thesis, titled "Cancellation of Peace, Suspension of payment (Central Jakarta Niaga Decision Study Number 2/Pdt.Sus-Pebatalan Peace/2016/PN.Niaga.Jkt. Pst Jo Number 8/Pdt.Sus PKPU/2015/Pn.Niaga.Jkt. Pst)." "The judges, examining the annulment of peace decision Number 2/Pdt.Sus PebatalanPeace/2016/PN.Niaga.Jkt. Pst, concurred with the applicant's plea to terminate the peace, citing the respondent's failure to adhere to the terms stipulated in the peace agreement and confirmed in the peace ratification ruling." This study has similarities to the author's research on the cancellation of peace agreements.<sup>5</sup> However, the primary distinction between the two studies lies in the differences in court decisions. Efendi Simbolon's thesis focuses on examining the principle of legal certainty in relation to the cancellation of peace agreements.

The second from Tjokorda Agung Candra Aditya conducted a research study titled "Judicial Review of the Cancellation of a Peace Agreement that Has Been Homologated Because It Contradicts the Provisions of the Law—Law Number 37 of 2004 concerning Bankruptcy and Suspension of payment (PKPU)—Case Study of Case Decision Number: 04/Pdt.Sus Cancellation of Peace/2019/Pn.Niaga.Jkt. Pst." The study was published in the Dharmasisya journal (Journal of the Law Master's Program, Faculty of Law, University of Indonesia, Volume 1, Number 3, September 2021). The research discusses the cancellation of a ratified peace agreement requested by the Creditor. The case decision numbers relevant to this discussion are 04/Pdt.Sus-Pebatalan Peace/2019/PN.Niaga.Jkt. Pst. jo Number: 23/Pdt.Sus-PKPU/2011/PN.Niaga.Jkt. Pst. Jo Case Decision Number: 718 K/ Pdt.Sus-Pailit/2019. Within the Peace Agreement, there exists a provision that permits the Debtor to modify or disregard the

<sup>5</sup> Efendi Simbolon, 2018, Tesis Pembatalan Perdamaian Penundaan Kewajiban Pembayaran Utang (Studi Putusan Niaga Jakarta Pusat Nomor 2/Pdt.Sus-Pembatalan Perdamaian/2016/PN.Niaga.Jkt. Pst Jo Nomor 8/Pdt.Sus-PKPU/2015/Pn.Niaga.Jkt.Pst), Program Studi Magister Ilmu Hukum, Fakultas Hukum, Universitas Sriwijaya, Palembang





peace plan, subject to the consent of the Majority of Creditors. This modification will be obligatory for all creditors. Consequently, the Debtor has frequently exploited this legal loophole to propose amendments to the Peace Agreement to circumvent their failure to fulfill their debt repayment responsibilities to their Creditors.<sup>6</sup>

Tjokorda Agung Candra Aditya's research findings indicate that it is not permissible to include a clause in a ratified Peace Agreement that allows the debtor to modify the agreement with the approval of most creditors. This violates the provisions stated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of payment (PKPU), specifically Article 285 paragraph (2) letter b, as well as the principle of Balance adopted by the Bankruptcy Law and Suspension of payment(PKPU). The purpose of the Peace Agreement is to ensure the continuity of the debtor's business and provide certainty of payment for creditors. The author's description indicates a divergence between Tjokorda Agung Candra Aditya's findings and their own. Aditya's magazine highlighted the annulment of recognized peace accords that conflicted with Law Number 37 of 2004 on Bankruptcy and Debt Payment Delay (PKPU). Conversely, the author's research canters on the annulment of a peace agreement because of the debtor's inability to execute its provisions. Despite ongoing disputes on legal regulations, it is evident that the focus and court decisions being examined are distinct.

## Method

The author engages in normative law research, which entails examining library resources such as books, journals, scholarly works, and court rulings, among others, to investigate legal principles and systematization. The author analyses several facets of law, such as vertical and horizontal harmonization, legal comparisons, and legal chronology.<sup>7</sup> This study pertains to normative legal research, specifically examining the commercial court decisions at the Semarang District Court with case numbers 20/Pdt.Sus-Pailit/2019/Pn. Smg, Jo. Number 23/Pdt.Sus-Pkpu/2018/Pn. Smg. We carried out the research in accordance with statutory restrictions, specifically Law Number 37 of 2004 about Bankruptcy and Postponement of Debt Payment Obligations, legal literature, and societal standards.

