

Legal Conception of Suspension of Debt Payment Obligations Through Homologation

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ABSTRACT

In deferring the obligation to pay debts through homologation, the reconciliation has been ratified and has permanent legal force through a ratification decision by the Commercial Court. The protection of the interests of the parties in deferring the obligation to pay debts through homologation is one way to prevent the debtor from going bankrupt, but the opportunity for proposals for a peace plan is disproportionate and has a favorable attitude or prioritizes unilateral interests, so that it is difficult to reach an agreement. , Auditor; Legal Consultant, Financial and Business Management Expert. It is necessary to explicitly include the essence and benchmarks of good faith in the peace agreement in the framework of postponing the obligation to pay debts. Then the holding of an insolvency test (test of the respondent's financial ability) before the trial of canceling the peace agreement within the framework of delaying debt payment obligations to find out whether the Debtor or Creditor has good faith or not, as well as to know the financial prospects of the Debtor and whether or not the Debtor is still able to carry out his obligations.

PRELIMINARY

The main purpose of the principle of the rule of law is to guarantee certainty, order and legal protection for every citizen, with the core of truth and justice. The law must be enforced for the creation of the goals and ideals of the Indonesian nation.³

Development efforts are carried out fairly and equitably throughout Indonesia, despite the fact that the government faces many obstacles. The monetary crisis hit almost all parts of the world in the middle of 1997, shattering the foundations of the economy.⁴ The business world is the world that suffers the most and feels the impact of the crisis. Indonesia is not alone in facing the crisis, but it is undeniable that Indonesia is one of the countries that has felt the consequences.⁵

The government made changes to laws and regulations in overcoming problems in the business world, one of which was to revise the Bankruptcy Law. The provisions governing bankruptcy were originally contained in Wet Boek Van Koophandel (WVK) book III, but were replaced with Staatblad 1905 Number 217 concerning Faillissementverordening Staatblad 1906 Number 348. This regulation

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³ Zainal Asikin, *Hukum Kepailitan dan Penundaan Kewajiban Pembayaran di Indonesia*, Rajawali Pers, Jakarta, 1991, page 10. *The State of Indonesia is a state of law (rechtsstat), all attitudes and behavior and actions, the government and citizens must be based on law based on Pancasila and the 1945 Constitution of the Republic of Indonesia with the aim of forming a state government, protecting the entire nation and all blood spilled, promote the general welfare and the intellectual life of the nation. In order for the goals and ideals to be achieved, the state carries out development in all fields for the welfare of the people, and the people feel safe from various threats and dangers both coming from within and from abroad. Development efforts must be supported by the availability of quality Human Resources to process and utilize Natural Resources properly and wisely.*

⁴ *Ibid*, page 11.

⁵ Sutan Remy Sjahdeini, *Hukum Kepailitan*, Rajawali Pers, Jakarta, 2009, page 50. *The impact of economic turmoil causes economic difficulties, especially the ability to develop or maintain business continuity in fulfilling payment obligations to creditors. Rachmadi Usman, Dimensions of Bankruptcy Law in Indonesia*, Gramedia Pustaka Utama, Jakarta, 2004, p. 4. *The monetary crisis makes debts swell, resulting in a lot of debtors being unable to pay their debts. In addition, Indonesia's banking non-performing loans have skyrocketed due to the monetary crisis (before the monetary crisis, Indonesian banks had faced serious problems with non-performing loans). Adrian Sutedi, Bankruptcy Law*, Ghalia Indonesia, Bogor, 2009, p 3.

was enhanced by Government Regulation in Lieu of Law Number 1 of 1998 concerning Amendments to Laws Bankruptcy of 1905 which was stipulated as Law Number 4 of 1998 concerning Bankruptcy, then to meet the development and needs of the community, the government together with the House of Representatives issued Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations.

