Juridic Analysis Of Revocation Of Homology For Delaying Debt Payment Obligations (Case Study between PT. X and PT. Y)

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Abstract

In the business world, of course, can experience ups and downs in corporate earnings. Not always the company always gets a profit, but there are times when the company suffers losses that ultimately have an impact on the velocity of money in the company. This triggers debts that must be done by the company in order to continue to run the company properly. Borrowing funds or money made by a company can be through a bank or a fellow company. If there is an agreement from the two companies, the debt-receivable transaction can run properly. There are times when companies that become debtors again experience problems that result in not being able to pay their debts in a timely manner in accordance with the agreement between them. That caused the company that became a creditor to make legal efforts to continue to receive payment of money. Both the debtor and the creditor can submit a Deferment of Obligation for Debt Payment (PKPU) to settle debts between them. Despite these efforts, it still cannot avoid other problems. Problems usually occur after the approval of the peace plan (Homologation) which is included in the Delayment of Obligations of Debt Payments that ends in the withdrawal of the peace carried out by the Commercial Court. Although it has been revoked, those who feel dissatisfied with the results of the decision can take legal action through cassation and judicial review through the Supreme Court. The purpose of this research is to know the role of peace Treaty (Homologasi) in the application of postponement of debt payment obligation (PKPU) PT. X. And also to know the consequences incurred if the peace treaty (homologation) was canceled by the judge against the payment of PT. X debt. Using the juridical normative method of supporting this research report.

Keywords: Penundaan Kewajiban Pembayaran Utang, Homologation, Commercial Court

I. Introduction

Changes and developments in the legislation regarding Bankruptcy and PKPU have a huge impact in increasing the settlement of debts and debts between debtors and creditors. The ultimate goal of Bankruptcy and PKPU is the creation of peace between debtors and creditors. This peace can be submitted by the debtor in the form of a Peace Plan. Arrangements regarding Peace in UUK-PKPU are regulated in Part Two of Chapter III, namely from Article 265 to Article 294

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1Sutan Remy Sjahdeini, Hukum Kepailitan: Memahami Undang-Undang No. 37 Tahun 2004 tentang Kepailitan, Cetakan keempat (Jakarta: Pustaka Utama Grafiti, 2010), hlm 363
What often becomes the problem is the late payment of debts by the debtor as the borrower of the fund which causes suspicion on the part of the creditor as the donor of the fund. Because before the debtor receives loan funds, between the debtor and the creditor make an agreement in order to maintain the rights and obligations between the parties to be maintained properly. If one party cannot do the agreement properly or in short violates what has been agreed, then it is deemed not to have good faith or in civil law is called default. If so, one of the parties that feels aggrieved can propose another effort to resolve the debts dispute. There are two efforts that can be taken, namely through Postponement of Debt Payment Obligations (PKPU) or Bankruptcy.

But not all peace in delaying debt service obligations can go according to the agreement. Like the case of the request for postponement of debt payment obligations between PT. X with PT. Y. Judge revokes peace (homologation) submitted by PT. X as the Debtor because PT. Y as the creditor has never felt that he received a debt payment from the Debtor. Peace which should be an agreement between the two parties becomes meaningless in the request for postponement of debt payment obligations between PT. X with PT. Y.

The peace plan rejected by the creditor which results in revocation by the judge is interesting to study because in the UUK and PKPU it does not provide a detailed explanation of the conditions or grounds for rejecting the related peace in Article 285 Paragraph 2 a, b and c. These definitions, explanations and scope that are not yet clear enough cause different understandings. This is very important, considering the rejection of the peace plan will affect the agreed peace agreement.

Deferment of Obligations to Pay Debt is a method provided to pay debtors' debts to creditors through the decision of the Commercial Court that has the authority to decide and try this case. Where it includes an agreement or gives time to the Debtor and Creditors to deliberate on the methods and methods that will be used to pay debts in accordance with the period agreed upon together.

PKPU Institute in commercial law is known as surseance van betaling or suspension of payment is a period given by the law through the decision of a commercial judge in which during this period the creditors and debtors are given the opportunity to
deliberate on the methods of paying their debts by providing plan to repay all or part of the debt, including if necessary to restructure the debt².

PKPU is basically aimed at establishing peace between debtors and their creditors and to avoid debtors who will experience insolvency from Bankruptcy. During the PKPU period, the debtor cannot be forced to pay his debts, including carrying out all acts of execution that have been initiated to obtain debt service, must be deferred.