The research employs two methodologies: a statutory approach and a casuistry approach, with the objective of examining legal norms or standards as they are applied in legal practice. The case applies the case method by examining pertinent cases adjudicated by a court with enduring legal authority. The court scrutinizes the judge's deliberations (ratio decidendi or reasoning) during the decision-making process.<sup>8</sup> This research focuses on analyzing legal concerns and challenges related to bankruptcy law, specifically in accordance with Law Number

<sup>6</sup> Tjokorda Agung Candra Aditya, "Tinjauan Yuridis Terhadap Pembatalan Perjanjian Perdamaian Yang Telah Dihomologasi Karena Bertentangan Dengan Ketentuan Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang (PKPU)", Jurnal Dharmasisya: Program Magister Hukum Fakultas Hukum Universitas Indonesia, Volume 1 Nomor 3, September 2021.

<sup>7</sup> Soerjono Soekanto dan Sri Mamuji, 1995, *Penelitian Hukum Normatif, Suatu Tujuan Singkat*, Jakarta: Raja Grafindo, hlm. 15

<sup>8</sup> Mukti Fajar & Yulianto Ahmad, 2010, *Dualisme Penelitian Hukum Normatif & Empiris*, Yogyakarta: Pustaka Pelajar, hlm. 184.



37 of 2004. Law Number 37 of 2004 is the most recent special regulation that addresses the specific topics discussed in this research. The court ruling identified as Number 20/Pdt.Sus-Bankruptcy/2019/Pn. Smg, and Jo. Number 23/Pdt.Sus-Pkpu/2018/Pn. Smg subsequently enforced the regulation.

In this research, the data source comes from literature (library research), which consists of primary, secondary, and tertiary legal materials. The primary legal material in this research is a copy of the Commercial Court Decision at the Semarang District Court Number 20/Pdt.Sus-Pailit/2019/Pn. Smg, Jo. Number 23/Pdt.Sus-Pkpu/2018/Pn. Smg.; Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations; and the Civil Code. Researchers gathered secondary legal materials from legal literature, law journal articles, and other scientific works. Expert opinions, previous research results, and legal articles provided the tertiary legal material for this study. This research presents the data processing and analysis methods in a descriptive form. Qualitative descriptive analysis methods will adjust the data description to align with related theories. Once we have the research results, we reexplain the findings, and then we formulate a conclusion or solution to the research's central problem.

### **The Judge's considerations were outlined in Decision Number 20/Pdt.Sus-Pailit/2019/Pn. Smg, Jo. Number 23/Pdt.Sus-Pkpu/2018/Pn. Smg.**

The debtor may still fail to meet their commitments even after the ratification or approval of a settlement agreement. This may include instances of default, negligence, or breaches of the peace agreement allegedly perpetrated by Mr. H. FUAD, the respondent or debtor specified in the PT Application. In its capacity as the petitioner/creditor, Bank Victoria Syariah failed to fulfill its obligations following the Commercial Court of the Semarang District Court's approval or validation of the Settlement Agreement within the initial 30-day deadline. The duty entails the first payment of 50% of the applicant's claims and debts, along with 50% of any obligations owed to other creditors. Nevertheless, on August 30, 2019 (before the initial payment date), the respondent made a payment of IDR. 3,964,478,468.52 to PT. Bank BRI Syariah Tbk, without the petitioner's or other creditors' authorization.

As the plaintiff in this case, PT. BANK VICTORIA SYARIAH gave power of attorney to Ag. Agus Setyo Purwoko, S.H., M.H., and Fransiskus Ravellino, S.H., to help the petitioner ask the defendant, Mr. H. FUAD, to cancel the peace agreement. The defendant has been given homologation or validation from the Commercial Court at the Semarang District Court through Homologation Decision Number 24/Pdt.Sus-PKPU/2018/Pn. Smg, dated July 30, 2019. The petitioner, acting as a creditor, cancelled the peace agreement due to elements of negligence and violation of the agreement, signed by the respondent as a debtor and the petitioner as a creditor alongside other creditors.

