



Legal Certainty for Creditors Due to Legal Efforts to Postpone Debtors' Debt Payment Obligations

Sodikin^{1*}, Roosdiana Harahap²

¹ Fakultas Hukum, Universitas Muhammadiyah Jakarta

² Fakultas Hukum, Universitas Muhammadiyah Jakarta

^{1*}sodikin.fh@umj.ac.id, ²roosdiana.harahap@umj.ac.id

Abstract

The Suspension of Debt Payment Obligations (PKPU) is a legal procedure that allows debtors who are unable, or expect to be unable, to continue paying their due and collectible debts to seek legal recourse. Debtors in such situations can initiate legal action during the PKPU process. However, the question arises: what is the legal certainty for creditors following the Constitutional Court's decision that encourages debtors to pursue legal action? This study uses a descriptive normative research method to analyze the legal issues related to such actions. The findings indicate that the legal recourse available to debtors in specific circumstances significantly impacts creditors. This leads to uncertainties regarding payment, especially if the debtor decides to file for legal action. Additionally, these uncertainties can affect the creditor's business operations. The Constitutional Court's decision, subsequently reinforced by a Circular Letter from the Supreme Court, does not adequately address the gaps in legal certainty faced by creditors. This situation complicates creditors' efforts to secure their rights, which are the obligations of the debtor.

Kata Kunci: Legal Certainty, PKPU, Creditors, Debtors.

INTRODUCTION

The Suspension of Debt Payment Obligations (PKPU) is a system established by the state under Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. The PKPU process is administered by the Commercial Court, which is tasked with helping debtors improve their ability to repay their debts to creditors. Payment obligations are based on established conditions (Nugroho, 2018). Therefore, the PKPU serves as a legal moratorium, supported by legislation. Its decisions, made by the Commercial Court, aim to provide debtors with the opportunity to collaborate with their creditors on the procedures and mechanisms for either partial or complete debt repayment (Fuady, 2017).

The Suspension of Debt Payment Obligations (PKPU) is a legal process designed for debtors who are unable to pay or anticipate they will not be able to fulfill their debt obligations. This procedure allows debtors to request a temporary suspension of their debt payments (Budiyono, 2021). The law offers a compromise plan to creditors, aiming to assist debtors in avoiding bankruptcy while proposing to repay their debts, either partially or in full. Creditors can choose to accept or reject the debt repayment plan presented by the debtor.

If some or all creditors accept the peace plan, a binding peace agreement will be established between the debtor and the creditors, allowing the debtor to avoid bankruptcy. This agreement entails that the bankrupt debtor will make a partial payment of their debt, after which they will be released from the remaining amount, leaving them debt-free. However, if the peace plan proposed by the debtor is rejected by some or all creditors (Dewi, 2019), the law considers the debtor to be in a state of bankruptcy. In this case, all assets or property will be included in the bankruptcy estate and confiscated according to legal procedures. The PKPU process is designed for debtors with multiple creditors facing matured debts. Either the creditors or the debtor can submit an application for PKPU. Applicants must demonstrate that they will be unable to continue paying their matured debts that are currently due for collection. It is important to note that the PKPU is not based on the debtor's failure to pay or their insolvency, nor is it intended to liquidate the debtor's assets. Instead, the PKPU process considers the interests of both the debtor and all creditors, particularly concurrent creditors (Sjahdaeni, 2009).

The foundation for submitting a PKPU Application is outlined in Article 222, paragraphs (2) and (3) of Law Number 37 of 2004. This article states that when a debtor is unable to continue paying debts that are due and collectible, they can propose a peace plan, which may include an offer to pay some or all of their debts to the creditor. Additionally, creditors who believe that the debtor cannot fulfill their payment obligations can request a Suspension of Debt Payment Obligations, allowing the debtor time to submit a peace plan. This legal framework provides the debtor with an opportunity to reach an agreement with creditors. If the PKPU is approved, no actions can be taken to execute claims against the debtor during the PKPU process. Moreover, throughout the PKPU Process, the debtor is permitted to restructure the payment schedule for their debts, which must be outlined in the peace plan submitted to the creditors (Hartono, 2009).

