DUE TO THE LAW OVERVIEWING THE PACT PRINCIPLE *SUNT SERVANDA TOWARDS* THE SETTLEMENT OF BANKRUPTCY DISPUTES IN LAW NUMBER 37 OF 2004 CONCERNING BANKRUPTCY AND OBLIGATIONS OF DEBT PAYMENT

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Abstract

The settlement offered by the debtor to the creditor is basically to settle debt disputes and claims out of court. As it is known that in the case of bankruptcy, namely the existence of a process of implementing the provisions of Article 1131 and Article 1132 of the Civil Code, which aims to divide the assets of the debtor fairly, it is intended that creditors obtain prior implementation (pari passu) than others, as well as creditors obtain greater repayments. to others (prostata). However, the provisions of Article 303 of the UUK and PKPU of course raise problems regarding the legal force of the principle of the sunt servanda agreement in the form of an arbitration clause that is relevant for bankruptcy disputes, so as a result of the law violation of the principle of Pacta sunt servanda in bankruptcy disputes. These problems cause legal uncertainty to realize legal certainty as a fundamental value in law. Therefore, in this case, the DPR should immediately review and then revise the UUK and PKPU which are oriented towards prioritizing the Pacta sunt servanda principle in contract law, including business agreements and resulting in bankruptcy. And judges who are expected to better understand the ins and outs of bankruptcy.

Keywords : Disputes, Bankruptcy, and the Principle of Pacta Sunt Servanda.

INTRODUCTION

An agreement is considered very important in people's lives, especially for economic actors. Almost all business activities are carried out through agreements, but many people/economic actors do not fully understand the importance of having a good understanding of agreements.[1] Sometimes an agreement is seen as just a formality or proof that an agreement has been reached between the parties. But when things go wrong, he realizes the importance of a deal. In this condition, the agreement is only repressive, not preventive.[2] Article 1313 of the Civil Code states: An agreement is an act by which one or more people bind themselves to one or more other people. In general, the agreement is: The agreement of the parties on something that gives birth to a legal engagement/relationship, gives rise to rights and obligations, if it is not carried out as agreed, it will result in sanctions.[3]

The agreement creates an alliance for the parties. A partnership is a legal relationship between two people or two parties, on that basis one party has the right to demand something from the other party and the other party is obliged to fulfill that requirement.[4] The agreement reached determines the continuity of the business, regardless of whether the business makes a profit or a loss. For this reason, care and caution is required when drafting a contract.[5] Agreements must be made by people who can actually understand and analyze the agreement.[6] Given the importance of an agreement, it is important to understand matters relating to an agreement, such as the parties, the rights and obligations of the parties, the structure and organization of the contract, dispute resolution and contract termination. The principle of *pacta sunt servanda is* explained in article 1338 of the Civil Code, which stipulates that all agreements made legally apply to those who make them.[7] The agreement can only be withdrawn with the consent of both parties or for reasons that are legally stated to be sufficient and the agreement must be carried out in good faith, legal expertise and *pacta sunt servanda*.[8]

The settlements offered by debtors to creditors are generally used for settlement of disputes and receivables outside the law or procedural by using an arbitration institution. With regard to the settlement of credit and debt disputes by arbitration institutions, the process is simple and fast, the decision-making, carried out by experts, is resolved, definitive and binding and is used in the world of commerce.[9] This is different from the settlement of debt and credit disputes (litigation) which is not easy and takes a long time to reach a final and permanent decision. Due to the legal consequences of the agreement with the arbitration clause, the dispute is resolved by the arbitration body, which must be taken and enforced by the debtor and creditor. Because according to article 1338 of the Civil Code. This provision is known as thePrinciple *Pacta Sunt Servanda*, so that every legal arrangement must be carried out in good faith. The existence of an arbitration clause is a normative law, regional courts are not authorized to settle this case, although in practice this court is not regulated as in Article 3 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution that, "The district court is not authorized to settle disputes between the parties bound by the arbitration agreement". According to this provision, the district court should not have the authority to settle disputes that have determined the existence of an arbitration clause as a manifestation of the principle of pacta sunt servanda, but in practice this principle cannot be applied properly, as happens in a state of bankruptcy.