The Panel of Judges, consisting of Edy Suwanto, S.H., M.H., as the Chief Judge, Muhammad Yusuf, S.H., M.H., and Aloysius P. Bayu Aji, S.H., M.H., as member judges, made their decision based on the petitioner's petition, the facts revealed during the trial, and the



examined witnesses and evidence. The decision was then handed down by the member judges and read on Monday, November 25, 2019, as follows:

1. Accept, and partially grant, the petitioner's request.
2. Declare that the respondent has been negligent and violated the settlement agreement dated June 20, 2019, which was signed by the respondent and the petitioner, as well as other creditors.
3. Declare the Peace Agreement dated June 20, 2019, and ratify the Peace Agreement Number 24/Pdt.Sus-PKPU/2018/Pn. Smg dated July 30, 2019.
4. Declare the bankrupt respondent, namely H. Fuad, to be bankrupt with all the legal consequences.
5. We should appoint Mr. Pudjo Hunggul HW, S.H., M.H. as the supervisory judge in this bankruptcy process.
6. Appoint and appoint curators:
  - a. RONALD ANTHONY SIRAIT, S.H.
  - b. MUHAMMAD SAEFUDIN, S.H., M.Hum
 As a team of curators involved in this bankruptcy.
7. Sentence: The bankruptcy respondent is to pay all costs incurred and estimated at IDR. 3,145,000. (three million, one hundred and forty-five thousand rupiah).

The judge's deliberations in reaching a verdict in case Number 20/Pdt.Sus-Pailit/2019/Pn. Smg, Jo. Number 23/Pdt.Sus-Pkpu/2018/Pn. SMG are outlined below: Through the case study process, a number of noteworthy discoveries have been made. The judge considered the petitioner's formal request, the respondent's replies, the evidence presented during the trial, the testimony of witnesses, and the applicable laws and regulations in this situation. When resolving the matter at hand, the judge considered the following factors:

### **Judge's Considerations Regarding Negligence in Implementing the Peace Agreement by the Respondent/Debtor**

The Commercial Court at the Semarang District Court homologated or ratified the peace agreement on the first due date (30 days after the homologation decision read out), proving that Mr. H. Fuad, the respondent or debtor, had committed negligence. The respondent did not carry out its obligations, namely making the first payment of 50% of PT's bills and receivables. The applicant or creditor, Bank Victoria Syariah, also needs to pay 50% of each creditor's receivables.

The judge's considerations above indicate that the Peace Agreement Number 24/Pdt.Sus-PKPU/2018/Pn exhibits negligence or default. What action did the respondent take? Default refers to a situation in which an individual fails to fulfill their obligations in line with the agreed-upon terms between the creditor and debtor.<sup>9</sup> The Panel of Judges then connected the respondent's act of default on the peace agreement to Article 170 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, which stipulates that

<sup>9</sup> Abdul R Saliman, 2004, *Esensi Hukum Bisnis Indonesia*, Jakarta: Kencana, hlm.15.





"Creditors could demand the cancellation of a ratified peace agreement if the debtor neglected to fulfill the terms of the peace agreement." Every agreement requires performance. According to Article 1234 of the Civil Code, there are several ways to fulfill this achievement, which include handing over or giving something, doing something, or not doing anything at all. If a party does not carry out the contents of the agreed agreement, then that party is said to have violated the contents of the agreement or is often known as a breach of contract.

The judge also established a connection between Exhibit P-5, which refers to the First and Final Summons Letter from Purwoko & Associates dated October 18, 2019. This letter was delivered by the petitioner's lawyer to the respondent. The content of this letter pertained to the topic of bankruptcy and the act of postponing the repayment of debts. Article 170 of Law Number 37 of 2004 pertains to the following subjects: The respondent completely disregarded the subpoena and did not provide any response. This demonstrates the respondent's purposeful refusal or neglect to comply with or acknowledge the provisions of the peace accord.

The justices inferred that the respondent's inability to reply to the petitioner's subpoena indicated a lack of sincerity and honesty. In accordance with Article 1338, paragraph (3) of the Civil Code, the debtor must act in good faith when carrying out a peace decision from PKPU. This requires the debtor to follow the rules and behave appropriately, ensuring that their activities match with the agreed terms in the peace decision.