The PKPU (Proposed Composition Plan) is a tool that debtors can use to enhance their business situation, even if only temporarily. Its purpose is to improve business conditions without the constant threat of being pursued by creditors. However, this instrument is sometimes misused as a way to evade obligations without making any genuine improvements. To prevent bad faith in these scenarios, Law Number 37 of 2004 is in place. It states that if a reconciliation plan is rejected by the majority of creditors, the debtor is deemed to be in a state of bankruptcy. This law provides greater legal certainty for creditors regarding their claims (Budiyono, 2021).

The problem of this study is the Constitutional Court's decision No. 23/PUU-XIX/2021, which pertains to the judicial review of Article 235 paragraph (1) and Article 293 paragraph (1) of Law Number 37 of 2004. The Constitutional Court granted the applicant's (Debtor's) petition regarding the legal remedies available to the Debtor in the PKPU process when their proposed peace plan was not accepted by the majority of creditors. In response to this decision, the Supreme Court issued Circular Letter Number 1 of 2022. This letter outlines the implementation of the results from the Supreme Court's 2022 Chamber Plenary Meeting, serving as guidance for the courts' duties. According to the circular, if a creditor submits a PKPU application after a peace plan has been rejected, they can pursue cassation. If the cassation is granted, it will annul the relevant commercial court's decision at the District Court and declare that the Debtor is not in a state of bankruptcy. Therefore, the central question is how to ensure legal certainty for creditors following the Constitutional Court's decision No. 23/PUU-XIX/2021 regarding the bankruptcy status of debtors who have initiated legal action.

METHOD

The research method employed in this study is descriptive-normative. This approach aims to describe, explain, and analyze phenomena, symptoms, or legal issues related to the Suspension of Debt Payment Obligations (PKPU) in depth (descriptive) and to assess them based on applicable norms, rules, principles, or laws (normative). The primary characteristic of this method is its descriptive aspect, which provides a systematic, factual, and comprehensive overview of a PKPU situation. Normatively, it analyzes laws based on established doctrines, rules, and legal principles. As a result, the analysis connects legal practices or events with appropriate norms (positive legal aspects). The main objectives of the descriptive-normative method are to identify legal truths based on applicable norms, to analyze gaps, conflicts, or ambiguities in regulations, and to provide a comprehensive overview of the application of laws and regulations in the context of the Suspension of Debt Payment Obligations (PKPU). This method primarily focuses on secondary data, such as literature studies, laws, and legal theories.

RESULTS AND DISCUSSION

Understanding Legal Certainty for Creditors in Requests for Postponement of Debt Payment Obligations

The law governing the Suspension of Debt Payment Obligations (PKPU) is closely linked to bankruptcy law, as both issues arise in the context of business. This connection is rooted in the historical development of bankruptcy law and PKPU, influenced significantly by global economic

trends. In Indonesia, bankruptcy and PKPU issues became particularly relevant during the economic crisis that the country experienced (Leonardus, et al, 2023). During this crisis, the need for a robust bankruptcy law garnered serious attention from the Indonesian government. This urgency was further highlighted when the International Monetary Fund (IMF) provided financial assistance to Indonesia to aid its recovery. One of the IMF's stipulations was the need for immediate reforms in legal and justice systems, particularly regarding bankruptcy law. Additionally, the IMF encouraged Indonesia to create regulations overseeing business competition and to establish a separate judicial body to handle business-related cases. As a result of these developments, various laws and regulations emerged to address bankruptcy and PKPU, including Law Number 37 of 2004, which pertains to Bankruptcy and Suspension of Debt Payment Obligations (Aji, 2023).

The Suspension of Debt Payment Obligations is a legal measure designed to address debt issues between Debtors and Creditors. This approach involves restructuring or rescheduling debts that are overdue and collectible. The PKPU (Provisional Suspension of Debt Payment Obligations) process serves as an alternative means of debt settlement, aiming to prevent bankruptcy for Debtors. According to Law Number 37 of 2004, commercial courts grant time for Creditors and Debtors to develop strategies for debt repayment by submitting a Composition Plan that may accommodate all or part of the Debtor's debts. This process is essential for rescheduling debt payments; thus, the PKPU can be considered a legal moratorium (Fuady, 2017).