That in running a business, there are two possibilities, namely the company gains or loses. If it makes a profit, the company continues to grow, if it suffers a loss, maintaining the business is difficult, for that the company can borrow capital from other parties.⁶ However, the condition of a company does not always run well and is experiencing financial difficulties so that it is no longer able to pay its debts. The debtor can choose the steps to settle the debt, namely:⁷

1. Reconciliation out of court with its Creditors;
2. Reconciliation in court if the debtor is sued in a civil manner;
3. Application for postponement of debt payment obligations;
4. Peace in the suspension of debt payment obligations;
5. Application to be declared bankrupt by the Court;
6. Peace in bankruptcy.

Law Number 37 of 2004 provides at least 2 (two) solutions for debtors to be free from liquidation of assets in terms of debt repayment difficulties. First, to make peace between the Debtor and the Creditors after the Debtor is sentenced to bankruptcy. The other way is to propose a postponement of the obligation to pay debts,⁸ which is a period given by law through the decision of the Commercial Judge, in which the Creditors and Debtors are given the opportunity to discuss the method of paying debts by providing a payment plan of all or part of the debt.⁹ Suspension of debt payment obligations has a purpose, the Debtor

6 Lending is based on the assumption that the creditor believes the debtor will repay the debt on time. Debtor repayments to creditors do not always run smoothly, sometimes debtors do not pay debts even though they are due. In Articles 1131 and 1132 of the Civil Code, it has been regulated regarding accounts payable. Article 1131 of the Civil Code does not only determine that a debtor's assets by law become collateral for obligations in the form of paying his debts to the creditors who owe them, but also serve as collateral for all other obligations due to other engagements, both statutory and contractual engagements. Article 1132 of the Civil Code implies that every creditor has the same position as other creditors, unless stipulated otherwise by law because he has legal reasons to take precedence.

7 Man. S. Sastrawidjaja, *Hukum Kepailitan dan Penundaan Kewajiban Pembayaran Utang*, Alumni, Bandung, 2006, page 202

8. Suspension of debt payment obligations, known as *Surseance Van Betaling* or *Suspension of Payment*, is a concept of Commercial Law, which allows debtors who have good intentions to apply for postponing their obligations to pay their debts. Regarding the postponement of debt payment obligations, Law Number 37 of 2004, Law Number 4 of 1998 and *FV*, regulates it as part of the bankruptcy provisions. If you pay attention, the title of the legislation regarding bankruptcy before the current regulation applies, does not mention the postponement of debt payment obligations even though the provisions are regulated in the regulation. In 2004 when Law No. 37 of 2004 was enacted, the term suspension of debt payment obligations was mentioned in the title of the regulation. The mention of deferment of debt payment obligations in the title of the legislation is very meaningful because the postponement of debt payment obligations is an important means in settling debts and receivables by the debtor; not only through bankruptcy. *Ibid*, p. 203.

9. Postponement of debt repayment obligations is different from bankruptcy. Although bankruptcy is known as reconciliation, basically bankruptcy is aimed at settling the bankruptcy estate by selling the entire bankrupt bank and distributing the proceeds of the sale to eligible creditors in the order specified in the law. Sunarmi, *Bankruptcy Law*, Soft Media, Jakarta, 2010, p 202. In the event that bankruptcy results in the liquidation of the Debtor's assets, the Debtor is given the opportunity to negotiate to discuss the continuation of the debt so that there is no settlement of the bankruptcy estate. The purpose of delaying the obligation to pay debts is to submit an offer of a reconciliation plan by the Debtor. The reconciliation plan provides an opportunity for the Debtor to restructure the debt, including the payment of all or part of the debt to the Concurrent Creditors. So that the postponement of debt payment obligations has the aim of enabling the debtor to continue his business even though there are difficulties in paying and avoiding bankruptcy. Rahayu Hartini, *Bankruptcy Law*, UMM Press, Malang, 2007, p. 3. The purpose of the postponement of payment obligations is to prevent the debtor who for whatever reason is in trouble, lack of money and/or difficult to obtain bankruptcy which results in the sale of his assets and the company being forced to terminate, whereas if the company can continue to run, the Debtor does not lose assets and the Creditors may get their receivables paid more satisfactorily than if the Debtor was declared bankrupt. Kartono, *Bankruptcy and Postponement of Payments*, Pradnya Paramita, Jakarta, 1994, p. 67. Suspension of debt payment obligations is a period provided for by law through a decision of a commercial judge in which the creditors and debtors are given the opportunity to discuss the method of paying debts by providing a payment plan in whole or in part. part of the debt, including if necessary to restructure the debt. Munir Fuady, *Bankruptcy Law in Theory & Practice*, Citra Aditya Bakti, Jakarta, 2014, p. 175.

