

Proposing Peace Agreement Ratification Procedures in Delay of Debt Payment Obligations (PKPU)

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Abstract. *This research examines the legal impact of postponing a peace agreement in the context of Delay of Debt Payment Obligations (Keterlambatan Kewajiban Pembayaran Utang/PKPU) in Indonesia, with a focus on the principle of legal certainty. The potential bankruptcy that may occur in PKPU due to the reconciliation approval process violating the specified time limits as regulated in the Bankruptcy and Delay of Debt Payment Obligations Law (UUKPKPU) implies legal uncertainty. The research method used is a normative juridical method, which is descriptive-analytical in nature. Secondary data used includes primary legal materials and related explanations, as well as relevant literary sources. This research highlights the importance of peace agreements in PKPU to achieve legal certainty for all parties involved. Research findings show that delaying settlement agreements can have serious impacts, including the possibility of debtor bankruptcy and legal uncertainty. This research emphasizes the need for compliance with regulations governing the peace process in PKPU to prevent negative consequences and ensure smooth debt settlement. Thus, this research makes an important contribution to the understanding of the implementation of the principle of legal certainty in the context of PKPU in Indonesia.*

Keywords: Legal Certainty, Debtor Debt Settlement, Ratification of Peace, Bankruptcy

1. INTRODUCTION

In the context of Delay of Debt Payment Obligations (*Keterlambatan Kewajiban Pembayaran Utang/PKPU*), reconciliation is a crucial element and the main objective. Reconciliation represents not only the essence of the process but also aims to ensure the sustainability of a company that can still be resolved (solvable) or continue to operate (going concern) to avoid the risk of bankruptcy.¹ The steps to approve or reject a reconciliation plan are strictly regulated in Articles 284 and 285 of the Bankruptcy and Delay of Debt Payment Obligations Law (UUKPKPU). According to Article 284 paragraph (1) UUKPKPU, if the reconciliation plan is accepted in the creditors' meeting, the supervisory judge must submit a written report to the Commercial Court Judgeship on the specified hearing schedule. The reconciliation plan can prevent the possibility of debtor bankruptcy after going through the creditors' meeting, provided that the valid quorum is fulfilled. The importance of homologation, or official approval, from the

¹ Serlika Aprita, Joni Emirzon, and Muhammad Syaifuddin. "Restructural Justice-Based Legal Protection For Bankrupt Debtors In Settling Bankruptcy Disputes." *International Journal of Civil Engineering and Technology* 10, no. 5 (2019): 886.

Commercial Court is the final step to legalize and bind the reconciliation legally to all involved parties.²

Delaying the approval of the reconciliation plan that violates the provisions of Article 284 paragraph (3) UUKPKPU can have serious consequences for the debtor, causing disruptions to the business climate of the company. As a result of the PKPU, the debtor loses independence in the management and transfer of rights to his assets, as it always requires approval from the Administrator. The close relationship between the debtor and the Administrator is often referred to as a dualism. Violation of the dualism concept gives the Administrator the authority to take steps to ensure that the debtor's assets are not harmed by their actions, but this can harm the interests of creditors, in accordance with Article 240 paragraph (2) UUKPKPU.³ The process of approving the reconciliation agreement becomes a crucial stage as the final step in achieving the goals of PKPU. By obtaining approval from the Commercial Court, the reconciliation agreement has legal force and binds all involved parties. This ensures that the debtor can promptly fulfill its obligations in accordance with the agreement, and creditors are obliged to comply with it. Therefore, delaying the approval of the reconciliation plan beyond the set time limit can create legal uncertainty, raise doubts about the validity of the reconciliation agreement, and potentially have serious consequences, including the risk of debtor bankruptcy when the PKPU period exceeds its limits or ends.⁴

In the formation of legal rules, there is a fundamental principle underlying the creation of clarity in legal regulations, namely the principle of legal certainty. Legal certainty is defined as a condition in which the law has clarity due to the presence of concrete binding force for the relevant law. The principle of legal certainty serves as a form of protection for justice seekers against arbitrary actions, ensuring that individuals can expect something definite in a specific context. In the rapid development of law and the society's need for legal certainty, especially related to the delay in approving reconciliation in PKPU to support the smooth running of company activities, special attention becomes crucial. This is aimed at ensuring legal certainty regarding the approved reconciliation and preventing bankruptcy in the context of PKPU.⁵ The potential bankruptcy that may occur in PKPU due to the reconciliation approval process violating the specified time limits as regulated in the Bankruptcy and Delay of Debt Payment Obligations Law (UUKPKPU) implies legal uncertainty. This situation arises due to the mismatch between the established norms and their implementation. Therefore, the existence of norms or rules and consistency in the implementation of these rules is the

² Catherine Putri Andaresta, Fadhilah Rahmi Tamy Desindira, Nyulistiowati Suryanti, and Deviana Yuanitasari. "Analysis of Constitutional Court Decision No. 23/PUU-XIX/2021: Legal Efforts for Cassation in Postponing Debt Payment Obligations (PKPU) by Rejecting a Peace Offer from the Debtor." *Qiyas: Jurnal Hukum Islam dan Peradilan* 8, no. 2 (2023): 153.