Article 222, paragraphs (2) and (3) of Law No. 37 of 2004 outlines the guidelines for the PKPU process, which can be initiated by Debtors or Creditors who believe that a Debtor will be unable to continue making payments on overdue debts. They may request a postponement of debt payment obligations to allow for the submission of a peace plan, which includes an offer to pay part or all of the debt to the Creditor. Additionally, the Debtor can also request a postponement of their debt payment obligations in order to prepare and present the peace plan (Putra & Hariyana, 2022).

Law No. 37 of 2004 highlights that the Preliminary Debt Settlement (PKPU) is designed not only for the benefit of the debtor to prevent bankruptcy, but also to protect the interests of creditors and provide them with legal certainty. The PKPU aims to safeguard the debtor because liquidity issues and difficulties in obtaining credit can lead to bankruptcy. With a little time, the debtor is expected to be able to repay their debts. Bankruptcy can negatively affect creditors by diminishing the company's value, resulting in a lack of legal protection for them. The primary goal of PKPU is to prevent bankruptcy. Additionally, PKPU allows the debtor to continue their business without the pressure of immediate debt repayment, fostering a more stable environment. Ultimately, PKPU is intended to enhance the overall health of the business (Yudha et al, 2022).

Law Number 37 of 2004 establishes straightforward requirements for submitting a PKPU (Postponement of Debt Payment Obligations) application. Specifically, it requires the presence of two creditors, at least one of whom must have a matured and collectible debt that can be easily verified. Both creditors and debtors are eligible to file a PKPU application. According to Article 225, paragraph (2) of Law Number 37 of 2004, if the debtor submits the application, the court must grant a temporary suspension of debt payment obligations within a maximum of three days from the date the application is registered, as mentioned in Article 224, paragraph (2). During this time, the court must appoint a Supervisory Judge from among its judges, as well as one or more administrators to work alongside the debtor in managing the debtor's assets (Fitria, 2018). If the application is submitted by a creditor, as stated in Article 225, paragraph (3), the court must decide on the application within a maximum of twenty days after the application is registered. In this case, the court is also required to grant a temporary suspension of debt payment obligations, appoint a Supervisory Judge, and assign one or more administrators to manage the debtor's assets together with the debtor. It is important to note that the Commercial Court does not have the authority to reject a PKPU application or assess its eligibility. However, it can issue a decision stating that the application cannot be accepted (*Niet ontvankelijk verklaarden*) (Sjahdaeni, 2009).

Law Number 37 of 2004 provides legal certainty by protecting creditors. Its preventive legal protection aims to avoid disputes with creditors, while its repressive legal protection seeks to

uphold creditors' rights when a debtor is unable to fulfill their obligations. One method to protect creditors and ensure legal certainty in the settlement of debtor obligations is through a Peace Plan established under the court's supervision (PKPU) (Sihotang, 2024). For a Peace Plan to be effective, it must be designed in a way that allows creditors to fully accept it, or at least attain the acceptance of the majority of creditors. Debtors are encouraged to seek assistance from expert consultants, such as Public Accountants, Legal Consultants, Business Financial Management Consultants, and valuation firms. These experts can provide the necessary knowledge and resources to prepare a Peace Plan that safeguards creditors' rights (Nainggolan, 2022).

In the PKPU process, both debtors and creditors can take legal steps to seek a postponement of debt payment obligations, as determined by a commercial court. According to Article 235, paragraph (1) of Law No. 37 of 2004, no legal action can be taken against a decision to postpone debt payment obligations. Additionally, Article 293, paragraph (1) of the same law states that no legal action can be taken against court decisions based on the provisions in Chapter III, unless specified otherwise in the law. These two articles indicate that the PKPU process is focused on postponing debt payment obligations, allowing no room for legal action—whether initiated by creditors or voluntarily by debtors. As a result, the absence of such legal actions provides certainty for creditors in securing their rights.

