

## PEACE (HOMOLOGATION) IN BANKRUPTCY AFTER THE DEBTOR IS DECLARED IN BANKRUPT BECAUSE PEACE (HOMOLOGATION) IN PKPU IS NOT ACCEPTED

HORMAN SIREGAR

*Master of Law Student – Indonesian Christian University*

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### **Abstract**

Bankruptcy is a condition or condition when the debtor, i.e. a person or business entity, is unable to settle the payment of the debt given by the creditor. Bankruptcy can occur due to 2 (two) things, first because it is filed for bankruptcy, and second because it is requested by PKPU but in PKPU it is not successful in achieving a peace (homologation). In the PKPU Process, the Debtor is given the opportunity to submit a reconciliation plan which contains the condition of the Debtor and the scheme/procedure for payment of debt to be carried out by the Debtor against his Creditors. If the conciliation plan is accepted by the creditor, the debtor's PKPU will end and he can resume his business independently as before. However, if the reconciliation plan proposed by the Debtor is not accepted by the Creditor, the Debtor will fall into bankruptcy. In the event that the Debtor is declared bankrupt, the Curator appointed by the Court will exercise his authority to administer and settle the bankruptcy estate. The problem is, Can the Bankrupt Debtor be able to resubmit the reconciliation plan during the Bankruptcy process and How is the implementation of its authority for the Curator to manage and settle the assets of the Bankruptcy Debtor who proposes reconciliation in Bankruptcy? The purpose of this study is to analyze and find out the Bankrupt Debtor in resubmitting the Peace Proposal in the Bankruptcy Process after the Peace in the PKPU Process failed/not achieved, and to determine the authority of the Curator in managing and settling bankruptcy assets against the Debtor who is submitting a peace plan in the Bankruptcy process. Research Methods using normative juridical research methods. namely library research and analysis of cases. Based on the results of the study, it was concluded that Bankrupt Debtors who had been declared Bankrupt with all the legal consequences could still submit proposals for reconciliation to their Creditors, even though the Peace in PKPU had been submitted but was not achieved. The legal position of the debtor whose bankruptcy has ended due to reconciliation (homologation) returns to its original state of managing and running its business independently.

**Keywords: PKPU, Bankruptcy, Homologation.**

## INTRODUCTION

The monetary crisis that occurred in Indonesia in mid-1997 had a negative impact on the national economy, causing major difficulties for the business world in settling debts and receivables to continue their activities and causing adverse impacts on society.

The above conditions have resulted in many companies being threatened with bankruptcy due to the condition of the national economy and the inability to pay the company's debts which are generally done in dollars. To overcome this problem, a legislation is needed that regulates this debt problem quickly, effectively, efficiently and fairly.

Article 1131 of the Civil Code stipulates as follows: "All objects of the debtor, both movable and immovable, whether existing or those that will only exist in the future, become dependents for all individual engagements".<sup>1</sup> Bankruptcy actions are 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. Bankruptcy assets will be distributed according to the portion of the creditor's claim. This principle of bankruptcy is a realization of the provisions of Article 1131 of the Civil Code, namely that the debtor's property becomes a joint guarantee for all creditors which are divided according to the principle of balance or "pari pasu prorata parte".

Bankruptcy is a condition where a debtor is unable to pay off his debts when the debts mature. As long as the debtor has not been declared bankrupt by a court decision, during that time he is considered capable of paying his debts that have matured.<sup>2</sup> Article 2 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (KPKPU Law) which defines bankruptcy as: "Debtors who have two or more creditors and do not pay off at least one debt which has matured and can be collected, declared bankrupt by a court decision either at his own request or at the request of one or more creditors."<sup>3</sup>