within a certain period of time can correct difficulties and will finally be able to pay off/pay off his debts at a later date to the Creditor.¹⁰

In the event of a settlement, the suspension of the obligation to pay debts of the Commercial Court through its decision, grants the request by ratifying, and punishing the parties for complying with the contents of the peace agreement which has been agreed and signed by the Respondent, the Supervisory Team and the Supervisory Judge as well as the Creditors. In connection with the postponement of the obligation to pay debts, based on the settlement, the creditor should receive the repayment of the debtor's debt, but sometimes the debtor has not fulfilled the obligation to pay his debts. This is not in accordance with the purpose of postponing debt payment obligations, namely: the debtor within a sufficient period of time, can repair difficulties, and will finally be able to pay off/pay off his debts at a later date; and For the Creditor, due to the delay in payment of this debt, it is possible that the receivables from the Debtor will be paid in full, so as not to harm him.

With the problems mentioned above, the authors are very interesting to conduct research with the formulation of the problem how the legal conception of the suspension of debt payment obligations through homologation?

DISCUSSION

Theoretical review

The theory used in this research is the theory of justice, legal certainty and legal protection.

The theory of justice, gave birth to the theory of expediency, because it is a rationalism of justice, if justice is achieved it will automatically provide benefits to the parties. In the event of a postponement of the obligation to pay debts, it is expected to provide benefits for both the Creditor and the Debtor itself.

Aristotle in his book Politics, formulated a good state is a state ruled by a constitution and rule of law. In essence, the law itself determines everything. Aristotle also argues that law can only be established in terms of justice. The main purpose of law is to realize justice, so that the rule of law is automatically oriented towards justice for the community.¹¹ John Austin's legal theory states that law is an order of a sovereign ruler, law contains orders, obligations, sovereignty, and sanctions. In his theory (analytical jurisprudence), there are two forms of law, namely positive law (laws) and positive morality (customary law). Legal logic is law, customary law will be recognized if it is confirmed as law by an authorized official. The law must meet the material livelihoods of each individual, promote equality, maintain security, and achieve property rights. Justice must be in accordance with what a person does and balanced treatment between rights and obligations.¹² Justice will be achieved if creditors get repayments on time according to the agreement. Based on Article 222 paragraph (3) of Law Number 37 of 2004, Creditors have the right to apply for a postponement of the obligation to pay debts to ensure the settlement of their receivables.¹³ Based on this theory, it is expected that the postponement of debt payment obligations will provide a sense of justice which ultimately brings benefits to the company and is able to save the company from bankruptcy. Thus, Creditors and Debtors can be saved from the threat of greater losses.

Legal certainty is when a regulation is made and promulgated with certainty because it regulates clearly and logically. Legal certainty means that every material contained in laws and regulations must

10. Sunarmi, *Op, Cit*, page 200. *The purpose of postponing debt payment obligations is not only that the Debtor can rise up, then pay off the debt, giving the Debtor time to submit a reconciliation plan to the Creditors.* Emy Yuhassarie, *Bapepam Exclusive Authority in Bankruptcy*, Raja Grafindo, Jakarta, 1999, page 70.

11. George Sabine, *A History of Political Theory*, George G. Harrap & Co. Ltd., London, 1945, page. 92

12. Achmad Ali, *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicialprudence)*, *Termasuk Interpretasi Undang-Undang (Legisprudence)*, Kencana Prenada Media Group, Jakarta, 2009, page 223.