Constitutional Court Decision Number 23/PUU XIX/2021 and SEMA Number 1 of 2022

According to Article 235, paragraph (1), and Article 293, paragraph (1) of Law Number 37 of 2004, it is understood that the PKPU (Postponement of Debt Payment Obligations) process does not allow for legal remedies to be submitted, whether the application originates from the Creditor or is filed voluntarily by the Debtor. However, following the Constitutional Court's Decision Number 23/PUU-XIX/2021, it is now possible to seek legal remedies against the PKPU process (Gunawan et al., 2024). These remedies can be pursued through cassation, which can be initiated in connection with a PKPU application submitted either by the Creditor or a peace plan offered by the Debtor. The legal remedies referenced in the Constitutional Court's decision can only be taken by the Debtor, and they may only be pursued after the Debtor has entered the PKPU process. This applies specifically when the application is made by the Creditor and the Debtor has proposed a peace plan that the Creditor has rejected.

The opinion of the Constitutional Court indicates that the application of Article 235 paragraph (1), Article 293 paragraph (1), and Article 295 paragraph (1) of Law No. 37 of 2004 prevents the Debtor from initiating any legal action. This inability to act results in challenges in managing their assets due to their bankruptcy status. The prohibition on legal actions against bankruptcy decisions, which are based on or originate from a Suspension of Debt Payment Obligations (PKPU) decision, can potentially be exploited to create unhealthy competition in the business sector. This restriction can lead to the dismantling of a competitor's business through the Commercial Court. There may also be malicious intentions behind these actions aimed at halting or closing down a business entity, ultimately harming the economic interests of the state. In this context, the peace proposal mechanism is not utilized to seek a solution; instead, it merely legitimizes the state of bankruptcy without any legal recourse (Gunawan et al., 2024).

A decision from a commercial court may arise from inaccuracies by the Panel of Judges in examining, adjudicating, and deciding a case. This can result in the debtor feeling disadvantaged and believing that their legal rights have been violated. Such decisions are particularly concerning in the context of temporary PKPU (Suspension of Debt Payment Obligations) rulings and bankruptcy statuses that stem from PKPU applications. It is essential that these matters remain open to legal challenge so that the actual existence of debt can be established before a bankruptcy decision is issued (Sundah, 2022). Another reason a debtor may choose to file a PKPU application with the commercial court is to gain the opportunity to reorganize their financial situation, thereby potentially avoiding the severe consequences associated with bankruptcy. This process allows the debtor to manage their business continuity better and provides valuable time, economic, and legal

certainty. By filing a PKPU application, the debtor can engage in discussions with creditors about repayment strategies, potentially offering a payment plan for all or part of their debt. This may include, if agreed upon, restructuring the debtor's obligations (Haichal, 2022).

The debtor has legal remedies available to them because the primary objective of submitting a PKPU application is to achieve an agreement between the debtor and creditor regarding a plan to settle the debtor's debts, either partially or completely, while also restructuring those debts. This agreement is designed to provide clarity about the debtor's financial capabilities. It forms part of the clauses included in the proposed payment scheme to the creditor. The philosophy behind the PKPU application is that it is fundamentally a right of the debtor, based on the understanding that only the debtor truly knows their ability to repay their debts (Mawwaddah, 2020).

Furthermore, regarding the PKPU application submitted by creditors under the law, it is a right granted to creditors to file such an application when they believe that the debtor is unable to continue making payments on matured debts that can be collected. The purpose of this application is to provide the debtor with a postponement of their debt payment obligations, allowing them to propose a peace plan that includes an offer to repay part or all of their debts to creditors. Additionally, the right of creditors to submit a PKPU application is based on principles of balance and justice. This means that if the debtor is genuinely facing difficulties in meeting their debt repayment obligations, the creditor has the right to file a PKPU application. This process aims to prevent the debtor from falling into an even more challenging situation regarding their debts, thereby avoiding the risk of bankruptcy (Sagala, 2015).

