



Impact of Failure to Postpone Debt Payment Obligations Suspension on Separate Creditors*

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Abstract

Separate creditors have special rights, and rejection of a peace plan can limit these rights in terms of receiving payment from the debtor, as separated creditors will only accept payment with the lowest value between the collateral value and the actual value of the loan. This study examines the legal protection for separated creditors in the context of rejecting a peace plan in the Debt Payment Obligation Suspension (PKPU) process. The main focus of the study is to analyse the legal implications of the rejection of peace by separated creditors and how it affects their rights in the PKPU process. The methodology used is normative juridical with a statutory regulatory approach, while the legal sources used in analysing this study were obtained through library materials or secondary data. This research is also called library legal research. It can be concluded that separatist creditors are still given compensation of the lowest value among the collateral or actual value of the loan. It is directly guaranteed by collateral rights on the property owned by the creditor. The results show that the Debt Payment Obligation Suspension (PKPU) Law has yet to fully provide adequate legal protection for separatist creditors who reject the peace plan.

Keywords: Peace Plan; Postponement of Debt Payment Obligations; Separatist Creditors

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A. INTRODUCTION

Creditors who reject the debt peace deed in PKPU are less protected, as they receive only the lowest compensation of the total loan value. Research relevant to material collateral that gets a separatist position as seen in the following study: Ainurnisa Handayani said creditors get more protection through general collateral seizures, pauliana action, and gizeeling. In addition, creditors can file PKPU or bankruptcy asset settlement. ([Handayani, 2021](#)) Nina Kasih Puspita and Juliani Paramitha Yoesuf said that there are no regulations governing the settlement of disputes over debtors who fail to pay according to Sharia. The existence of PERMA Number 2 of 2008 overrides positive law related to bankruptcy because disputes related to Sharia-based practices should be the competence of the Religious Court, not the Commercial Court. ([Puspita & Yoesuf, 2022](#))

The COVID-19 pandemic conditions have severely impacted industry and trade, resulting in debtor defaults. However, dispute resolution through PKPU has not provided optimal protection for the peace agreement (homologation). The default is not due to intent but rather a temporary force majeure event (non-permanent force majeure), so debtors can get relief in the form of temporary release through contract renegotiation. ([Syahfitri, 2021](#))

The solvency of a business entity can be known through the banking information system to assess the quality of the debtor's credit, where the OJK SLIK is one of the means of determining debtors in terms of their ability to pay. The information provided by SLIK is one of the products issued from the mandate of POJK Number 18 of 2017, where creditors can request services from the bank to assess the debtor's credit, which can be used as evidence in bankruptcy proceedings. In Decision No. 92/Pdt.Sus-PKPU/2023/PN Niaga.Jkt.Pst provides a decision that creditors can ignore witnesses or debt recognition from the debtor through the evidence. ([Simanjuntak, 2023](#)) The dispute resolution clause through an arbitration institution manifests the existence of the valid conditions of the agreement and pasta sun served, emphasizing the parties' good faith in fulfilling their obligations. ([Florencia, et.al., 2021](#))

The position of the collateral institution has changed from that of a concurrent creditor with a general guarantee. Article 21 of the Bankruptcy and PKPU Law and Article 1131 of the Civil Code—to a special guarantee and a separatist preference—stipulates that the curator must consider the basis of his rights so that credit with collateral must be removed from the bankruptcy bond.

Therefore, credit with general collateral becomes the debtor's responsibility to personal assets, both existing and future. ([Syamsudin, et.al., 2021](#))

The provisions on responsibility for settling outstanding credit at the time of bankruptcy filing do not necessarily mean that the business entity is bankrupt; they may become the joint responsibility of the directors if the condition is an action without a basis in good faith (Business Judgment Rule), as stated in Article 97 of UUPT Number 40 of 2007. ([Utama & Santoso, 2022](#))

The relevant research above clearly shows that this research is different from the research that the author examines, which is the impact of the rejection of peace on separatist creditors. Therefore, this study investigates the legal protection for separatist creditors related to the rejection of peace in the postponement of debt payment obligations.