13. Sutan Remy Sjahdeini, *Hukum Kepailitan*, Pustaka Utama Grafiti, Jakarta, 2010, page 394.

be able to create order in society through guarantees of legal certainty.

According to Gustav Radbruch, law has 3 (three) things oriented objectives, namely legal certainty, justice and expediency. The theory of legal certainty states that the applicable law is not allowed to deviate, this is known as *fiat justitia et pereat mundus* (even though the world is collapsing the law must be enforced). Legal certainty is a justifiable protection against arbitrary actions, meaning that a person will be able to obtain something that is expected under certain circumstances.¹⁴

According to Hans Kelsen, law is a system of norms, namely statements emphasizing aspects of should or *das sollen*, by including rules of what must be done. Norms are products of deliberative¹⁵ human action. Laws that contain general rules serve as guidelines for individuals to behave, both in their relationships with fellow individuals and in their relationships with society. Rules become limits for society in burdening or taking action against individuals. The implementation of the rules creates legal certainty.

Legal goals that are close to realistic are legal certainty and legal benefits. The positivism emphasizes legal certainty, the functionalists prioritize the usefulness of the law, and if it can be stated *summum ius, summa injuria, summa lex, summa crux* which means harsh law injures, unless justice can help it, although justice is not the sole purpose of law, but the most substantive goal of law is justice. Legal certainty is one of the goals of the existence of law, where the theory of legal certainty has several meanings in it.

The theory of legal certainty contains 2 (two) meanings, firstly the existence of general rules makes individuals know what actions may or may not be carried out, and secondly in the form of legal security for individuals from government arbitrariness because of the general nature of the rule of law, individuals can know what is allowed. by the state against individuals. Legal certainty is not only in the form of articles in the law but also the consistency of judge decisions between the decisions of one judge and the decisions of other judges for similar cases that have been decided.¹⁶

The teaching of legal certainty comes from dogmatic juridical teachings based on the positivist school of thought, which sees law as something autonomous, independent, for adherents of this thought, law is nothing but a collection of rules. For adherents, the purpose of law is nothing but the realization of legal certainty. Legal certainty is realized by law by its nature which only makes a general rule of law. The general nature of the rule of law proves that the law does not aim at realizing justice or benefit, but solely for certainty.

The existence of legal certainty hopes for justice seekers against arbitrary actions by law enforcement officers who are sometimes always arrogance in carrying out their duties as law enforcers. Due to legal certainty, people know the clarity of their rights and obligations under the law. Without legal certainty, people will not know what to do, do not know what is right or wrong, prohibited or not prohibited by law. Legal certainty is realized through good and clear normalization in a law and its application will be clear. Legal certainty means that the law is correct, the subject and object and the threat of punishment. Legal certainty may not be considered an absolute element at all times, but the means used are in accordance with the situation and conditions by taking into account the principles of benefit and efficiency.

In a law, legal certainty includes two things, namely the first certainty of the formulation of legal norms and principles that do not conflict with one another, both from the article of the law as a whole and in relation to other articles that are outside the law. second, certainty in implementing the legal norms and principles of the law. If the formulation of legal norms and principles already has legal certainty but

14. Achmad Ali, *Op, Cit*, page 287. Lihat juga O Notohamidjojo, *Soal Pokok Filsafat Hukum*, Griya Media, Jakarta, 2011, page 33.

15. *Ibid*.

16. Bahsan Marzuki, *Hukum Jaminan dan Jaminan Kredit Perbankan Indonesia*, Raja Grafindo Persada, Jakarta, 2008, page 158.

only applies juridically in the sense that it is only for the sake of the law, it means that legal certainty has never touched the people.¹⁷

The theory of legal certainty was developed by Rene Descartes, a philosopher from France. In the opinion that legal certainty can be obtained from the method of sanctions applied to legal subjects, both individuals and legal entities, which emphasizes the orientation process of the implementation process rather than the results of the implementation. Certainty provides clarity in carrying out legal actions during contract implementation in the form of achievements even when the contract is in default.¹⁸ Another opinion regarding legal certainty was given by M. Yahya Harahap, legal certainty is needed in society for the sake of creating order and justice. Legal uncertainty will cause chaos in people's lives and every member of the community will act vigilantly.¹⁹

In order for the law to apply perfectly to guarantee legal certainty, three basic values are needed. Legal certainty is related to the certainty of the rule of law, not the certainty of action against or actions that are in accordance with the rule of law. The principle of legal certainty is a principle in a state of law that uses the basis of legislation, propriety and justice in every state administration policy implemented by the government.