### **Judge's Considerations Regarding Proof of the Respondent's/Debtor's Performance**

The judge's second issue was the respondent's inability to substantiate his compliance with Peace Agreement Number 24/Pdt.Sus-PKPU/2018/Pn. The homologation decision has been revoked. The judge's judgment was grounded on Article 170 Paragraph 2 of Law Number 37 of 2004, which pertains to Bankruptcy and Postponement of Debt Payment Obligations. This article mandates that the debtor must provide evidence of achieving peace. Nevertheless, the trial uncovered that it was the respondent/debtor, rather than the debtor, who was able to provide evidence of complying with the peace agreement. The respondent only paid complete payments to PT. Bank BRI Syariah Tbk, amounting to IDR 3,964,478,468.52, on August 30, 2019 (before the initial payment was due). In this instance, the respondent neglected to meet its responsibilities of repaying its debts to the petitioner, creditors, and many other creditors, resulting in the termination of the settlement agreement.

### **Judge's Considerations Regarding the Reasons for the Respondent's/Debtor's Negligence**

The respondent provided a detailed explanation in response to the petitioner's petition, including the specific factors that led to his negligence. As the debtor in this instance, the respondent felt encumbered by the creditors' restricted timeframe of just 60 days to settle his debts amounting to IDR 18,968,346,308. The respondent has also made a request to modify the



agreement between the debtor and creditors, seeking an extension of the time to allow the debtor to meet its commitments.

The panel of judges denied approval to the respondent after considering the respondent's explanation of fault. The Panel of Judges has determined that failure to comply with the provisions of a quo peace agreement will result in the debtor being declared bankrupt according to the law. In the event of this occurrence, the debtor will be unable to propose a peace plan and will instead go to the insolvency phase. Consequently, this plainly illustrates the debtor's negligence.

### **Judge's Considerations Regarding Payments Made by the Respondent/Debtor to PT. Bank BRI Syariah Tbk**

The Panel of Judges denied the petitioner's request, which claimed that the respondent's payment to PT was cancelled. Bank BRI Syariah Tbk, the party being responded to, made a payment of IDR. 3,964,478,468.52 on August 30, 2019, which was made before the original payment deadline. The petitioner complied with the respondent's determination to exclusively make payments to PT. Bank BRI Syariah Tbk has breached the peace accord and inflicted significant hardship upon the petitioner and other creditors.

Nevertheless, the Panel of Judges examining the issue at hand concluded that the Respondent had indeed carried out a transaction involving the buying and selling of mortgage rights, and this action did not violate the conditions outlined in the peace agreement dated June 20, 2019. Consequently, the Petitioner's plea was dismissed on the grounds of its lack of rationality.

### **Judge's Considerations Regarding the Bankruptcy of the Respondent/Debtor**

The judge's decisions about the respondent, who was officially declared bankrupt, were based on the stipulations outlined in Article 291 Paragraph 2 of Law Number 37 of 2004, which pertains to bankruptcy and postponement of debt payment obligations. This article explicitly states:

- 1) The provisions outlined in Article 170 and Article 171 are also applicable, with necessary modifications, to the cancellation of the agreement.
- 2) In a court decision that cancels the peace agreement, the debtor must also be declared bankrupt.

It can be seen that because the peace agreement dated June 20, 2019, which had been agreed upon by the debtor/respondent and the petitioner as creditor together with other creditors and which had been homologated, had been cancelled because the debtor/respondent had failed to carry out the terms of the peace agreement, the panel of judges, based on the provisions mentioned above, handed down a decision for the respondent to be declared bankrupt with all the legal consequences.

According to Law Number 37 of 2004 on Bankruptcy and Postponement of Debt Payment Obligations, individuals who owe money to two or more creditors and fail to fully repay at least



one debt that is due, and collectible can be declared bankrupt by a court. This declaration can be made either upon the debtor's own request or upon the request of one or more of their creditors. Consequently, the judge's decision and the rules are in accordance with that statute. As per the clarification provided in Article 2, Paragraph (1), the phrase "debt which has matured and can be collected" pertains to the responsibility of repaying a debt that has reached its maturity date. This can occur due to various reasons such as an agreement, the acceleration of the collection timeframe, the imposition of penalties or fines by the relevant authority, or a ruling made by a court, arbitrator, or arbitration panel.

Due to the debtor's failure to comply with the peace agreement, particularly their inability to repay the obligation of IDR 18,968,346,308 within the specified 60-day period, we have grounds to declare the respondent bankrupt. The debtor has adopted a biphasic payment system, wherein 50% of the claimant's invoices and outstanding amounts will be paid in August 2019, followed by another 50% in September 2019. The debtor has four distinct creditors, namely PT. Bank Victoria Syariah (applicant), PT. BPR Adipura Sentosa, PT. Bank Bri Syariah TBK, and PT. Bank Negara Indonesia (Persero) TBK. Hence, the existence of several creditors offers ample justification for declaring the respondent insolvent.