Bankruptcy is a condition or condition when the debtor, namely a person or business entity, is unable to complete payments against the debt given by the creditor. Bankruptcy can happen because of 2 (two) things, first because it was filed for Bankruptcy, and secondly because requested by PKPU but in PKPU did not succeed in achieving a peace (homologation). When a debtor is declared bankrupt, it does not mean that the debtor the person concerned is said to be no longer capable of carrying out legal actions in order to enter into certain legal relations. Bankrupt debtors just say no able to carry out legal actions in relation to the control and bankruptcy estate management.<sup>4</sup>

In the PKPU Process, the Debtor is given the opportunity to submit a reconciliation plan which contains the condition of the Debtor and the scheme/procedure for payment of debt to be carried out by the Debtor against his Creditors. Peace or accord is an agreement between a bankrupt debtor and a creditor. In this settlement, the bankrupt debtor offers to pay all or part of the debt to the concurrent creditor. Bankrupt debtors can apply for debt restructuring to creditors as an effort to end bankruptcy; The bankrupt assets sold are not necessarily sufficient to pay off the remaining debts of the bankrupt debtor.<sup>5</sup> If approved, a new legal situation is created for the debts owed by the debtor to its creditors.

If the conciliation plan is accepted by the creditor, the debtor's PKPU will end and the debtor can return to running his business independently as before. However, if the reconciliation plan proposed by the Debtor is not accepted by the Creditor, the Debtor will fall into bankruptcy. In the event that the Debtor is declared bankrupt, the Curator appointed by the Court will exercise his authority to administer and settle the bankruptcy estate.

The bankruptcy declaration decision based on the KPKPU Law is not based on insolvency, so the debtor who is declared bankrupt is not necessarily unable to pay all his debts. Therefore, reconciliation is the only way that can be taken by debtors who have been declared bankrupt to get out of the bankrupt state.<sup>6</sup>

If a debtor is declared bankrupt due to the failure to achieve peace in the PKPU process, by law the debtor will lose the right to control and manage the assets included in the bankruptcy estate and

<sup>1</sup> Article 1131 of the Civil Code

<sup>2</sup> Rachmadi Usman, 2017, *Dimensions of Bankruptcy Law in Indonesia*, Jakarta: Gramedia Pustaka Utama, p. 12.

<sup>3</sup> Article 2 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.

<sup>4</sup> Rachmadi Usman, *Op.Cit*, p. 52.

<sup>5</sup> *Ibid*, p. 133

<sup>6</sup> Elita Ras Ginting, 2018, *Bankruptcy Law Creditor Meetings*, Jakarta: Sinar Grapika, p. 148.

all debtor assets will automatically be placed in general confiscation. This often leads to bankruptcy estate settlement actions by the Curator. Whereas in accordance with the provisions of Article 144 of the KPKPU Law, Bankrupt Debtors have the right to offer a reconciliation to all Creditors. Based on Article 144 of the KPKPU Law, a debtor who is declared bankrupt can still submit a peace proposal, even though in the PKPU process, the debtor has submitted a peace proposal but to no avail.

The failure of the peace plan in the PKPU process gave rise to different opinions among the Curators. Most of the Curators are of the opinion that if the reconciliation plan in the PKPU has been submitted and is not achieved, the Bankrupt Debtor cannot submit the reconciliation plan in the Bankruptcy process. However, some Curators have a different opinion by stating that the debtor can still propose peace in bankruptcy even in the PKPU process the Debtor's reconciliation proposal has not been achieved, the reason being that there is no provision in the KPKPU Law which clearly prohibits the submission of a peace proposal in the bankruptcy process if in the PKPU process the reconciliation is not achieved.

This difference in perception was finally answered in the Bankruptcy Case of PT. Anugrah Kembang Sawit Sejahtera (In Bankrupt) Decision No. 59/Pdt.Sus-PKPU/2019/PN.Niaga.Sby at the Commercial Court at the Surabaya District Court. PT. Anugrah Kembang Sawit Sejahtera was originally declared a PKPU and has submitted a peace proposal to all its creditors, but later peace was not reached so that PT. Anugrah Kembang Sawit Sejahtera is declared bankrupt. During the bankruptcy process, the Debtor again submits a reconciliation proposal to all of its Creditors, and then the reconciliation proposal is accepted and approved by approximately 98% (Ninety eight percent) of its Creditors. Bankruptcy of PT. Anugrah Kembang Sawit Sejahtera ended because of peace and PT. Anugrah Kembang Sawit Sejahtera has resumed its business activities as before.