The theory of legal protection is basically a theory related to providing services to the community, studying and analyzing the form or form or purpose of protection, protected legal subjects and objects of protection given by law to the subject. In each legislation, the form or form or purpose of protection for the subject and object of protection is different from one another. In Law Number 37 of 2004, the purpose of protection is not only creditors, but also debtors, curators or administrators, legal experts who handle bankruptcy and the public.

According to Sudikno Mertokusumo, understanding the law is not only about the purpose of the law, it is also about the function and protection of the law. In its function as the protection of human interests, the law has goals and objectives to be achieved. The main purpose of law is to create order and balance. With the achievement of order in society, it is hoped that human interests will be protected. In achieving its objectives, the law is tasked with dividing rights and obligations between individuals in society, dividing authority and regulating how to solve legal problems and maintaining legal certainty.²⁰

Debt Payment Obligation Postponement

Postponement of debt payment obligations is a term associated with bankruptcy problems, often associated with insolvency problems or the inability to pay of the debtor for debts that have matured and can be billed immediately.²¹ The postponement of debt payment obligations is an effort for the Debtor to pay off or carry out his obligations on his debts, so that the Debtor does not become declared bankrupt. The law expressly states that as long as the suspension of debt payment obligations lasts, the debtor cannot be filed for bankruptcy.²² Munir Fuady explained that the suspension of payment or *Surseance van Betaling* is a period of time given by law through the decision of the Commercial Court Judge to the Creditor and Debtor to discuss the method of payment of debt with a plan to pay all or part of the debt,

17. Tan Kamelo, *Hukum Jaminan Fidusia, Suatu Kebutuhan Yang Didambakan*, Alumni, Bandung, 2006, page 117.

18. Mariotedja, *Teori Kepastian Dalam Perspektif Hukum*, Marotedja.blogspot.com.

19. M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP*, Sinar Grafika, Jakarta, 2006, page 76.

20. Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar*, Liberty, Yogyakarta, 1999, page 71.

21. Gunawan Widjaja, *Resiko Hukum dan Bisnis Perusahaan Pailit : Dampaknya Bagi Karyawan, Debitor dan Kreditor; Penyebab Perusahaan Dinyatakan Pailit, Akibat Hukum Perusahaan yang Pailit*, Forum Sahabat, Jakarta, 2009, page 149. There are 2 (two) ways in which Law Number 37 of 2004 provides for debtors to avoid bankruptcy. The first is to apply for a Suspension of Debt Payment Obligations. Second, submit a request for reconciliation between the Debtor and its Creditors after the Debtor is declared bankrupt. Sutan Remy Sjahdeini, *Bankruptcy Law: Understanding the Faillissementsverordening Juncto Law Number 4 of 1998*. Main Library of Graffiti, Jakarta, 2002, page 327.

22. Jono, *Hukum Kepailitan*, Sinar Grafika, Jakarta, 2008, page 170.

including debt restructuring. The suspension of debt repayment obligations is basically a kind of legal moratorium (peace plan).²³

Suspension of debt payment obligations can be interpreted as a relief given to the debtor in order to delay the payment of his debt. With the intention of having the hope of returning in a relatively short time to earn and earn income to be able to pay off the debt.²⁴

Postponement of debt payment obligations is one alternative to prevent the bankruptcy of a debtor who cannot pay, but who may be able to pay in the future. The suspension of debt payment obligations provides temporary relief to the Debtor in dealing with the pressured Creditors in order to reorganize and continue the business and finally fulfill the debtor's obligations to the creditors' claims.