³ Zeto Bachri, Suhariningsih Suhariningsih, Sukarmi Sukarmi, and Iwan Permadi. "Legal Protection for Debtors Through Bankruptcy Concept." *International Journal of Multicultural and Multireligious Understanding* 8, no. 8 (2021): 459.

⁴ Kurnia Toha and Sonyendah Retnaningsih. "Legal policy granting status of fresh start to the individual bankrupt debtor in developing the bankruptcy law in Indonesia." *Academic Journal of Interdisciplinary Studies* 9, no. 2 (2020): 158.

⁵ Zeffrianto Sihotang. "Duties And Authority Of PKPU Management Basen On Law No. 37 Of 2004 Concerning Bankruptcy And Suspension Debt Payment Obligations." *Journal of Law Science* 3, no. 1 (2021): 17.

essence of the concept of legal certainty.⁶

Normative legal certainty arises when a legal regulation is created and promulgated clearly and logically, so as not to create conflicts in norms. Norm conflicts can take the form of normative contests, norm reduction, or norm distortion, arising from the uncertainty of legal regulations. According to Puppo⁷, law can be interpreted as a System of Norms, consisting of statements affirming the aspect of what should be or *das sollen*, which includes several rules about what should be done. These norms are products of human deliberative actions. After reconciliation is achieved, it is essential to promptly approve the reconciliation plan to provide legal certainty regarding the debtor's status and position. This research aims to review the application of the legal certainty principle related to the delay in the approval of reconciliation by the Judge. In theory, a reconciled agreement that has been approved may be doubted in its validity if formal requirements are not met according to UUKPKPU. Moreover, this research explores the legal consequences of delaying the approval of reconciliation in the context of delaying debt payment obligations. Thus, attention to the principle of legal certainty is expected to avoid doubts about the validity of reconciliation agreements and provide a clear foundation for post-reconciliation legal actions.

2. RESEARCH METHODS

This study employs a normative juridical method, which is descriptive-analytical to explain the delay in the approval of reconciliation in the process of debt payment obligation delay by the judge, related to the principle of legal certainty. This approach involves elaborating theories from relevant literature, as well as related legal regulations. Secondary data sources are used, involving legal materials related to primary legal materials and providing explanations for them. Secondary data sources include books, journals, papers, reports, scientific papers, and the results of undergraduate legal research. In addition, tertiary legal materials are also used as additional references, such as articles, books, or papers. The research process is conducted through two phases. First, a literature review of binding primary data sources, including legal principles, the 1945 Constitution, the Civil Code, and Law No. 37 of 2004 concerning Bankruptcy and Debt Payment Obligation Delay. Thus, this research combines theoretical and normative approaches to analyze the delay in the approval of reconciliation in the context of applicable legislation.

3. RESULTS AND DISCUSSION

3.1. Ratification of Peace in PKPU with the Principle of Legal Certainty

Indonesia, as a law-based country, recognizes law as a mandatory norm and regulation designed to govern and protect the lives of the community and the state. In the judicial system, judges play a central role in upholding the law, manifested through judicial power that obliges them to examine, adjudicate, and decide on every case based on

⁶ Muhammad Yasid, Ria Sintha Devi, and Syawal Amry Siregar. "The Legal Protection for Concurrent Creditors in the Context of Enforcing Bankruptcy Cases." *Jurnal Daulat Hukum* 5, no. 4 (2022): 382.