Literature Review

Separatist creditors hold collateral, such as holders of Mortgage Rights, Mortgages, pawns, Fiduciary Guarantees, and other collateral. They are said to be "separatist," which means "separation," because the creditor's position is indeed separated from that of other creditors. This is in the sense that the creditor can sell the collateral himself and take it from the sale proceeds, which is separate from the general bankrupt assets. ([Handayani, 2021](#))

Postponement of Debt Payment Obligations (PKPU) is an alternative debt settlement to avoid bankruptcy. Postponement of Debt Payment Obligations (PKPU) is a certain period given by law through a commercial court decision. During that period, the creditor and debtor agree to discuss ways to pay their debts by providing a peace plan (*composition plan*) for all or part of their debts, including, if necessary, restructuring their debts. Thus, the Postponement of Debt Payment Obligations (PKPU) is a kind of moratorium, which, in this case, is a legal moratorium. ([Eiflal, Mukidi, and Ibnu Affan, 2022](#))

In today's world, there are many sources of funds for a person or a legal entity who wants to obtain a loan (*borrowing, loan, credit*). However, funds cannot be obtained from these sources. Sutan Remy Sjahdeni said that a person or a legal entity obtains a loan from another party (another person or another legal entity). The one who receives the loan is called the debtor, whereas the one who gives out the loan is called the creditor. ([Sinaga & Sulisrudatin, 2016](#))

The debt receivables process between creditors and debtors does not always go according to plan. Problems, such as the debtor's inability to repay his

debt to the creditor, may occur. If this happens, then to take back its creditor rights, the Company that cannot pay debts to third parties can be declared bankrupt by the Creditor through the commercial court. (Hariyadi, 2020) Bankruptcy is a condition in which the debtor cannot pay its creditors' debts. The inability to pay is usually caused by financial distress in the debtor's declining business.

The Debtor can interpret PKPU as a means to continue its business activities (going concern). PKPU aims for the Debtor to have sufficient time and effort to make peace with its Creditors in settling its debts. PKPU will allow the debtor to enable the business reorganisation, the company's management reorganisation, or the restructuring of its liabilities during the period beneficial to creditors. This will result in the reorganisation of the business, allowing the Debtor to carry out the business so that he can pay all his Creditors. In the process of PKPU, the Debtor will not be divested of the rights to administer the company and the assets; hence, the Debtor is still in managerial control of the company. ([Anisah, Siti, 2008](#))

Debtors who have problems fulfilling their obligations to pay their debts will take various alternative ways of resolving the issue. The debtor can negotiate a request for debt cancellation, in part or whole. The debtor can also sell some or part of their assets or even their business, and the debtor can also change the loan into a share investment, in addition to the above possibilities. The debtor can also offer negotiations for a PKPU request as one of the final ways, after which the problem can also be resolved through bankruptcy if the peace process in the PKPU cannot be achieved.

In the PKPU process, creditors must submit their debt claims to the debtor through the administrator, following Article 270 paragraph (1) of the UUK. Furthermore, the administrator must match it with the debtor's records, as stated in Article 271 of the UUK. If, after several attempts to match the receivables, the creditor and debtor still do not find a middle ground to resolve the difference in the value of the creditor's bill with the debtor's records, then the administrator will determine the attitude towards the difference. The administrator must make a list of receivables as stated in Article 272 of the UUK. This is important because the bill's value recognised by the administrator and made in the list of receivables will significantly determine the continuation of the debtor's business. After all, the bill's value will be converted into voting rights.

Separate creditors can approve or reject the peace plan submitted by the debtor, as regulated in Article 281 paragraph (1) letter b of the UUK-PKPU, by granting voting rights to separatist creditors to consider and approve the peace

plan submitted by the debtor. Separatist creditors can also reject the peace plan submitted by the Debtor. Therefore, the author is interested in studying Legal Protection for Separatist Creditors Related to the Rejection of Peace in the Postponement of Debt Payment Obligations.

B. METHODS

The research methodology employed in this study is normative juridical, utilising a statutory regulatory approach that focuses on examining legal norms. This approach involves an in-depth analysis of laws, regulations, and other legal instruments directly relevant to the subject. This research's primary sources of information are derived from library materials or secondary data, such as legal documents, academic journals, books, and other scholarly works. Since the research relies entirely on secondary data, it is also called library law research. By analysing legal norms through a systematic examination of relevant literature, this method provides a structured framework for interpreting and understanding legal principles and their application. Furthermore, this approach allows the study to comprehensively address the issues raised, offering insights into aligning legal regulations with the research objectives while contributing to the existing body of legal knowledge. ([Rifa'i, et.al., 2023](#))

C. RESULT AND DISCUSSION

1. Legal Protection for Separatist Creditors Regarding Rejection of Peace in Postponement of Debt Payment Obligations

Bankruptcy and PKPU complaints are brought about in case the debtor cannot honour payments that are due associated with his or her debt. There are ways in which the debtor can mitigate a compromise petition leading to appointing a trustee for the debtor. This is done by instituting a temporary restraining order against paying debts (PKPU). PKPU is an opportunity for the debtor to postpone payment of his debts. There are similarities and differences between bankruptcy and PKPU. The similarity is the existence of a peace plan offered, where if the peace plan is accepted, then bankruptcy is revoked. Whereas in PKPU, the PKPU ends. ([Sari & Kongres, 2023](#)), ([Nasution, et.al., 2023](#))