The suspension of debt payment obligations is basically an offer of reconciliation from the Debtor to the Creditor and the postponement of the debt payment obligation is an opportunity for the Debtor to restructure its debts, which includes the payment of all or part of the debt to concurrent creditors.²⁵ The judge may order the suspension of the obligation to pay debts to the debtor who feels unable to pay his debts when the time for repayment has come, but is able if the payment period is extended or is able to continue payments after some time to come.²⁶

In deferring the obligation to pay debts, the debtor is given the opportunity to make financial improvements and management to improve the company's performance. This is done through the addition of capital (composition), as well as reorganization of the company (corporate reorganization). Either replacing the management (Directors/Managers) of the company or focusing/minimizing business activities. The opportunity is given to the debtor after obtaining the approval of the management(s) to save the company from bankruptcy, so that it can settle its debts.²⁷

In the process of postponing the obligation to pay debts, in addition to the appointed Supervisory Judge and Management, the appointment of a Committee of Creditors may also be carried out in the event that the application for suspension of obligation for payment of debt includes debts of a complex nature or includes many Creditors; or when required by the Creditor to represent at least (one half) of all recognized claims.

The administrator is in charge of managing the debtor's assets together with the debtor itself. Management must be independent and have no conflict of interest with Debtors or Creditors. The Management is responsible for legal actions taken while managing the Debtor's assets. The Management is responsible for errors or omissions in carrying out management duties that cause losses to the Debtor's assets. The Supervisory Judge who is appointed also has the right to be able to appoint one or more Experts to conduct an examination and compile a report on the condition of the debtor's assets, if the postponement of debt payment obligations has been granted.

If the Court declares that there is a temporary suspension of debt payment obligations, then a summons simultaneously announces the announcement of the temporary suspension of debt payment

23. Munir Fuady, *Op, Cit*, page 177. *Suspension of debt payment obligations is an opportunity for the Debtor to reconstruct the debt, including the payment of all or part of the debt to the Concurrent Creditor. The granting of an opportunity is a right owned by the Debtor and the submission can be accompanied by a peace plan for the payment of his debts. It is hoped that the Debtor will not go bankrupt and the management of the assets will still be the authority of the Debtor. Sutan Remy Sjahdeni, Bankruptcy Law Understanding Faillissementsverordening Juncto Law Number 4 of 1998, Op, Cit, p. 364..*

24. Umar Haris Sanjaya. *Penundaan Kewajiban Pembayaran Utang Dalam Kepailitan*, NFP Publishing, Sleman Yogyakarta, 2014, page 27.

25. Kartini Mulyadi, *Penundaan Kewajiban Pembayaran Utang Serta Dampak Hukumnya*, *Papers in the Workshop on Bankruptcy Regulations, organized by the Regional Board of the Indonesian Notary Association for the Special Region of Jakarta in collaboration with the Directorate General of Law and Legislation, Ministry of Justice of the Republic of Indonesia on October 24, 1998.*

26. Andi Hamzah, *Kamus Hukum*, Ghalia Indonesia, Jakarta, 1986, page 256.

27. R. Anton Suyatno, *Pemanfaatan Penundaan Kewajiban Pembayaran Utang Sebagai Upaya Mencegah Kepailitan*, Kencana, Jakarta, 2012, page 13.

obligations made by the Management. However, if after the summons has been made, the Debtor is not present at the appointed time of the trial, the Court declares the suspension of the obligation to pay the debt temporarily to end and the Debtor is immediately sentenced to bankruptcy.