As it is known that bankruptcy is a procedure to fulfill the provisions of Article 1131 and Article 1132 of the Civil Code, which aims to distribute debtors' assets fairly, it is intended that creditors seek execution first (pari passu) so that others and creditors receive higher payments than other debtor

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[1] Anita Kamilah, *Bangun Guna Serah (Build operate and Transfer/ BOT) Membangun Tanpa Harus Memiliki Tanah (Persfektif Hukum Agraria Hukum Perjanjian dan Hukum Publik)*, CV. Keni Media, Bandung, 2013, hlm. 63.

[2] Soerjono Soekanto, *Penelitian Hukum Normatif*, PT Raja Grafindo Persada, Jakarta, 2003, hlm. 13.

[3] Purwahid Patrik, Dasar-Dasar Hukum Perikatan, Mandar Maju, Bandung, 1994, hlm. 4.

[4] Mariam Darus Badruizaman, *KUH Perdata Buku III Hukum Perikatan Dengan Penjelasan*, Alumni, Bandung, 1996, hlm. 99.

[5] Sri Gambir Melati Hatta, *Beli Sewa Sebagai Perjanjian Tak Bernama: Pandangan Masyarakat dan Sikap Mahkamah Agung Indonesia*, alumni, cetakan ke-2, Bandung, 2000, hlm. 16.

[6] Johannes Ibrahim & Lindawaty Sewu, *Hukum Bisnis Dalam Persepsi Manusia Modern*, PT. Refika Aditama, Cet. ke-2, Bandung, 2007, hlm. 43.

[7] Huala Adolf, *Dasar-Dasar Hukum Kontrak Internasional*, Refika Aditama, Bandung, 2006, hlm. 15.

[8] Salim, HS, *Hukum Kontrak Teori dan Teknik Penyusunan Kontrak*, Sinar Grafika, Jakarta, 2010, hlm. 42.

[9] Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, Liberty, Yogyakarta, 1991, hlm. 203.

assets (protaten).[10] Article 1 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and PKPU states that Bankruptcy is a general confiscation of all assets of the Bankrupt Debtor whose management and settlement is carried out by the Curator under the supervision of the Supervisory Judge as regulated in this Law.[11] So actually Bankruptcy can be interpreted as a confiscation of all debtor assets that are included in the bankruptcy application.[12] The bankrupt debtor does not automatically lose his ability to take legal action, but loses control and management of his assets which are included in the bankruptcy starting from the declaration of bankruptcy.[13]

In this case, the settlement of bankruptcy cases must be brought to the Commercial Court, which is a special court that has been appointed by the Law on Bankruptcy and Suspension of Debt Payment Obligations.[14] By setting aside the existence of an arbitration clause which is a contract/agreement between the parties in a business related to the choice of a dispute resolution forum by appointing a particular arbitrator/arbitration institution.[15] In Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, there is a violation of very basic and universal legal principles, namely the principle of "*pacta sunt servanda*" which has been ignored by the founders of Bankruptcy and Postponement of Debt Payment Obligations. Even in any religion in the world states: "promises" must be kept, because a promise is a "debt" that must be paid. In *Pacta sunt servanda* is a principle / law principle that should be put forward in contract law, because this is part of the principle of freedom of contract that apply equally appropriate with the Act, so that it binds the parties that promise. Therefore, based on the background of the problem above, the researcher needs to study and analyze the **"Legal Consequences of Overriding thePrinciple on the *Pacta Sunt Servanda* Settlement of Bankruptcy Disputes in Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations".**

PROBLEM FORMULATION

Based on the background of the problem above, the formulation of the problem in this research is about how the legal consequences of overriding the principle *pacta sunt servanda* on the settlement of bankruptcy disputes in Law Number 37 of 2004 concerning Bankruptcy and Delay of Payment of Debt Obligations?

RESEARCH METHODS

Scientific work, especially legal research, requires the use of prescriptive and applied legal research methods. In prescriptive jurisprudence, jurisprudence examines the purpose of law, the values of justice in a law, the rule of law, legal concepts and norms while in applied science the law establishes procedures, rules and prohibitions to enforce the rule of law.[16]

Research on legal consequences overriding the principle *pacta sunt servanda* on the settlement of bankruptcy disputes in Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations is a research that uses a approach *normative juridical,* namely the approach is carried out by examining and interpreting theoretical issues related to principles, conceptions and comparisons of law, actions, legal policies and legal reforms and others, which are described in the form of narrative words in certain contexts and using the scientific method. The legal materials studied and analyzed in this study used secondary data, including: [17]

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[10] Gunawan Widjaja, *Risiko Hukum dan Bisnis Bila Perusahaan Pailit*, Penebar Swadaya, Jakarta, 2009, hlm. 47.