Based on this, the author writes this journal entitled PEACE (HOMOLOGATION) IN BANKRUPTCY AFTER THE DEBTOR IS DECLARED BANKRUPT DUE TO PEACE (HOMOLOGATION) IN PKPU NOT ACHIEVE (Case Study of Bankruptcy of PT. Anugrah Kembang Sawit Sejahtera (In Bankrupt) Decision No. 59/Pdt. Sus-PKPU/2019/PN.Niaga.Sby).

## PROBLEMS

1. Can the Bankrupt Debtor be able to resubmit the peace plan during the Bankruptcy process?
2. How is the implementation of the authority of the Curator to manage and settle the assets of the bankrupt Debtor who proposes reconciliation in Bankruptcy?

## DISCUSSION

### 1. Bankrupt Debtor Resubmit Reconciliation Plan During Bankruptcy Process

The bankruptcy declaration decision based on the KPKPU Law is not based on insolvency, so the debtor who is declared bankrupt is not necessarily unable to pay all his debts. Therefore, reconciliation is the only way that can be taken by debtors who have been declared bankrupt to get out of the bankrupt state.<sup>7</sup>

Peace or accord is an agreement between a bankrupt debtor and a creditor. In this settlement, the bankrupt debtor offers to pay all or part of the debt to the concurrent creditor. Bankrupt debtors can apply for debt restructuring to creditors as an effort to end bankruptcy; the bankrupt assets sold are not necessarily sufficient to pay off the remaining debt of the bankrupt debtor.<sup>8</sup>

a peace plan can at least include the following:<sup>9</sup>

- 1) The current state of the debtor's business;
- 2) The prospect of the debtor's business continuity;
- 3) The latest balance sheet position;
- 4) Asset disclosure; and
- 5) Investor commitment (if any).

In the PKPU Process, the Debtor is given the opportunity to submit a reconciliation plan which contains the condition of the Debtor and the scheme/procedure for payment of debt to be carried out by the Debtor against his Creditors. The Peace Proposal is a peace plan for rescheduling the payment of its debts to some or all of its creditors. If approved, a new legal situation is created for the debts owed by the debtor to his creditors.

<sup>7</sup> *Ibid*, p. 148.

<sup>8</sup> Rachmadi Usman, *Op.Cit*, p. 133.

<sup>9</sup> <https://www.hukumonline.com/klinik/detail/ulasan/lt5e57a47ed0725/tips-membuat-proposal-perdamaian-dalam-kepailitan-dan-pkpu> accessed on June 21, 2021

If the conciliation plan is accepted by the creditor, the debtor's PKPU will end and the debtor can return to running his business independently as before. However, if the reconciliation plan proposed by the Debtor is not accepted by the Creditor, the Debtor will fall into bankruptcy. In the event that the Debtor is declared bankrupt, the Curator appointed by the Court will exercise his authority to administer and settle the bankruptcy estate.

If a debtor is declared bankrupt due to the failure to achieve reconciliation in the PKPU process, by law the debtor will lose the right to control and manage the assets included in the bankruptcy estate and all debtor's assets will automatically be placed in general confiscation. This often leads to bankruptcy estate settlement actions by the Curator. Whereas in accordance with the provisions of Article 144 of the KPKPU Law, Bankrupt Debtors have the right to offer a reconciliation to all Creditors. Based on Article 144 of the KPKPU Law, a debtor who is declared bankrupt can still submit a peace proposal, even though in the PKPU process, the debtor has submitted a peace proposal but to no avail.