This opinion is very important as it emphasizes that creditors can still submit a PKPU (Temporary Moratorium for Debtors) application, but it is essential to ensure that creditors act in good faith. This is crucial for debtors involved in businesses that play a role in maintaining economic stability, allowing them to continue their operations. Consequently, the legal certainty of the PKPU instrument should align with the spirit of Law Number 37 of 2004, which aims to provide legal protection for business actors to prevent them from easily going bankrupt (Saputri, et al., 2019). Debtors are often the best judges of their own financial capabilities. Therefore, it is necessary for the court to review the PKPU applications made by creditors as part of its oversight mechanism for lower court decisions. Furthermore, when a creditor submits a PKPU application and the debtor proposes a settlement that the creditor subsequently rejects, a conflict of interest may arise between the parties. This scenario could potentially lead to biases or errors in the judge's interpretation and application of the law. Thus, if a creditor rejects the PKPU application and the debtor's proposed settlement, it becomes necessary to pursue legal recourse (Soelistyo, 2022).

The Supreme Court has reaffirmed the decision made by the Constitutional Court and has recommended that it further regulate the process for filing cassation appeals. Additionally, it has been advised to create specific provisions or regulations regarding the procedures for submitting a cassation appeal against a Suspension of Debt Payment Obligations (PKPU) decision made by a creditor, particularly when the debtor's peace offer has been rejected. In line with this, the Supreme Court issued Circular Letter Number 1 of 2022, which outlines the results of the 2022 Supreme Court Chamber Plenary Meeting and serves as a guideline for court duties. In this Circular, particularly in Section B regarding the formulation of Civil Chamber Law Number 2 on Special Civil Law, it states: "An application for Suspension of Debt Payment Obligations (PKPU) submitted by a creditor whose peace plan has been rejected can be appealed through cassation. If the cassation is granted, the ruling will annul the decision made by the commercial court at the District Court and will declare the debtor not to be in a state of bankruptcy. However, a Decision on Temporary Suspension of Debt Payment Obligations (PKPU S) or Permanent PKPU cannot be submitted for cassation."

An interesting aspect of the two judicial decisions is the cassation appeal against the bankruptcy decision, which arose from a creditor's request for a suspension of payment (PKPU). During the process, the creditors rejected the debtor's proposed reconciliation plan, thereby ensuring legal certainty for the creditors. This legal certainty is important as it supports the national economy and

development. The essence of a PKPU is the need for rapid legal certainty in the business sector, which is closely linked to a country's economic situation (Maryono et al., 2022). If legal remedies take a long time, it becomes crucial to establish legal certainty in order to provide stability for business activities.

Legal Consequences of the Constitutional Court Decision and the Supreme Court Circular

Initially, there was a legal appeal against the bankruptcy decision, which began with the PKPU application submitted by the creditor after the debtor's peace plan was rejected by its creditors. This situation contradicts the intent of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (KPKPU), which aims to guarantee legal certainty to support the economy and national development. However, following the Constitutional Court's decision, which was later reinforced by a Circular from the Supreme Court, Law No. 37 of 2004 was amended. Although the Supreme Court issued Circular Number 1 of 2022 regarding the implementation of the Plenary Meeting of the Supreme Court Chamber's resolutions, this guidance does not adequately address the existing legal uncertainties. Specifically, the circular lacks technical and detailed explanations regarding the procedure when the PKPU period, which lasts 270 days, has expired. There is ambiguity about whether, upon a granted cassation, the debtor returns to the status before the PKPU or continues in the PKPU process, which would no longer be possible due to the expiration of the period. Consequently, the absence of definitive regulations to guide the procedures for submitting and handling cassation appeals against PKPU decisions suggests that Constitutional Court Decision Number 23/PUU-XIX/2021 could reinstate the emphasis of Law No. 37 of 2004: that the resolution of PKPU cases must create legal certainty (Putri et al., 2021).