In submitting a PKPU application based on the provisions of the UUK, the application must be made in writing to the Commercial Court. Whether the debtor or the creditor applies, the PKPU application by the debtor must be accompanied by a list that includes the total debt, nature and debt of the debtor, and supporting evidence. It can also include a mediation plan, as stated in Article

224 Paragraph (2) and Paragraph (5) of the UUKPKPU. In contrast, in the PKPU application submitted by the creditor, the court must summon the debtor using a bailiff and express mail a maximum of 7 days when the trial will be held, as stated in Article 224 Paragraph (3) of the UUK. The PKPU application must be submitted to the court and signed by the applicant and his lawyer, according to Article 224 Paragraph (1) of the UUK. ([Fibriani, 2022](#))

The primary purpose of PKPU is to prevent debtors involved in financial problems or debts with their creditors from the brink of bankruptcy. ([Fibriani, 2022](#)) It is often known as bankruptcy, namely, providing opportunities for debtors to submit plans related to mediation to creditors in the PKPU process to make peace between the two parties. Suppose the plan is agreed upon by the parties involved. In that case, it will then be ratified by the Panel of Judges of the Commercial Court (homologated) so that the planning related to mediation that has been homologated by the Panel of Judges of the Commercial Court is binding on debtors and creditors and also has legal consequences for both parties if it is not implemented.

After the debtor is declared in a PKPU state by the panel of judges of the commercial court, there are stages or meeting schedule agendas that the management, debtor, and creditors must carry out. The supervisory judge determines the agendas for the meeting schedules through a stipulation containing meeting agendas. This includes ordering management to make an announcement regarding the PKPU decision in the Indonesian state news and at least two national daily news media, determining the meeting agenda schedule from the first creditor. ([Weku, et.al., 2018](#))

Andika Wijaya said that it is necessary to decide on the final deadline for submitting bills to creditors, ([Eiflal, Mukidi, & Affan, 2022](#)), ([Zubaedah, 2022](#)) determine the meeting agenda time to match receivables, the agenda schedule for discussing peace, the voting meeting, and the deliberation meeting of the panel of judges. ([Kusumadewi, et.al., 2020](#)), ([Kautsar & Muhammad, 2021](#)), ([Manikoe, 2023](#))

Based on Article 270, paragraph (1) of the UUK explains, "A bill must be submitted to the administrator by submitting a bill or other written evidence stating the nature and amount of the bill accompanied by supporting evidence or a copy of the evidence." Based on these provisions, the administrator must summon the debtor and creditor to a verification meeting agenda as determined by the Supervisory Judge to verify the bill submitted by the creditor to the administrator. The amount and nature of the creditor's bill, which will be verified

with the debtor's records, will be discussed in the meeting. ([Kartoningrat, et.al., 2021](#))

Suppose there is a difference regarding the bill's value or nature between the creditor and the debtor. In that case, the administrator can hold several receivables verification meetings with the debtor and creditor. It is according to the agenda determined by the supervisory judge or agreed upon by both parties, either in a commercial court attended by the Supervisory Judge or outside the court without the Supervisory Judge being present. ([Kartoningrat, et.al., 2021](#))

A list of receivables must be made if there is no solution to the difference in the value of the debtor's bill and records as stated in Article 272 of the UUK, as follows: "The administrator must make a list of receivables containing the name, residence of the creditor, the amount of each receivable, an explanation of the receivable, and whether the receivable is acknowledged or denied by the administrator." To carry out these duties, the administrator must be independent, with the obligation to act transparently based on the provisions of Article 234 of the UUK. There are no conflicting needs between the related parties. ([Kartoningrat, et.al., 2021](#))

The purpose of the postponement of the Debt Payment obligation is for the debtor to be able to submit a peace effort to his creditors. The peace plan contains offers of payment for some or all of his debts that have matured and can be collected. ([Kenting & Parulian, 2022](#)) Suppose the PKPU application is submitted voluntarily, namely, the debtor as the PKPU applicant. In that case, the peace plan can be attached to the PKPU application or before the PKPU hearing is set to begin. A vote can be taken on the peace plan in a creditor meeting, the date and time of which have been determined by the supervisory judge. In addition to when and where the creditor meeting is determined, the Supervisory Judge must also pay attention to the grace period between the last day of submission of the bill to the administrator and the implementation of the creditor meeting, which is at least 14 (fourteen) days.