⁷ Alberto Puppo. "The Sollen as Otherwise than Being. Notes on Hermann Cohen, Hans Kelsen and Emmanuel Lévinas." *Why Religion? Towards a Critical Philosophy of Law, Peace and God* (2020): 178.

clear legal foundations. In the context of Delay of Debt Payment Obligations (*Keterlambatan Kewajiban Pembayaran Utang/PKPU*), administrators and supervisory judges play crucial roles.⁸ Administrators, in the peace discussion meeting, must submit a written report on the approved peace plan by the creditors. The supervisory judge, for approval, is also obliged to submit a written report on the accepted peace plan. The Panel of Judges, based on Article 299 of the Bankruptcy and Delay of Debt Payment Obligations Law (UUKPKPU), has the authority to decide bankruptcy and PKPU cases in the commercial court, with civil procedure law as a guide, unless otherwise specified by law.⁹

In civil procedure law, there are several legal principles, including the principle of passive judge. The basic principle of bankruptcy and PKPU procedural law is that the judge is essentially passive, where their function is to oversee the implementation of procedural regulations established by the law, carried out by the parties involved in the trial. However, this principle does not mean that the judge does not have an active role. As the session leader, the judge actively participates in leading the trial to ensure the smooth process. In the context of Bankruptcy and PKPU, the judge has the authority to determine evidence submissions, provide advice, attempt to mediate peace, indicate legal efforts, and provide information to the parties involved according to Article 132 HIR/156 RBg.¹⁰ Therefore, although judges are generally considered passive, in the execution of their duties, especially in bankruptcy hearings, judges can still play an active role to ensure the trial's continuity and perform relevant legal functions.

In the implementation of peace approval in the delay of debt payment obligation, the role of the panel of judges has characteristics that are both passive and active. The panel of judges is passive in the sense that the judge's decision is limited to the substance of the case filed by the PKPU petitioner, especially regarding debt collection in the form of a success fee. However, when it comes to granting an extension decision in the form of Permanent PKPU for the debtor, the Panel of Judges does not have the authority to initiate such an extension request. Article 229 paragraph (1) of the UUKPKPU emphasizes that Permanent PKPU is essentially granted by the creditors in agreement with the debtor. Therefore, judges are not allowed to expand the substance of the case or make decisions beyond the demands submitted.¹¹

Delaying the approval of peace with an extension in the form of Permanent PKPU for 60 (sixty) days is considered a violation of applicable regulations. This is inconsistent with

⁸ Catherine Putri Andaresta, Fadhilah Rahmi Tamy Desindira, Nyulistiowati Suryanti, and Deviana Yuanitasari. "Analysis of Constitutional Court Decision No. 23/PUU-XIX/2021: Legal Efforts for Cassation in Postponing Debt Payment Obligations (PKPU) by Rejecting a Peace Offer from the Debtor." *Qiyas: Jurnal Hukum Islam dan Peradilan* 8, no. 2 (2023): 154.

⁹ M. Ihsan, Nindyo Pramono, Rio Christiawan, and Januar Agung Saputera. "Implications Of The Opening Of Cassation Legal Remedies For PKPU Decisions Due To MK Decision Number 23/PUU-XIX/2021 On The Mandate Of The K-PKPU Law." *Asian Journal of Management, Entrepreneurship and Social Science* 3, no. 04 (2023): 1476.

¹⁰ Chica Octa Andinda, and Richard C. Adam. "Impact and Legal Protection for Concurrent Creditors Due to the Rejection of Homologation of Peace Agreement by Commercial Court." *UNES Law Review* 6, no. 2 (2023): 5043.

¹¹ Krista Yitawati, and Adi Sulistiyono. "Constitutional Court Decision Number 23/PUU-XIX/2021: Analysis of Judges' Considerations Is It Permissible to Take Cassation Against Decisions to Postpone Debt Payment Obligations?." *Jurnal Jurisprudence* 12, no. 1 (2022): 22.

the provisions accommodated in Article 284 paragraph (3) of the UUKPKPU. According to the UUKPKPU, if the scheduled hearing cannot be held to approve the peace, the court may postpone and set the hearing date to be held no later than 14 (fourteen) days after the date of the postponement hearing. This opinion is based on the understanding that the provisions regarding the time frame in the peace approval process in the commercial court are included in the formal legal substance. Bankruptcy and PKPU procedural law, based on civil procedure law, has a public nature, so its rules are binding on all parties.¹² The panel of judges is expected to be active, in accordance with Article 10 paragraph (1) of the judicial power law, which mandates that judges have the obligation to examine, adjudicate, and decide on cases. In the context of the debt payment obligation delay process, the judge has the authority to force the administrator to immediately submit a written report on the peace discussion meeting/voting regarding the approved peace offer. This action is necessary so that the peace can be approved by the commercial court, creating legal certainty, and binding all parties. In addition, if peace has been achieved within the 45 (forty-five) days of the temporary PKPU, the judge is expected to promptly approve the peace. This action aims to achieve a fast, cost-effective, and straightforward PKPU process. The active role of the judge as the session leader is crucial in ensuring the smooth progress of the trial and facilitating peace among the parties, thus realizing legal certainty through court decisions.¹³