The impact of allowing legal remedies in this PKPU application raises concerns for the curator. Before these legal remedies are available, if the reconciliation plan is either not accepted or rejected, the debtor automatically enters a state of bankruptcy without any legal recourse. This situation allows the curator to promptly proceed with their responsibilities to manage and settle the bankruptcy estate. The introduction of legal remedies creates a level of uncertainty since it affects the curator's potential actions. If the debtor is in bankruptcy because the creditors have not accepted the proposed reconciliation plan, the debtor should remain in that state. However, if the curator begins to settle the debtor's bankruptcy estate and the debtor then seeks legal remedies, the outcomes could vary. If the legal remedies are rejected, the curator's actions would likely remain unaffected. Conversely, if the legal remedies are accepted and granted by the Supreme Court, any actions taken by the curator in settling the estate could be invalidated. This unpredictability results in legal uncertainty across various aspects of the process (Sari & Kongres, 2023). Legal certainty can only be achieved when provisions are clear, rationally regulated, and free from conflicts with established norms. Such conflicts may manifest as distortion or reduction of norms, among other similar consequences.

If the curator has successfully settled the debtor's bankruptcy estate and distributed the assets to the creditors, and if the court upholds the legal actions taken, then the bankruptcy estate must be returned to the debtor. This process can be quite complex and burdensome. It not only impacts the creditors but also introduces legal uncertainties for the debtor that can be detrimental to them. Additionally, a state of non-bankruptcy may lead to misunderstandings regarding the debtor's true situation. This is particularly relevant because such a state can be misconstrued as a return to the PKPU (Commitment to Payment for Disposal) status. The debtor originally fell into bankruptcy due to the rejection of a reconciliation plan by creditors during the PKPU process. The lengthy legal proceedings conflict with the principles of justice, which emphasize promptness and minimal costs. Protracted judicial processes result in higher expenses and extended durations. Furthermore, according to Circular Letter No. 1 of 2022, if a cassation appeal is granted and the court declares the debtor no longer bankrupt, the debtor returns to the same position they held prior to the PKPU decision. This can prompt creditors to either resubmit a PKPU request or directly file a bankruptcy petition with the Commercial Court (Nasution, et al., 2023).

In the context of a debtor re-submitting their application during the PKPU process, it is indeed permissible. This is because the PKPU application does not recognize the principle of *ne bis in idem* (not twice for the same cause). If the process continues to repeat without reaching a resolution, both the creditor and the debtor become entrenched in ongoing court proceedings. This prevents the debtor from focusing on managing their business effectively.

The PKPU application submitted by the creditor is a necessary step for them to secure their rights. This process reflects the creditor's good faith in seeking payment for their debt. Additionally, it serves to provide the creditor with legal certainty concerning their debt repayment, thereby helping them avoid potential losses. If the bankrupt debtor does not take any legal action, the creditor can confidently pursue their rights. Should the peace plan be accepted and approved by the court, the creditor will receive repayment according to the terms outlined in the agreement. Conversely, if the peace plan is rejected or not approved, the creditor will still be able to recover their rights through the asset settlement managed by the curator team. This ensures that the creditor maintains legal certainty regarding the fulfillment of their rights by the debtor.

CONCLUSION

The cassation appeal addressed by the Constitutional Court arises from the determination of the debtor's bankruptcy, following the rejection of their reconciliation plan by creditors. As a result, the legal consequences for the debtor create a situation of legal uncertainty, which can be harmful to the debtor. Initially, this situation may appear beneficial for the debtor, but upon closer inspection, the cassation appeal could ultimately strip the debtor of legal certainty. Moreover, the existence of this appeal also undermines legal protection and certainty for creditors. The PKPU (Deferred Payment Order) serves as a legal instrument aimed at clarifying the repayment of creditors' rights owed by the debtor. Legal remedies available to debtors under certain conditions significantly affect creditors, leading to uncertain payments when a debtor may later initiate legal action. This uncertainty can also impact the creditors' business operations. Additionally, the Circular Letter of the Supreme Court Number 1 of 2022, which outlines the implementation of the results from the 2022 plenary meeting of the Supreme Court, serves as a guideline for the court's duties following the Constitutional Court's decision. However, it does not sufficiently address the legal uncertainty surrounding PKPU, making it increasingly challenging for creditors to secure their rights as obligations of the debtor.

ACKNOWLEDGEMENTS

Thanks are extended to all parties who supported the implementation of this research.

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