The legal consequences of the temporary PKPU decision for creditors are that creditors cannot collect debts from the debtor during the temporary PKPU. According to the regulations, the debtor is not required to pay his debts during the temporary PKPU process. The legal consequences for the debtor are that, based on the temporary PKPU decision, the debtor's assets are under the administrator's supervision. Hence, the debtor no longer has the authority over his assets to carry out management or transfer actions without the administrator's approval. ([Sari, 2017](#))

Since the PKPU decision was issued, the general PKPU process has been applied. In this process, discussions are carried out regarding peace plans. ([Sihabudin & Adhitama, 2023](#)) Danik Gatot Kuswardani and Achmad Busro in Sihabudin Sihabudin and Edo Adhitama said that obstacles are often encountered in the Bankruptcy and PKPU processes, which can cause legal uncertainty, even though the UUK-PKPU adheres to the principles of balance, justice, and integration. ([Sihabudin & Adhitama, 2023](#))

In the process of Postponement of Debt Payment Obligations (PKPU), if a peace proposal has been submitted that is approved by the creditor, then Homologation will arise, which the debtor has the right to also submit. Homologation is the ratification of the peace by the judge upon the agreement between the debtor and the creditor to end bankruptcy. If completed, then the PKPU will end by law. ([Dori, 2023](#))

Elyta Ras Ginting in Mariatul Fariah said there are fundamental differences between peace (accord) through the bankruptcy stage and peace in the PKPU instrument. The difference can be viewed in terms of the intent and purpose of implementing peace between the debtor and his creditors, namely: ([Sihabudin & Adhitama, 2023](#))

- 1) The peace plan submitted by the debtor in the PKPU process aims to prevent the debtor's assets from falling into bankruptcy. The peace plan submitted at the bankruptcy stage seeks to avoid the debtor's assets from falling into a state of insolvency and to end the debtor's bankruptcy status.
- 2) The peace plan offered in the PKPU instrument is intended for all creditors without exception. However, in the bankruptcy phase, it only applies to concurrent creditors.
- 3) The peace plan approved by the creditor turns into a peace (accord), which is then requested for ratification (homologation) by the Commercial Court, namely the Panel of Judges, which decides on the PKPU. Peace in the bankruptcy phase is binding on all creditors, both those who agree and those who reject. Meanwhile, peace in the PKPU phase is not binding on all creditors but only on those who agree.

Separate creditors can vote in voting without giving up their rights as creditors holding collateral rights. Still, the problem is, if the separatist creditors do not agree to the peace plan, what is the legal protection for the separatist creditors? UUK Article 281 (2) states that creditors who reject peace receive compensation of the lowest value between the collateral value or the actual value of the loan directly guaranteed by collateral rights over the property.

In bankruptcy law, creditors who can be classified as separatist creditors because their receivables have security rights in rem are creditors holding rights consisting of: 1). Mortgages regulated in Article 1 of Law No. 4 of 1996 concerning Mortgage Rights; 2). Liens are regulated in Article 1150 of the Civil Code; 3). Fiduciary as regulated in Article 1 number (2) of Law No. 43 of 1999 concerning Fiduciary Guarantee; 4). Creditors with retention rights over an item in Article 65 of Law No. 37 of 2004 concerning Bankruptcy and PKPU. Thus, the author concludes that if the separatist creditor does not approve the peace plan submitted by the debtor, the creditor will only receive a return of his receivables of the lowest value of his collateral. In addition, the separatist creditor must submit his collateral to the administrator. Thus, the creditor's status is degraded from a separatist creditor to a concurrent creditor, namely, a creditor who does not have the right to be prioritised. ([Tejaningsih, 2016](#)), ([Sari & Kongres, 2023](#)), ([Handayani, 2021](#)), ([Lubis, 2024](#))

Voting in the PKPU process should be guided by the voting process in bankruptcy as regulated in Article 149 of the UUK, which prohibits voting rights for separatist creditors regarding the peace plan submitted by the debtor. This is because of the position of separatist creditors who can execute their collateral rights as if the debtor were not in a state of bankruptcy. Also, PKPU cannot take place against claims belonging to separatist creditors as regulated in Article 244. If separatist creditors wish to vote on the peace plan, they must first waive their right to participate in voting and be positioned as concurrent creditors. Therefore, the homologated peace plan also applies to all creditors, both those who agree and those who do not. This means that the minority of separatist creditors who reject the peace must submit to the peace plan ratified by the Court and approved by the majority of creditors. ([Kenting & Parulian, 2022](#))

D. CONCLUSIONS

Legal protection for separatist creditors related to the rejection of peace in the postponement of debt payment obligations regulated in the UUK. Separatist creditors are still given compensation at the lowest value between the collateral or the actual value of the loan, which is directly guaranteed by collateral rights on property owned by the creditor. The Bankruptcy Law and Postponement of Debt Payment Obligations have not fully provided adequate legal protection for separatist creditors who reject the peace plan. Regulatory improvements are still needed to strengthen legal protection for separatist creditors who reject the peace plan.

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