The Bankruptcy Law and PKPU do not further regulate the content of the peace proposal and how to pay the debts agreed in the reconciliation. This indicates that the settlement to settle debt payments fully within the jurisdiction of bankruptcy between the bankrupt debtor and the concurrent creditors is based on the principle of the party autonomy, bona fide, and the principle of *facta sunt servanda*.<sup>10</sup>

Article 120 and Article 145 paragraph (1) of the KPKPU Law regulates when the submission of a peace proposal can be made from the time the bankruptcy declaration decision is pronounced. Peace proposals can also be submitted no later than 8 days before the debt verification meeting is held. Submitting a peace proposal after the debt verification meeting is closed or has ended is no longer possible and even if it is submitted it does not have legal consequences for the bankruptcy estate. This is because the absence of a reconciliation proposal after the verification of receivables has been completed resulted in the bankruptcy estate being declared insolvent by law.<sup>11</sup>

The reconciliation plan is discussed immediately after the completion of the verification of accounts receivable in the credit verification meeting if it meets the following requirements:<sup>12</sup>

- a. The bankrupt debtor submits the reconciliation plan no later than eight days prior to the arbitration meeting;
- b. The peace plan has been placed in the clerk of the district court;
- c. The peace plan has been put in the curator's office;
- d. Copies and respective peace plans must be sent to each member of the interim creditors committee.

## **2. Implementation of the Curator's Authority to Manage and Settle the Bankrupt Assets of the Debtor Who Submits Reconciliation in Bankruptcy**

The bankruptcy declaration decision has serious consequences for the debtor's assets because he no longer has the authority to manage and control his assets.<sup>13</sup> According to Article 184 paragraph (1) of the KPKPU Law, with due observance of Article 15 paragraph (1) of the KPKPU Law, the curator must initiate the settlement and sale of all bankrupt assets (after verification of receivables) without the need for approval and assistance from the debtor if:<sup>14</sup>

- a. The proposal to manage the Debtor's company was not submitted within the period as provided for in this Law, or the proposal was submitted but rejected; or
- b. Management of the Debtor's company is terminated.

Bankruptcy is intended to avoid separate confiscation or separate execution by creditors and replace it by holding joint confiscations so that debtor's assets can be distributed to all creditors according to their respective rights because bankruptcy exists in order to guarantee creditors to obtain their rights to the assets of the bankrupt debtor. If after being declared bankrupt there is an insolvency situation, then the debt payment procedure is no longer carried out individually according to an individual agreement previously agreed upon by the debtor and creditor, but debt payments are made collectively based on the type and nature of the debt based on a *pro rata pari pasu* payment system.<sup>15</sup>

<sup>10</sup> Elyta Ras ginting, *Op.Cit*, p. 150.

<sup>11</sup> *Ibid*, p. 153.

<sup>12</sup> Munir Fuady, Issue VI 2017, *Bankruptcy Law in Theory and Practice*, Jakarta: Citra Aditya Bakti, p. 117-118

<sup>13</sup> Sunarmi, 2017, *Bankruptcy Law*, Depok, Kencana, p. 355

<sup>14</sup> Sutan Remi Sjahdeini, 2018, *Sejarah, Asas Dan Teori Hukum Kepailitan*, Jakarta: Prenadamedia Group, p. 376.

<sup>15</sup> Elyta Ras Ginting, 2018, *Bankruptcy Law Bankruptcy Theory*, Jakarta: Sinar Graphic, p. 111.

All assets of the bankrupt debtor which have been placed in general confiscation will be managed by the curator under the supervision of the supervisory judge. General confiscation is a form of confiscation that is known in the civil law regime, especially the private bankruptcy law. In Article 16 of the KPKPU Law, the Curator is given the authority to carry out the task of managing and/or settling bankruptcy assets from the date the bankruptcy decision is pronounced even though an appeal or judicial review is filed against the decision.