If the Creditor has not been able to vote on the reconciliation plan, at the request of the Debtor, must determine whether to grant or refuse the suspension of the obligation for payment of a permanent debt with the aim of enabling the Debtor, Management and Creditors to consider and approve the reconciliation plan at the next meeting or session. In the trial, the Debtor may be sentenced to bankruptcy if the postponement of the obligation to pay debts cannot be determined by the Court because the Creditor, within a period of time, does not give approval for the suspension of the obligation to pay debts. This is because basically the temporary suspension of debt payment obligations is only valid until the day of the last trial, so that if the postponement of debt payment obligations is still not granted, then the debtor may be sentenced to bankruptcy due to the expiration of the suspension of debt payment obligations given to him. The debtor can also be sentenced to bankruptcy if after the postponement of the obligation to pay debts is still given and an extension has been made for the postponement of the obligation to pay debts, no agreement is reached on the plan of reconciliation. The decision on the bankruptcy of the Debtor must also be announced by the Management in the daily newspaper where the decision on the temporary suspension of debt payment obligations is announced.

In the event that the postponement of the obligation for payment of debt remains approved by the Creditor, the postponement and extension may not exceed 270 (two hundred and seventy) days after the decision on the suspension of the obligation for payment of the temporary debt is pronounced.²⁸ In the event that the determination of the postponement of the obligation for payment of permanent debt can be given to the Debtor or not, it is the Concurrent Creditor, while the Court only has the authority to provide a determination of the postponement of the obligation to pay the permanent debt with the approval of the Concurrent Creditor. The granting of a postponement of the obligation for payment of permanent debts along with the extension itself is determined by the Court in the presence of:

1. Approval of more than (one half) of the number of Concurrent Creditors whose rights are recognized or temporarily recognized who are present and represent at least 2/3 (two thirds) of all claims that are recognized or temporarily recognized from Concurrent Creditors or their proxies who are present at the event. the trial; and
2. Approval of more than (one half) of the number of Creditors whose receivables are guaranteed by pledge, fiduciary guarantee, mortgage, mortgage, or other collateral rights in attendance and represent at least 2/3 (two thirds) of the total claims of Creditors or their proxies present at the hearing.

The provision of suspension of obligations for payment of fixed debts and extensions may occur when the two types of Creditors, namely Concurrent Creditors and Separatist Creditors, cumulatively give approval which must meet certain proportions as determined by law. In this case, it can be seen that the provision clearly contradicts the provision which states that the granting of approval for the postponement of the obligation for payment of fixed debts along with the extension is the right of the Concurrent Creditors only.

28. *Regarding the period of postponement of debt payment obligations and extensions, it must be observed that the postponement of debt repayment obligations is still different from the definition of debt rescheduling period. The period of 270 days is the period for the Debtor and the Creditors to negotiate a settlement between them. As a result of reconciliation, it must be achieved within that time period, it may be possible to result in peace providing rescheduling for the debtor's debt for a long period of time, for example up to five or eight years. The period of postponement of the obligation to pay debts which is not more than 270 days is the period for reaching an agreement between the Debtor and the Creditors on the reconciliation plan proposed by the Debtor. If during the period of postponement of the obligation to pay debts, it turns out that an agreement is reached between the Debtor and the Concurrent Creditors to provide a rescheduling period, for example for eight years, it means that the repayment period of the debtor's debts to the Creditors is eight years, not 270 days. Sutan Remy Sjahdeini, Bankruptcy Law Understanding Faillissementsverordening Juncto Law Number 4 of 1998, Op, Cit, p 352.*

The preconditions for the provision of suspension of obligations for payment of fixed debts and extensions are unclear due to the differences in these arrangements. The Bankruptcy Law in Indonesia currently has weaknesses in terms of determining the provision of postponement of permanent debt repayment obligations and extensions. After the decision to postpone the obligation to pay debts is still pronounced, the Management is required to report the condition of the Debtor's assets every 3 (three) months, and the reporting period can be extended by the Supervisory Judge. With this provision, it means that the time period as determined is not too rigid. Thus, if the Management considers that the three-month period is too short because the Debtor's financial condition is not simple, for example a Debtor who has a very large amount of debt, the Management may apply to the Supervisory Judge to relax the reporting period.²⁹

After the postponement of the obligation for payment of debt has been granted, during that period and the extension, which is until the 270th day since the suspension of the obligation for payment of debt is temporarily granted, the Debtor and Creditor conduct negotiations on the reconciliation plan proposed by the Debtor. If during the period lasting until the specified time limit is not reached an agreement on the reconciliation plan because the reconciliation plan is rejected by the Creditors, the Court must declare the Debtor Bankrupt.