3.2. Legal Impact of Delays in Ratification of Peace on Debt Settlement

The formal conclusion of Delay of Debt Payment Obligations (*Keterlambatan Kewajiban Pembayaran Utang/PKPU*) occurs when the peace approval decree gains permanent legal force from the Commercial Court. The administrator is obligated to announce the termination of this PKPU through the State Gazette of the Republic of Indonesia, in at least 2 (two) daily newspapers. PKPU also concludes if the court rejects the approval of peace and the debtor is instantly declared bankrupt in the same verdict. Furthermore, if the maximum duration of Permanent PKPU for 270 (two hundred and seventy) days has expired without the peace being approved by the Commercial Court, PKPU is legally considered concluded.¹⁴ Even though peace has been approved in the Peace Discussion Meeting/Voting, referring to Article 230 paragraph (1) in conjunction with Article 285 paragraph (3) of the Bankruptcy and Delay of Debt Payment Obligations Law (UUKPKPU), the debtor must be declared bankrupt. The approval of peace may be subject to postponement according to statutory provisions. In the case of such a delay, the Commercial Court may determine and announce the hearing date, which must be

¹² Madayuti Pertiwi, Efa Laela Fakhriah, Isis Ikhwansyah, Bernard Nainggolan, and Agus Budiman. "The Function of Peace in Delay in Obligations Debt Payment to Prevent Bankruptcy in the Settlement of Company Debt Disputes in Indonesia." *Review of International Geographical Education Online* 11, no. 9 (2021): 37.

¹³ Zeffrianto Sihotang. "Duties And Authority Of PKPU Management Basen On Law No. 37 Of 2004 Concerning Bankruptcy And Suspension Debt Payment Obligations." *Journal of Law Science* 3, no. 1 (2021): 19. See also, Agitha Agitha, Putri Andany Hidayat, and Anita Afriana. "Penundaan Pengesahan Perdamaian Dalam Penundaan Kewajiban Pembayaran Utang Oleh Hakim Dikaitkan Dengan Asas Kepastian Hukum." *Jurnal Poros Hukum Padjadjaran* 3, no. 1 (2021): 21.

¹⁴ Aloysius Harry Mukti, and Aldino Putra Aji. "Relevance of the Implementation of Law No. 37 Of 2004: Concerning Bankruptcy and Postponement of Debt Payment Obligations in Accounting Perspective." *Journal of Legal Studies & Research* 9, no. 1 (2023): 121.

held no later than 14 (fourteen) days after the postponement, as stipulated in Article 284 paragraph (3) of the UUKPKPU.¹⁵

However, a delay in approving peace that violates the provisions can adversely affect a well-intentioned debtor. One of its legal consequences is that the debtor loses its independence, especially in terms of management and the transfer of property rights, which must be done with the knowledge and consent of the Administrator during the PKPU. Violation of this provision, as regulated in Article 240 paragraph (2) of the UUKPKPU, empowers the Administrator to take necessary actions to ensure that the debtor's assets do not suffer losses due to the debtor's actions. The Administrator plays a central role in ensuring peace is reached among the parties. The report presenting the approved peace plan must be submitted promptly because this report forms the basis for the judge's consideration to approve the peace. Postponement of peace approval due to the Administrator's negligence in performing its duties can have serious consequences. The judge's decision to grant an extension that exceeds statutory provisions can bring the debtor close to the brink of bankruptcy.¹⁶ The debtor's efforts to achieve peace and obtain an approval decree with permanent legal force become challenging. The obstacle to approval is mainly due to the Administrator's negligence in submitting the Peace Discussion Meeting/Voting report to the Panel of Judges. The less careful attitude of the Administrator can affect the completion of the PKPU, making it not comprehensive and even threatening the success of the peace. Before the peace gains permanent legal force, creditors do not have the right to force the debtor to pay their debts, according to Article 242 paragraph (1) of the UUKPKPU. Delay of Debt Payment Obligations (*Keterlambatan Kewajiban Pembayaran Utang/PKPU*), the debtor cannot be compelled to settle their debts, and all execution actions on collateral for debt repayment must be suspended. Article 244 and 246 of the UUKPKPU stipulate that PKPU only applies to concurrent creditors, so concerning secured creditors and creditors with privileged rights, the debtor must pay their debts in full. Article 246 of the UUKPKPU also states that the provisions as stipulated in Article 56, Article 57, and Article 58 apply *mutatis mutandis* to the execution of the creditor's rights as stipulated in Article 55 paragraph (1) and privileged creditors, provided that the suspension applies during the Debt Payment Obligation Postponement.¹⁷