### **The legal consequences arising from the cancellation of Peace Agreement Number 24/Pdt.Sus-PKPU/2018/Pn through Bankruptcy Decision Number 20/Pdt.Sus-Pailit/2019/Pn. Smg, Jo. Number 23/Pdt.Sus-Pkpu/2018/Pn. Smg**

The ratification of Peace Agreement Number 24/Pdt.Sus-PKPU/2018/Pn. Smg, which was dated July 30, 2019, has been revoked. This judgment was derived from the Peace Agreement dated June 20, 2019, and was founded upon the Bankruptcy judgment Number 20/Pdt.Sus-Pailit/2019/Pn. Smg, in addition to Jo. Number 23/Pdt.Sus-Pkpu/2018/Pn. The rulings announced by the Panel of Commercial Court Judges at the Semarang District Court will unquestionably have legal consequences for both debtors and creditors, as specified in Law Number 37 of 2004 on Bankruptcy and Suspension of payment (PKPU). The Commercial Court Decision rendered the peace accord null and void, leading to the subsequent legal ramifications:

- a. According to Article 291 Paragraph 2 of Law Number 37 of 2004 on Bankruptcy and Suspension of Payment Obligations, the debtor shall be considered bankrupt if the court ruling cancels the settlement.
- b. Upon being declared bankrupt, the debtor forfeits their authority to oversee and administer their assets, which are classified as part of the bankruptcy estate, starting from the date when the bankruptcy declaration is officially made, as stipulated in Law Number 37 of 2004 regarding Bankruptcy and Suspension of Payment.
- c. The Panel of Judges has determined that the curator will be responsible for overseeing the debtor's assets once the bankruptcy proceedings resume. The curator is required to take prompt action to resolve the bankruptcy assets. The regulations on this topic are outlined in Article 175, Paragraph 1 of Law No. 37 of 2004. As per the rules outlined in Law Number 37 of 2004, the termination of the peace accord leads to Mr. H. Fuad forfeiting his autonomy in handling



his assets. The curator, specifically the Panel of Examining Judges, takes charge over these assets. The case at hand appoints Mr. RONALD ANTONY SIRAIT, S.H., and Mr. MUHAMMAD SAEFUDIN, S.H., M.H., as the curators responsible for managing the bankruptcy of Mr. H. Fuad. After being declared bankrupt, Mr. H. Fuad is no longer capable of satisfying his creditors.

- d. The curator, consisting of Mr. Ronald Anthony Sirait, S.H., and Mr. Muhamad Safuddin, S.H., M.H., is responsible for handling all legal claims related to the rights and obligations of the bankrupt debtor's assets. Additionally, according to Article 26 Number 37 of the 2004 UUK and PKPU, if legal claims against the bankrupt debtor result in the debtor being punished, the assets contained in the bankruptcy estate (bankruptcy boedel) will not be affected by the sentence.

Article 1 Number 4 of Law Number 37 of 2004 on Bankruptcy and Postponement of Debt Payment Obligations officially recognizes Mr. H. Fuad as a bankrupt debtor, following a court ruling. We cite Bankruptcy Decision Number 20/Pdt.Sus-Pailit/2019/Pn. Smg Jo. Number 23/Pdt.Sus-Pkpu/2018/Pn. Smg as evidence of Mr. H. Fuad's legal recognition as a bankrupt debtor.

With Decision Number 20/Pdt.Sus-Pailit/2019/Pn. Smg, the Commercial Court invalidated the peace agreement. The Commercial Court invalidated the peace agreement through Decision Number 20/Pdt.Sus-Pailit/2019/Pn. Smg, resulting in legal consequences for the debtor. Furthermore, this judgment carries legal ramifications for creditors, namely;

- a. Based on Article 176 of Law Number 37 of 2004, which pertains to Bankruptcy and Suspension of Payment Obligations, the bankruptcy assets are distributed among the creditors in the case of a reopening, by;
  1. Pro-rata distribution of the proceeds from the reduction in bankruptcy assets occurs if the old creditors and new creditors have not received payment.
  2. If a partial payment has been made to the old creditor, both the old and the new creditor are entitled to receive payment in accordance with the percentage agreed upon in the settlement.
  3. After deducting payments as mentioned in point number 2, old and new creditors have the right to receive pro rata payments for the remaining bankruptcy assets until all recognized receivables have been satisfied.
  4. Existing creditors are not required to return payments they have already received.