The task of the curator is to manage and/or settle the bankruptcy estate, so that if there are assets of a bankrupt debtor that have been sold prior to bankruptcy, the curator must take care of when the sale is made and to whom the assets are sold. Tracing debtor assets that are sold/hidden and the cancellation process takes a long time and costs a lot, this is clearly an obstacle in settling debtors' debts to creditors through bankruptcy. The task of the curator is to administer and/or to settle the bankruptcy estate.<sup>16</sup> In carrying out their duties, the curator:

- a. It is not required to obtain approval from or give prior notification to the debtor or one of the debtor's organs, even though in circumstances outside of bankruptcy such approval or notification is required;
- b. Can make loans from third parties, only in order to increase the value of the bankruptcy estate.

Therefore, the curator must act in the best interests of the creditors, but the curator must also pay attention to the interests of the bankrupt debtor, these interests must not be ignored. at all.

Based on the KPKPU Law, the duties and authorities of the most primary curators are as follows:<sup>17</sup>

- a. The curator has the authority to act on his own to the extent of his duties (Article 73 Paragraph 3 of the KPKPU Law);
- b. The main task of the curator is to manage and settle bankrupt assets (Article 69 Paragraph 1 U of the KPKPU);
- c. It is permissible to borrow from a third party with the terms and objectives to increase the value of the bankruptcy estate (Article 69 Paragraph 2);
- d. With the approval of the supervisory judge, the curator has the authority to encumber the bankruptcy estate with Mortgage, Pledge and other Collateral Rights (Article 69 Paragraph 3);
- e. The authority referred to in Article 36 is a reciprocal agreement unless there is an agreement that gives the debtor the right to carry out his own actions;
- f. The authority to sell collateral from separatist creditors after 2 (two) months of insolvency (Article 59 Paragraph 1) or the curator to sell movable goods in a state of stay (Article 56 Paragraph 3);
- g. The curator has the authority to continue the business of the debtor who is declared bankrupt (with the approval of the supervisory judge or creditor committee) even though the decision on the bankruptcy statement is filed for cassation or review (Article 104);
- h. The curator has the obligation to make a description or record of the bankruptcy estate (Article 100);
- i. Authority to transfer bankrupt assets prior to verification (with the approval of the supervisory judge) (Article 107 Paragraph 1);
- j. The curator is obligated to make and verify the list of receivables (Article 116 in conjunction with Article 117);
- k. The curator is obligated to make payments according to the creditors' receivables in the settlement process (Article 201);
- l. Can make demands based on the action paulina legal system (Article 41 in conjunction with Article 47 Paragraph 1);
- m. The curator may release the object that becomes the collateral by paying the creditor concerned the smallest amount of the market price of the collateralized goods with the amount of money that is guaranteed by the collateral goods (Article 59 Paragraph 3);
- n. The curator is entitled to a service fee/Fee in performing his duties after the bankruptcy ends and the provisions regarding the amount of compensation obtained are through a determination

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<sup>16</sup> Susanti Adi Nugroho, 2020, *Bankruptcy Law in Indonesia in theory and practice and the application of the law*, Jakarta, Pranadamedia Group, p. 367.

<sup>17</sup> Ida Bagus Adi Wiradharmasa and Ida Ayu Sukihana, 2018, "Legal Protection of Curators in Carrying Out the Tasks of Management and Settlement of Bankrupt Debtor Assets", *Journal of the Faculty of Law, Udayana University*, Volume 06, No. 04, August 2018, Kertha Semaya, URL: <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/42623> Accessed on May 3, 2021, p. 7

based on the guidelines of the Minister of Law and Human Rights Regulation Number 2 of 2017 concerning Amendments to the Regulation of the Minister of Law and Human Rights Number 11 of 2017. 2016 concerning Guidelines for Service Fees for Curators and Management. (Article 75 in conjunction with Article 76);