Article 246 of the UUKPKPU stipulates that the suspension applies during the PKPU. Unlike bankruptcy, which has a maximum suspension period of 90 days (Article 56 of the UUKPKPU), the suspension in PKPU is not limited to 90 days but continues throughout the PKPU period. This means that preferential creditors (with collateral rights) cannot execute collateral, and privileged creditors cannot collect their receivables ahead of other

¹⁵ Muhammad Nurohim, Yusuf Hanafi, and Asmaiyani Asmaiyani. "Application For Bankruptcy By Creditors Perspective Of Law Number 37 Of 2004 Concerning Bankruptcy And Suspension Of Debt Payment Obligations (Study of Decision Number 3/Pdt. Sus-Pailit/2021/PN Niaga Jkt. Pst)." *LEGAL BRIEF* 11, no. 2 (2022): 1414.

¹⁶ Serlika Aprita, Joni Emirzon, and Muhammad Syaifuddin. "Restructural Justice-Based Legal Protection For Bankrupt Debtors In Settling Bankruptcy Disputes." *International Journal of Civil Engineering and Technology* 10, no. 5 (2019): 888.

¹⁷ Suryati Suryati, Layang Sardana, and Ramanata Disurya. "Legal analysis of limited company which was submitted to bankruptcy." *Nurani: Jurnal Kajian Syaria'ah dan Masyarakat* 22, no. 1 (2022): 111.

creditors during the PKPU.¹⁸ The provision of Article 284 paragraph (3) of the UUKPKPU, which limits the postponement period for peace approval to 14 days, has serious implications. If the peace approval hearing is postponed beyond this limit, the debtor risks bankruptcy because the Permanent PKPU period exceeds and ends. It is essential to respect this provision because procedural law in Bankruptcy and PKPU, as part of Civil Procedure Law, is public and binding on the parties, including the Panel of Judges.¹⁹ Compliance with these rules is crucial to maintaining justice, order, and legal certainty in the legal process. In the context of postponement of peace approval that violates the provisions of Article 284 paragraph (3) of the UUKPKPU, the legal consequence is the invalidity of peace and may lead to the declaration of bankruptcy against the debtor. Peace without approval according to the regulations results in legal ambiguity and uncertainty, considering the validity of peace depends on the approval process by the Commercial Court. Although the parties have reached an agreement and have administrative evidence through the Peace Discussion Meeting, the Administrator's negligence in submitting the report can cause delays in approval, potentially leading to bankruptcy.²⁰ It is also important to emphasize the consideration of fairness in this context. Despite administrative negligence, the parties have agreed to reconcile, and the peace process has been conducted with existing evidence. Therefore, administrative postponement should not be a reason to disregard justice. However, legal clarity remains a significant challenge, and the alignment of norms and implementation in practice is crucial to prevent bankruptcy and maintain legal certainty.

4. CONCLUSION

The peace process in Delay of Debt Payment Obligations (*Keterlambatan Kewajiban Pembayaran Utang*/PKPU) is an important step that provides legal certainty through creditor voting and becomes permanent legal force with the peace decision of the Commercial Court. The peace agreement can be postponed in accordance with the regulations of the Bankruptcy Law and Suspension of Debt Payment Obligations (UUKPKPU). The Commercial Court can schedule a postponement hearing no later than 14 days after the postponement. The time of delay is governed by formal, substantial and binding regulations that the court must follow. For all parties involved, PKPU and bankruptcy procedural regulations offer a legally binding framework and provide legal certainty. However, delaying peace in PKPU can cause delays in resolving debtors' debts. Violation of the rules can result in cancellation of the settlement and even possible bankruptcy of the debtor. To provide legal clarity and smooth debt settlement procedures within the PKPU framework, it is very important that regulations related to the peace process continue to be researched and developed.

¹⁸ Adhi Setyo Prabowo. "Analisis Yuridis Peletakan Sita Pada Sita Khusus Pidana Pada Kuhap dan Sita Umum Pada UUK-PKPU." *Simbur Cahaya* 28, no. 1 (2021): 133.

¹⁹ Agitha, Agitha Putri Andany Hidayat, and Anita Afriana. "Penundaan Pengesahan Perdamaian Dalam Penundaan Kewajiban Pembayaran Utang Oleh Hakim Dikaitkan Dengan Asas Kepastian Hukum." *Jurnal Poros Hukum Padjadjaran* 3, no. 1 (2021): 25.

²⁰ Putu Eka Trisna Dewi. "Implementasi Penundaan Kewajiban Pembayaran Utang (PKPU) Dalam Kepailitan Ditinjau Dari Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang." *Jurnal Hukum Saraswati (JHS)* 1, no. 2 (2019): 209.

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