Therefore, in this case, the bankrupt debtor, Mr. H. Fuad, has four separate creditors: PT. BANK VICTORIA SYARIAH (the applicant), PT. BPR ADIPURA SENTOSA, PT. BANK BRI SYARIAH TBK, and PT. BANK NEGARA INDONESIA (PERSERO) TBK. These separate creditors, namely the parties who hold security rights to mortgages, pledges, fiduciary guarantees, and mortgage rights, will remain unaffected by the bankruptcy consequences.

The four separatist creditors previously mentioned have the option to sell their own goods that serve as collateral. The proceeds from the sale will be taken according to the



amount of receivables from creditors, whereas if there is any remainder from the sale, it can be deposited into the curator's cash or into the bankruptcy court. And if the sales made are not sufficient to make payment, the creditor can convey the deficiency as a competing (concurrent) creditor.

## Conclusion

The bankruptcy case, as determined by the Commercial Court Decision Number 20/Pdt.Sus-Pailit/2019/Pn. Smg, Jo. Number 23/Pdt.Sus-Pkpu/2018/Pn. Smg, concludes that the respondent or debtor has been found guilty of negligence for failing to fulfill their obligations after the settlement agreement, which was approved by the Commercial Court at the Semarang District Court, within the specified time frame (30 days after the approval decision was announced). The respondent did not meet its obligations, which included making the initial payment of 50% of PT's invoices and receivables. The applicant or creditor, BANK VICTORIA SYARIAH, is required to make a payment equal to 50% of the amount owed to each creditor.

The conduct of the Respondent on Peace Agreement Number 24/Pdt.Sus-PKPU/2018/Pn amounted to a violation or failure to fulfill their obligations. The respondent's actions had a significant role in the Panel of Judges' decision to allow the petitioner's plea for the cancellation of the peace agreement. The debtor's violation of the contract satisfies the requirement of negligence as stated in Article 170 paragraph 1 of Law No. 37 of 2004. Consequently, the judge has no grounds to reject the request for the cancellation of the peace agreement. The Panel of Judges determined that the respondent's failure to comply with the terms of the peace agreement constituted a violation of Article 170 paragraph (1) of Law Number 37 of 2004 on Bankruptcy and Postponement of Debt Payment Obligations. This article allows creditors to request the annulment of a ratified peace agreement if the debtor fails to fulfill its obligations under the agreement.

The Commercial Court rendered Decision Number 20/Pdt.Sus-Pailit/2019/Pn. Smg, Jo. Number 23/Pdt.Sus-Pkpu/2018/Pn., which invalidated the peace accord. The aforementioned SMG subsequently leads to several legal ramifications, including the following: Firstly, Mr. H. Fuad, who was the respondent or debtor in the case at hand, was officially declared bankrupt. As a result, he forfeited his authority to oversee and administer his assets, which were then included in the bankruptcy estate. Furthermore, the termination of the peace accord resulted in the declaration of Mr. H. Fuad's bankruptcy because of his failure to fulfill his duties, so rendering him unable to further the cause of peace. Therefore, the Panel of Judges decided that the curator would take on the responsibility for Tuan's assets. H. Fuad possesses Br. RONALD ANTONY SIRAIT, S.H., and Br. MUHAMMAD SAEFUDIN, S.H., M.H. as assets. The curator must promptly take measures to resolve the bankruptcy assets. The curator is responsible for submitting all legal claims arising from the rights and obligations associated with Mr. H. Fuad's bankrupt assets. In this matter, Mr. H. Fuad, who is bankrupt, has four separate creditors: PT. BANK VICTORIA SYARIAH (the applicant), PT. BPR ADIPURA SENTOSA, PT. BANK BRI SYARIAH TBK, and PT. BANK NEGARA INDONESIA (PERSERO) TBK. The bankruptcy





will have no effect on these individual creditors, as they retain the ability to enforce their rights as if the debtor's bankruptcy did not occur. The four secessionist creditors have the choice to vend their own merchandise, which acts as security. The funds generated from the auction will be allocated based on the outstanding debts owed to creditors. Any remaining funds from the sale can be either deposited into the curator's cash account or into the bankruptcy court.

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