[11] Mariam Darus Badruizaman, *Kompilasi Hukum Perikatan,* PT. Citra Aditya Bakti, Bandung, 2003, hlm. 84.

[12] Ahmadi Miru, *Hukum Kontrak dan Perancangan Kontrak,* PT. Raja Grafindo Persada, Edisi Revisi, Jakarta, 2007, hlm. 5.

[13] M. Hadi Subhan, *Prinsip-prinsip Hukum Kepailitan,* Disertasi, Program Pascasarjana Unair, Surabaya, 2006, hlm. 56.

[14] Syamsudin M. Sinaga, *Hukum Kepailitan Indonesia,* Tatanusa, Jakarta, 2012, hlm. 145.

[15] Sutan Remy Sjahdeini, *Hukum Kepailitan Memahami Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang,* Pustaka Utama Grafiti, Jakarta, 2009, hlm. 191.

[16] Yati Nurhayati, *Pengantar Ilmu Hukum,* Nusa Media, Bandung, 2020. hlm. 9.

[17] Dziky Saeful Rohim, *Mediasi Sebagai Alternatif Penyelesaian Perkara Tindak Pidana Penipuan Di Indonesia Ditinjau Dari Asas Contante Justice,* Al Adl Jurnal Hukum, Volume 13 Nomor 1, Januari 2021, hlm. 209-210.

1. Primary legal materials. Primary legal materials are legal materials that are authoritative, meaning they have authority. Primary legal materials consist of statutory regulations, official records or minutes in the formation of laws and regulations, namely:
   a. the 1945 Constitution of the Republic of Indonesia;
   b. Burgerlijk Wetboek voor Indonesië (Book of Civil Code);
   c. Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution;
   d. Law Number 40 of 2007 concerning Limited Liability Companies; and
   e. Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.
2. Secondary legal material. Secondary legal materials are in the form of official documents, including books, legal journals, papers, articles, magazines, newspapers and other sources.
3. Tertiary legal materials. Tertiary legal materials are legal materials that provide instructions and explanations for primary legal materials and secondary legal materials, in the form of legal dictionaries, large Indonesian language dictionaries, and so on.[18]

Data collection techniques used in this study include using library research techniques. The library technique is carried out to collect secondary data as described above. While the data analysis technique used is *descriptive qualitative normative analysis*, namely from the data obtained then collected systematically and analyzed qualitatively in order to create clarity about the problems discussed.

DISCUSSION

A. Legal Consequences of Overriding thePrinciple on the *Pacta Sunt Servanda* Settlement of Bankruptcy Disputes In Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations As a

As a result of thePrinciple *exclusion of the Pacta Sunt Servanda* in the settlement of bankruptcy disputes, it must first be clear who is entitled, that is, it must be determined. First, who is declared as the originator of the cancellation of the principle *pacta sunt servanda* in the settlement of bankruptcy disputes. Legal responsibility for the primacy of the principle of pacta sunt servanda in the settlement of bankruptcy disputes. From the point of view of responsibility, only those who can take responsibility can be held accountable for their actions.[19] In this case, due to the revocation of the principle of *pacta sunt servanda* in the settlement of a bankruptcy dispute, the person who commits an unlawful act depends on whether he commits a criminal act in committing the act and whether the person who commits the act commits the act, violates the law, then bankruptcy suffered will be charged to him.

The liability according to the debtor's law for the consequences of the cancellation of the basis of *pacta sunt servanda* in the settlement of a bankruptcy dispute is the ability of a person to be responsible for a crime. Everyone is responsible for all their actions, only their behavior causes the judge to impose the sentence imposed on the perpetrator. In order to order a debtor to go bankrupt, it is necessary for a person to act actively or passively in accordance with the provisions of the Civil Code, against the law and without justification and guilt in the broadest sense, including responsibility, volunteerism and negligence as well as apologies. .