- o. In the event of negligence and errors in carrying out the management and settlement of the bankruptcy estate, the curator is responsible for this (Article 72);
- p. The curator must uphold the attitude of independence and be free from the intervention of creditors and debtors (Article 15 Paragraph 3);
- q. The curator may conduct an auction of the bankruptcy estate based on the power of attorney from the supervisory judge according to the auction day that has been determined (Article 33);
- r. Dismissal of workers who work for debtors can be done by the curator or the will of the worker (Article 39);
- s. The authority of the curator to break the lease ties of the bankrupt debtor (the debtor as the party that rents) (Article 38);
- t. If in the management of the bankruptcy estate there is an inheritance that falls to the bankrupt debtor, the curator can accept the inheritance if its existence benefits the bankruptcy estate (Article 40 Paragraph 1) then on the contrary the curator has the right to refuse the inheritance based on the permission of the supervisory judge (Article 40 Paragraph 2);
- u. The curator's obligation to sell assets in terms of settlement tasks; and
- v. The curator must submit a report every 3 (three) months to the supervisory judge regarding the condition of the bankruptcy estate and the implementation of duties as a form of accountability (Article 74 Paragraph 1).

There is an example of a bankruptcy case of PT. Anugrah Kembang Sawit Sejahtera (In Bankrupt) Decision No. 59/Pdt.Sus-PKPU/2019/PN.Niaga.Sby at the Commercial Court at the Surabaya District Court. PT. Anugrah Kembang Sawit Sejahtera was originally declared PKPU and has submitted a peace proposal to all its creditors, but in the PKPU process, peace was not achieved so that PT. Anugrah Kembang Sawit Sejahtera is declared bankrupt. When the bankruptcy process is running, the Debtor again submits a peace proposal to all of his Creditors which has been revised several times in accordance with the suggestions and inputs of the Curator, so that the reconciliation proposal becomes better and clearer. Prior to voting on the peace proposal, the Curator facilitates an online meeting between the Debtor and all of its Creditors to receive input from their Creditors so that they can produce a better and more complete Peace Proposal, so that it can be accepted by the Creditors. There is maximum effort made by the Curator to bring about peace between the Debtor and Creditor without taking sides with any party. The Curator's efforts were successful with the acceptance and approval of the Debtor's reconciliation proposal by approximately 98% (Ninety eight percent) of its Creditors. Bankruptcy of PT. Anugrah Kembang Sawit Sejahtera ended because of peace and PT. Anugrah Kembang Sawit Sejahtera has resumed its business activities as before.

PT. The Kembang Sawit Sejahtera Award is a new discovery among academics and legal practitioners, especially in the field of bankruptcy, that debtors who have gone bankrupt after their peace proposals were rejected in the PKPU process can still submit proposals for peace in the bankruptcy process. The submission of the peace proposal certainly does not hinder the Curator in carrying out his duties and authorities as regulated in the KPKPU Law.

## CONCLUSION

1. Article 144 of the KPKPU Law, Bankrupt Debtors have the right to offer a reconciliation to all Creditors. A debtor whose peace plan is not achieved in the PKPU process may resubmit a peace proposal in bankruptcy even though in the PKPU process the debtor's peace proposal is not achieved. There is no provision in the KPKPU Law that clearly prohibits the submission of a peace proposal in the bankruptcy process if in the PKPU process the reconciliation is not achieved. Thus, it is possible for the debtor to resubmit a reconciliation proposal to all creditors.
2. The curator is given the authority to carry out the task of managing and/or settling the bankruptcy estate from the date the bankruptcy decision is pronounced even though an appeal or judicial review is filed against the decision. However, if in the Bankruptcy process it turns out that the Debtor submits a Reconciliation Proposal (in accordance with the provisions of Article 144 of the KPKPU Law, the Bankrupt Debtor has the right to offer a settlement to all Creditors), then the Curator continues to carry out and carry out his duties and authorities for the management of the bankruptcy estate, especially the Curator must continue to secure bankruptcy estate.

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