Thus, the party that must take the initiative to submit a request for postponement of debt payment obligations is the Debtor, that is, Debtors who cannot or are not expected to be able to continue repaying their debts, where the request itself must be signed by the Debtor or Creditors together with advocates, in this case the lawyer who has a license to practice³.

II. Method

This research method used by the author in this writing is normative juridical research that is research focused on examining the application of the rules or norms in positive law.⁴ Research basically is, ‘a search effort’ and not just watching closely to an object that is easily held, at hand. Research is the result of an English translation of research, which comes from the words re (back) and to search (search). Thus logawiyah means ‘looking back’.⁵ The purpose of this research is to know the role of peace Treaty (Homologasi) in the application of postponement of debt payment obligation (PKPU) PT. X. And also to know the consequences incurred if the peace treaty (homologation) was canceled by the judge against the payment of PT. X debt. Using the juridical-normative method of supporting this research report.

III. Main Heading of the Analysis or Result

A. Rights and Obligations of the Parties in the Peace Agreement Between PT. X With PT. Y.
The creditor's rights in this agreement include, among others, receiving repayments from the debtor in stages, receiving power of repayment of the debt agreed upon in the peace plan, can terminate through the Commercial Court if the Debtor fails to repay the debt.

In article 4 of the Peace Agreement (Homologation) of PT. X with PT. Y Regarding the Creditors Settlement Scheme Settlement Scheme, that the parties agree on the debtor's obligations to be settled by the scheme of settlement due to the peace plan as stipulated in article 2 number 1.

From the company's point of view, it is not possible for the debtor to pay his obligations in the nearest future, but it is hoped that with the restructuring, the company can repay its obligations later if the company is healthy. With the agreement in the agreement in accordance with article 4, it is expected that if the company condition of PT.X as the debtor is in good health, payment can be made according to the deadline given.

PT. Y in this case acting as a creditor has the right to file a cancellation if it is known that PT. X as the debtor neglected to carry out its obligations even though the peace had been agreed by both parties. This has been clearly stated in article 5 of the peace agreement to postpone debt payment obligations (PKPU).

However, in this case other than the debtor has the obligation to pay his debt in accordance with the deadlines set forth in the peace plan, the debtor is given the right to defend or change the peace plan as long as negotiations are agreed by both parties. This is an opportunity for debtors if they still want to change the contents of the peace plan.

One of the obligations held by creditors is to surrender the amount of money owed by the debtor to the curator after the ratification of peace which has permanent legal force. So that the curator can find out how much debt should be paid by the debtor. And also in order to avoid any fraud committed by the creditors.

Although peace has been agreed by both parties, both Debtor and Creditors, the peace requires ratification by the commercial court (ratification) in a session called 'Homologation' which determines to be ratified or rejects the ratification of peace in accordance with the reasons outlined in Article 159 paragraph 2 of Law Number 37 of 2004.
The essence of the granting of the Obligation of Debt Payment Obligation (PKPU) is to provide an opportunity for the parties, namely Debtors and Creditors to bring about peace in the settlement of debts between them.

The Commercial Court accepts the request for the Delay in Obligation of Debt Payment (PKPU) and if it has fulfilled the formal requirements, then it must grant the temporary Delay in Obligation of Debt Payment (PKPU) and must immediately appoint a Supervisory Judge and one or more management together with the Debtor to take care of the debtor’s assets.

B. Analysis of the Peace Agreement (Homologation) Linked to Law Number 37 of 2004 Concerning Bankruptcy and Delaying Debt Payment Obligations (PKPU)

The difference between peace in bankruptcy and peace in postponement of debt repayment obligations is that if in bankruptcy, peace is limited to the distribution and acquisition of bankrupt assets, then in peace the delay of debt repayment obligations is wider in scope until the deadline for repayment.

In addition, peace in the Postponement of Debt Payment Obligations (PKPU) if rejected by the creditor in the homologation hearing, then the debtor will immediately be declared bankrupt for his debt. That means, the debtor must surrender all his assets that become bankrupt bankruptcy or collateral for his debt to the creditor who is immediately cleared by the curator as the authorized party in the bankruptcy property. However, if it is accepted by the creditor, then after the homologation session is held, the debtor which was originally declared in the Temporary Delayment of Obligation of Debt Payment (PKPU), becomes the Delayed Obligation of Debt Payment (PKPU) remains until it can repay its debts.