On this basis, *dader* must have an element of guilt and guilt that must be fulfilled by these elements, namely:

1. The ability to be responsible or accountable to the Maker (*Dader)*.
2. There is a psychological relationship between the perpetrator and the deed, namely the presence of intentional or error in the narrowest sense (guilty). The perpetrator is aware that the perpetrator must know the consequences of his actions.
3. The absence of a debtor cancellation policy as a result of the cancellation of the basis of pacta sunt servanda in the settlement of bankruptcy disputes which excludes liability for actions against the maker.[20]

In the legality principle of the debtor's personal guarantee in Indonesia, which stipulates that a person can only carry out the debtor's actions as a result of the revocation of the pacta sunt servanda principle in the settlement of bankruptcy disputes if the act is in accordance with the words of the Debtor Law regarding personal guarantees. It is true that the person does not necessarily have to be sentenced

[18] *Ibid.,* hlm. 210.

[19] Roeslan Saleh,*Perbuatan Pidana dan Pertanggungjawaban Pidana*, Aksara Baru, Jakarta, 1999, hlm. 80.

[20] *Ibid.,* hlm. 85.

to the debtor for the bankruptcy he experienced, because it still needs to be proven whether his guilt can be proven. For someone who is the subject of the debtor's personal guarantee, he must fulfill the elements of the debtor's actions in the personal guarantee and the debtor's responsibility to overcome the principle of pacta sunt servanda.[21]

A debtor who cancels the principle *sunt servanda* by stipulating the existence of an obligation must show the fault of the bankrupt debtor by contracting a debtor, which is the most important characteristic of the debtor for the cancellation of the pacta sunt servanda. The unlawful nature is related to the mental state (soul) of the debtor by the sunt servanda carried out by him, which can be planned (*opzet)* or negligent (*culpa*). According to debtor legal experts, there are 3 (three) forms of intentional (*opzet)*, namely:

1. Deliberation as intentional. This intention is intentional, the perpetrator can be held accountable and if this intention is carried out by the debtor with personal guarantees, the perpetrator must be punished.
2. Deliberate with a certain conscience. This intention is present when the perpetrator (perpetrator or father) does not seek the consequences that underlie the subtlety of his actions and of course knows or believes that an effect other than what is intended will occur.
3. Intentionality with the realization of the possibility (*Dolus Eventualis*) Intentionality is also called intentionality with awareness of the possibility that someone performs an action with the intention of causing a certain result. However, the perpetrator is aware that there may be additional consequences which are also prohibited and threatened by law.[22]

In general negligence*(culpa)*is divided into two, namely:

1. Failure conscious*(deliberate fault).*In this case, the perpetrator imagines or suspects that an effect will occur, but even though he tries to prevent it, it still happens.
2. Unconscious abandonment (unconscious guilt). In this case, the perpetrator does not imagine or suspect that there will be a consequence that is prohibited and is punishable by law. While he should take into account the emergence of a consequence.[23]

A person is said to be responsible if he fulfills 3 (three) conditions, namely:

1. The ability to see the meaning of his actions;
2. Can recognize that actions in the company may not be considered appropriate;
3. Can determine the intention or will when performing an action.[24]

An act is said to have violated the law, and can be subject to sanctions from the debtor for a personal guarantee, then 2 (two) elements must be fulfilled, namely the existence of an element of the debtor's actions against the personal guarantee (*actus reus*) and the state of the inner nature of the maker (*mens rea*). Error (*schuld*) is an element of the maker of the offense, so it includes the element of the debtor's responsibility for a personal guarantee which means that the maker can be blamed for his actions. If the guilt is not proven, it means that the debtor's actions against personal guarantees (actus reus) are actually not proven because the judge cannot prove a fault if he knows beforehand that the debtor's fault occurred against that person. the guarantee does not exist or is not proven by the defendant. The ability to distinguish good and bad actions is an intellectual factor that can distinguish between permissible and inappropriate actions, and the ability to determine a person's will according to their own beliefs about whether an action is good or bad is a*volitional factor*. adjust his behavior with knowledge of what is and is not. For the two reasons above, of course, a person who cannot determine his will according to his belief on the basis of his actions, cannot be guilty if he forces a debtor to provide personal guarantees; such a person cannot be held accountable.[25]

As a result of the law that revoked the principle *pacta sunt servanda* for the settlement of bankruptcy disputes in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUK and PKPU), the application of the arbitration clause as the embodiment of thePrinciple *Pacta Sunt Servandacould* not be enforced even in cases of bankruptcy. This is due to the existence of Article 303 of the UUK and PKPU, which stipulate: "The court has the authority to examine and decide on the bankruptcy petition of the parties bound by the agreement with the arbitration clause, provided that the debt becomes the basis, the bankruptcy petition has met the requirements according to 2 paragraph (1) although an arbitration clause has been stipulated. Regarding the requirements for

[21] Andi Hamzah, *Asas-Asas Hukum Pidana*, Rineka Cipta, Jakarta, 1997, hlm. 130.

[22] Leden Mapaung, *Asas Teori Praktik Hukum Pidana*, Sinar Grafrika, Jakarta, 2005, hlm. 15.

[23] *Ibid.*, hlm. 26.

[24] Roeslan Saleh, *Op.Cit*, hlm. 80.

[25] Leden Mapaung, *Op.Cit.*, hlm. 263.

filing a bankruptcy petition in accordance with Article 2 paragraph (1) of the UUK and PKPU, the debtor has two or more creditors and has not paid at least one forfeit and refundable claim. The existence of the provisions of Article 303 of the UUK and PKPU of course raises problems regarding the legal force of the principle of the sunt servanda agreement in the form of an arbitration clause that is relevant for bankruptcy disputes, then as a result of the law violation of the principle of *Pacta sunt servanda* in a bankruptcy dispute. These problems require legal clarity to realize legal certainty as a fundamental legal value.

According to article 1313 of the Civil Code, the agreement is a source of partnership. There are several key principles in contract law that underlie agreements, including the basis of pacta sunt servanda. Some scientists equate the use of the word simple with the meaning of the principle (principle).[26] According to Paton, the principle is "a broad area of thought that underlies the existence of a rule of law".[27] Practical legal drafts must be based on these legal principles.[28] Meanwhile, according to Ron Jue, legal principles are the values that underlie the rule of law.[29]

Pacta Sunt Servanda is a principle or basic principle of the civil law system adopted in international law in its development. Basically the principle of Pacta Sunt Servanda refers to a contract or agreement made between individuals, which means: The

1. agreement is the law for the parties who make it, and
2. This implies that the parties reneging on the obligations contained in the agreement are a breach of promise or negligence.[30]

Aziz T. Saliba stated that the principle of Pacta Sunt Servanda is the victim of a contract (*Sanctity Of Contract*). The essence of contract law is the principle of contractual freedom or the so-called principle of autonomy. The principle of freedom of contract according to Article 1338 paragraph (1) of the German Civil Code (BGB) is that every agreement made legally applies to the person who signs it. However, freedom of contract does not mean that an agreement can be made freely, but nevertheless must be made with the conditions of the validity of the agreement according to article 1320 of the Civil Code, namely agreements, jurisdiction, certain matters and legal reasons. The principle of Pacta Sunt Servanda is also one of the basic norms in law, and is closely related to the principle of good faith to respect or obey the agreement.[31] The reality of the application of the principle of good faith from a promise can be described as follows, among others:

1. The parties must carry out the contract themselves in terms of the content, spirit, intent and purpose of the contract;
2. Respect the rights and obligations of all parties and third parties to whom rights and/or obligations may be granted; and
3. Failure to take any action that may prevent the Company from achieving the purposes and objectives of the Agreement itself, either before the Agreement enters into force or after the Agreement enters into force.[32]

One of the important provisions in an agreement or business contract is a dispute resolution provision or clause that regulates the affairs of the forum and what law applies to disputes that arise. Employers are less likely to settle disputes in court and prefer to resolve them through institutions outside the law.

In business practice, violators can reach many agreements, including debt agreements between creditors and debtors. Sometimes debtors fail to fulfill their obligations (default), causing disputes. Problems arise when one of the parties does not settle a debt dispute in a proper civil court, but files for bankruptcy directly to the commercial court.