In terms of the content of the peace that has been submitted by the parties, it has been explained who are the parties in it namely PT. X as the Debtor and PT. Y as the Preferred Credit Creditor and PT. Z as a Konkuren Creditor. In the peace it is also explained how much the nominal must be paid by the Debtor to the Creditors. And the deadline and the ability of the Debtor to repay the debt in part or in full. Deferment of Obligations for Debt Payment (PKPU) explained in article 2 to article 5 of the peace agreement.

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6 Munir Fuady., (2010). *Hukum Pailit dalam teori dan praktek*, Jakarta, Citra Abadi.hlm. 188
With the explanation of debt repayment and the ability of the Debtor, the supervisory judge who will later handle the request can know that there is clarity on the part of the Debtor to pay off his debt. So there is no room for creditors to assume that the Debtor is negligent or forgetting his responsibilities. And it also confirms that the Debtor is obliged to repay the debt in accordance with the nominal given by the creditor.

From the author’s analysis, the peace plan submitted by the Debtor to the Creditors is deemed to have fulfilled the procedures stipulated in Law Number 37 of 2004 concerning Bankruptcy and Delaying Obligations of Debt Payment. This proves if the Debtor has the good faith to repay his debt. However, the problem is that the Creditors still consider that PT. X as the Debtor is negligent or has defaulted only because he was late in paying the repayments due to the debtor waiting for payment from clients who have used his services.

Because in this case the Creditor Party feels disadvantaged because the Debtor Party is late paying its debts in the second installment, the Creditor Party without giving a summons directly submits a request to cancel the Peace Agreement in the local Commercial Court. The Debtor, which in this case feels his negligence in paying the debt, is not intentional, but because there are other reasons that force him to pay late. The debtor feels that the Creditor only decides unilaterally, without prior notice.

C. Reasons for the Commercial Court Judge To Revoke Peace Agreement (Homologation) Between PT. X with PT. Y.

The cause of the cancellation of the peace was that the Debtor was considered negligent due to being late in paying its debt installments to the Creditors. Creditors feel that the Debtor does not have good faith in paying off his debts and then on that basis, the Creditors submitted a request to cancel the peace to the local Commercial Court.

In a hearing attended by the two parties, the Judge of the Commercial Court asked both the Debtor and Creditors to prove that there was indeed a default in paying off the debt.

The judge in this case acts as a mediator in proving that the negligence in the peace agreement is true or not. In the cancellation of the hearing, the judge felt he found the fact that there was a delay in paying the debt repayments made by the Debtor. The basis for the judge to confirm this is that the creditor said that in the peace agreement explained in the contents of article 4 after the settlement scheme, the debtor is required
to pay debt installments for 10 times within a deadline of 12 months and the payment is made on the 15th of each month, but on on September 15 until the deadline for a week, the Debtor still has not paid off his debt. Realizing that the Debtor has defaulted on his obligations,

On the other hand, the Debtor regrets what was done by the Creditors for doing something without prior notice or summons to the Debtor. Debtors assume that if they want to take legal action, at least the Creditor gives a warning or a minimum advance notice to the Debtor so they can solve it and find a joint solution. Here the debtor feels that the creditor acted on his own without informing him. Even though they have an urgent reason, which is to wait for payment from other companies that hire their services. It is very unfortunate that the Creditors did not want to find out the cause first. That is what makes the Debtor a little disappointed with the attitude shown by the Creditors.

Furthermore, according to the Author, the homologation peace agreement has not yet expired because it still ends in 2023, PT. X can not be said negligent because in civil law known as Achievement. Achievement as an obligation of what must be done and carried out by the debtor in an agreement, is the contents of the agreement in the agreement. The debtor will be said to be in default if they cannot carry out their obligations in accordance with the specified agreement. Which means in this case, PT. X cannot be said to have defaulted.

So according to the author, the Panel of Judges’ consideration said ‘that PT. X has been negligent in carrying out his payment obligations to the Respondent and PT. X showed that he was in a state of being unable to pay, and the incident of stopping that which had occurred was enough to state that PT. X in negligence without having to wait for the end of the payment period in that agreement, namely the year 2023 ‘is not appropriate.