Bankruptcy disputes arise mainly from debt contracts. The bankruptcy dispute is chosen by the parties to place the debtor's property under the blanket forfeiture. Law Number 37 of 2004 seems to have determined the existence of legal provisions that can deny the principle of dispute resolution by the Arbitration Tribunal. Article 303 of the law stipulates: “The court has the authority to examine and settle the bankruptcy petition from a party bound by an agreement with an arbitration clause provided

[26] Muchtar Kusumaatmadja, *Pengantar Hukum Internasional*, Alumni, Bandung, 2003, hlm. 168.

[27] Chainur Arrasjid, *Dasar-Dasar Ilmu Hukum*, Sinar Grafika, Jakarta, 2000. hlm. 36.

[28] Sudikno Mertokusumo, *Penemuan Hukum,* Liberty, Yogyakarta, 2001, hlm. 5.

[29] Arief Sidharta, *Refleksi Tentang Hukum,* PT. Citra Aditya Bakti, Bandung, 2002. hlm. 121.

[30] Harry Purwanto, *Keberadaan Asas Pacta Sunt Servanda Dalam Perjanjian Internasional*, Artikel Dalam Jurnal, “Mimbar Hukum Volume 21 Nomor 1, Februari 2009, hlm. 50.

[31] Wayan Partiana, *Hukum Perjanjian Internasional* Bagian 2, Mandor Maja, Bandung, 2005, hlm. 263.

[32] *Ibid.*,

that the debt that forms the basis of the bankruptcy petition is the bankruptcy provision according to Article 2 Paragraph (1) of this Law. fulfilled."

The implementation of the arbitration clause agreement as the basis for resolving bankruptcy disputes shows legal uncertainty due to conflicting arrangements between Law Number 30 of 1999 and Law Number 37 of 2004 as follows: Article 3 of Law Number 30 of 1999 stipulates that the District Court is not authorized adjudicate disputes between the parties related to the arbitration agreement. Then, Article 11 paragraph (2) of the Law stipulates that the District Court must refuse and not interfere in any dispute resolution decided by arbitration, except in certain cases regulated in this Law, that the court remains authorized to review and complete the bankruptcy petition of the parties bound by an agreement with an arbitration clause. Within the meaning of Article 1 Number 7 of the law, the term "court" refers to the commercial court of the court.

Based on these provisions, in order to create legal certainty in the context of resolving bankruptcy disputes with the existence of an arbitration clause, it is necessary to discuss the existence of Article 303 of Law Number 37 of 2004 and be refined by adapting it to the provisions of Law Number 30 of 1999 concerning Arbitration and Alternative Settlement. Dispute.

UU no. 30 of 1999 Arbitration and Alternative Dispute Resolution requires that the arbitration agreement be made in writing. This written requirement is in the form of an agreement between the parties, where the existence of an agreement means the denial of the rights of the parties to submit a dispute resolution to the commercial court. In addition, the commercial court is not authorized to settle disputes between parties bound by an arbitration agreement. That is, the arbitration agreement establishes the absolute competence of the parties to determine for themselves how they want to resolve the dispute they want.

In the ideal case, the basis of the pacta sunt servanda has the force of law in its validity. However, the principle of this agreement must be challenged in connection with the provisions of Law Number 37 of 2004 which determines the power of the Commercial Court to decide on a bankruptcy petition which is article 2 paragraph (1) of the law. . .

Arbitration is an agreement between the parties that aims to determine how disputes arising from an agreed agreement will be resolved. The inclusion of an arbitration clause in the agreement is part of the implementation of the legal principle of the agreement in the form of the principle of *pacta sunt servanda in* accordance with Article 1338 paragraph (1) BW. This is a consequence of article 1233 of the Civil Code, which stipulates that every obligation can be derived from law or from an agreement. Therefore, agreement is the source of commitment.

Law is essentially a tool used by the community to ensure that the needs of the community can be met on a regular basis. As Roscoe Pond puts it, laws are made not only to fill a void, but also to be effective.[33] Similarly, if we look at the characteristics inherent in the legal market, namely:

1. The presence of law creates stability and order in human business;
2. Provide a social framework for community needs; and
3. As a social framework for human needs that are realized in the form of facilities. This standard is a means of ensuring that community members come together in an organized manner.[34]

In accordance with article 303 of Law 37 of 2004, the court has the authority to settle the petition for bankruptcy of the parties who, with the approval of an arbitration clause, have complied with the provisions of article 2 paragraph (1) of this Law. On this page, the commercial court which has a specialty as a judicial institution for bankruptcy disputes, must be used as a last resort or last resort for the parties, namely if an out-of-court settlement, in this case together with arbitration, has been agreed upon by the parties and the debtor cannot implement the decision. arbitration institution in good faith.

The problem of decision-making authority in bankruptcy cases with an arbitration clause does not provide legal certainty. According to Mahdi Surya Aprilliansyah, although the issue of bankruptcy is the absolute authority of the commercial court, if the issue of bankruptcy is due to an agreement between the two parties who in the agreement acknowledge the existence of an arbitration clause as a dispute, sign the agreement, then the agreement is signed If it is agreed that this will be fulfilled In accordance with the principle of pacta sunt servanda, the agreement becomes the legal basis for the producer. Therefore, it is not the commercial court that has the authority to settle bankruptcy cases, but the authority of the arbitration body. This is a form of high respect for the principle of contract law, namely the principle of Pacta sunt servanda, which in Article 3 of Law Number 1338 Paragraph violates law, order and morality. Then, Article 1338 paragraph (1) of the Civil Code stipulates that all agreements made will become law for those who make them, and this provision is known as the principle of pacta

[33] *Ibid.,* hlm. 133.

[34] *Ibid.,* hlm. 134.

sunt servanda. In addition, Article 1338 paragraph (3) of the Civil Code stipulates that contracts must be made in good faith (good faith principles).

An arbitration agreement is the result of an agreement between the obligee and the debtor who has a bankruptcy dispute resolution mechanism through a shooting institute. Such provisions can be said that the arbitration agreement as a reflection of the principle of pacta sunt servanda has binding legal force for the parties who obey it, so that the settlement of bankruptcy cases must be carried out by the arbitral tribunal. If one of the parties sues, for example because the settlement of a bankruptcy case is not carried out by an arbitration institution, but is requested in a commercial court, the person concerned is in default. The parties who feel aggrieved by the non-performance of the arbitration agreement have the right to claim compensation for non-compliance from the competent local court.[35]

CONCLUSION

A. Conclusion

Based on the analysis and the previous discussion, the authors concluded among other things that the legal consequences of the exclusion of the principle of *Pacta sunt servanda* for the settlement of disputes bankruptcy under Act No. 37 of 2004 on Bankruptcy and Suspension of Payments (Labor Law and PKPU) that the application of the treaty as a manifestation of the principle of Pacta Sunt Servanda cannot be enforced even in the event of bankruptcy or annulment. This is due to Article 303 of the UUK and PKPU, which stipulate: "The court remains authorized to examine and decide on the bankruptcy petition of the parties bound by the agreement with the arbitration clause provided that the debt which is the basis of the bankruptcy petition has been complied with by the provisions of Article 2 paragraph (1), although arbitration clause has been established. Bankruptcy disputes basically arise from debt contracts. The bankruptcy dispute is chosen by the parties to place the debtor's property under the *blanket forfeiture*. Law Number 37 of 2004 seems to have determined the existence of legal provisions that can deny the principle of dispute resolution by the Arbitration Tribunal. This creates legal ambiguity, because these principles cannot be ignored, let alone challenged, and lead to the non-realization of legal certainty as a fundamental value of rights.

B. Suggestions

The authors can give are:

1. So that the DPR immediately reviews and then revises Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations and synchronizes it with other laws and regulations such as the Civil Code, Company Law, Investment Law , the Law on Arbitration and Alternative Dispute Resolution and the Job Creation Act.
2. So that the Government, especially the Central Government and the House of Representatives will focus their attention and support their policies to put forward the Principles of Freedom of and the *ContractPacta Sunt Servanda* Principle as the basic principles of an agreement.
3. So that law enforcers, especially in this paper, are commercial judges, they are expected to better understand the ins and outs of bankruptcy. Bankruptcy is indeed vulnerable to be used for things that are considered wrong, but it is also important for companies that do have assets but do not want to pay them. So that judges in the Commercial Court must really understand the ins and outs of bankruptcy. Don't change it every two years, it will be difficult because you have to explain from the beginning again.

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