The judge did not see that the element of negligence itself was not fulfilled. negligence in the Civil Code as previously explained is if the debtor does not fulfill an achievement as promised and has matured and can be billed and has received a warning from the creditor. In the reality of this case, the peace agreement is not due and cannot be collected, let alone receive a warning or a summons from the creditor. The judge also did

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not see that the debtor is not a hopelessly in debt debtor, because there are still good prospects and the potential of the debtor company to develop and is believed to still be able to carry out its obligations towards all of its creditors in the future.

So, seeing from the fact that the principles of bankruptcy are not considered as the basis for the establishment of the PKPU Law, the interpretation of the Judges in considering this decision according to the author is quite subjective, because the Judge does not pay attention to the object of this case, namely the peace agreement and the regulation regarding it. And the judge did not consider bankruptcy as ultimum remedium, which according to Sutan Remy Sjahdeni in his book wrote, that bankruptcy should be made as one the only way to settle the payment obligation and if there is no other way to settle the obligation to the creditors. So, as a judge must consider bankruptcy itself as a last resort.

D. Legal Remedies if Homologation Is Revoked

The Verdict on Peace of Delay Liability for Debt Payment by the Commercial Court applies immediately. Thus from the moment of the peace decision the debtor’s status was in PKPU’s condition. However, if the peace is proposed for cancellation, the remedy that can be submitted is cassation or a review of the decision which has permanent legal force. In the bankruptcy process and the postponement of the obligation to pay debts, it is not possible to appeal.

This is regulated in Article 11 paragraph (1) of Law Number 37 of 2004 which states that legal remedies that can be filed against decisions on applications for bankruptcy statements are appeal to the Supreme Court. If at the cassation level it turns out that the decision on the bankruptcy statement was canceled, then the Debt Obligation Delay for debtors also ends.

However, all actions that have been done by the curator before or when the curator receives notification of the cancellation decision from the Supreme Court, are still valid. After receiving notification of the cancellation of the Declaration of Payment Obligation, the curator must then advertise the cancellation in the newspaper. With the cancellation of the ruling, the peace that had taken place was erased by law.

*Ibid, hlm. 45*
In this case, the debtor who felt aggrieved at the verdict of the local Commercial Court Judge submitted another legal remedy namely Cassation to the Supreme Court. With a request to the judges of the Supreme Court to provide justice to the debtor because the debtor feels that he has fulfilled all obligations that have been stated in the peace agreement. Also, the debtor has explained the reason for the late payment, not on intentional negligence. In addition, the debtor feels that the creditor moves on his own without warning or subpoena to the debtor. Because the debtor feels that the actions of the creditors are only one-sided, regardless of the actual situation or reality.

The legal remedies taken were only cassation. Because the results obtained remain the same, the Supreme Court judges still state that the debtor must be declared bankrupt due to violating the peace agreement between PT. X with PT. Y. That makes the debtor feel no need to make other extraordinary remedies. With grace, the debtor must be willing to be declared bankrupt by the Supreme Court.

IV. Conclusion

Based on the results of the author's analysis of the Judicial Analysis of Revocation of Peace (Homologation) Deferral of Debt Payment Obligations (Case Study between PT. X and PT. Y) above, the authors can draw the following conclusions:

1. In the Peace Agreement (Homologation) written the parties implementing the agreement, namely PT. X as a Party in this matter as Debtor and Borrower in this case PT. Y as a creditor. Rights and obligations are something that should be implemented on an object that was promised. The implementation of those rights and obligations is called achievement, if it is associated with the Homologation Agreement, PT. X and PT. Y, in this case as a debtor, commits himself to the contents of the agreement, while the Lender in this case the creditor grants the borrower the right to add a deadline for debt repayment. X with PT. Y and determine PT. X as the Debtor is declared bankrupt.

2. Settlement efforts can be pursued in two ways, namely the appeal and appeal remedies. This is regulated in Article 11 paragraph (1) of Law Number 37 of 2004 which states that legal remedies that can be filed against decisions on applications for bankruptcy statements are appeal to the Supreme Court. If at the cassation level it turns out that the decision on the bankruptcy statement was canceled, then the
Debt Obligation Delay for debtors also ends. the debtor who feels aggrieved at the verdict of the local Commercial Court Judge submits another legal remedy namely Cassation to the Supreme Court.

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