If the reconciliation plan is rejected, the Supervisory Judge must immediately notify the refusal to the Court by submitting a copy of the reconciliation plan and minutes of the meeting, and in such case the Court must declare the Debtor Bankrupt after the Court receives the notification of refusal from the Supervisory Judge, taking into account the provisions as referred to in Article 283. paragraph (1).

As for if during that period an agreement is finally reached between the Debtor and Creditor regarding the reconciliation plan, or in the end the reconciliation plan is approved with the fulfillment of the following provisions:

1. Approval of more than (one half) of the number of Concurrent Creditors whose rights are recognized or temporarily recognized who are present at the Creditors' meeting as referred to in Article 268 of Law Number 37 of 2004, including Creditors whose claims are disputed as referred to in Article 280, which together represent at least 2/3 (two thirds) of all claims that are recognized or temporarily recognized from the Concurrent Creditors or their proxies who are present at the meeting; and
2. Approval of more than (one half) of the number of Creditors whose receivables are guaranteed by pledge, fiduciary guarantee, mortgage, mortgage, or other collateral rights to material present and represent at least 2/3 (two thirds) of the total claim from The creditor or his proxies who are present at the meeting. then the Court will hold a hearing to ratify the peace.

In the trial, the Court is obliged to give a decision regarding the ratification of the peace accompanied by reasons. The court in the trial for ratification of the peace must refuse to ratify the peace, if:

1. Debtor's assets, including objects for which the right to retain objects is exercised, is far greater than the amount agreed in the peace agreement;
2. The implementation of peace is not sufficiently guaranteed;
3. The settlement was reached due to fraud, or conspiracy with one or more Creditors, or due to the use of other dishonest efforts and regardless of whether the Debtor or other parties cooperated to achieve this; and/or
4. Fees for services and costs incurred by Experts and Management have not been paid or are not guaranteed for payment.

With the rejection of the application for ratification of the settlement that has been received by the Creditor, the Court in the same decision will declare that the Debtor is bankrupt. The bankruptcy decision
^{29. Ibid, page 347.}

must be announced in the State Gazette of the Republic of Indonesia and in at least 2 (two) daily newspapers appointed by the Supervisory Judge within a period of no later than 5 (five) days after the decision is received by the Supervisory Judge and Curator.

The period of postponement of the obligation to pay the fixed debt and the extension will end with the hearing of the ratification of the reconciliation which has been received by the Creditors. At the trial there is the possibility of rejection of the ratification by the Court which may result in the bankruptcy of the Debtor. In addition, in the event that the meeting of the Creditors does not result in a decision on the acceptance of the reconciliation plan until the period of suspension of the obligation for payment of fixed debt and its extension ends, the Debtor will ultimately be sentenced to bankruptcy.

The suspension period for the obligation to pay debts ends with the ratification of the reconciliation plan by the Court, which will result in legal consequences for the Creditors and Debtors in accordance with the agreement contained in the reconciliation.

All terms of reconciliation that have been ratified, except for Creditors who do not agree to them. The postponement of the ongoing obligation to pay debts may also end not because of the conditions as mentioned above, but because of the request of the Supervisory Judge, one or more Creditors or on the Court's own initiative as referred to in Article 255 paragraph (1) of Law Number 37 of 2004. , that is, in the case of:

1. The debtor, during the time of suspension of obligation to pay debts, acts in bad faith in managing his assets;
2. The debtor has harmed or has tried to harm his creditors;
3. The debtor takes management actions or ownership of all or part of his assets without the approval of the Management.
4. The debtor fails to carry out the actions required by the Court at the time or after the suspension of the obligation to pay debts is granted, or fails to carry out the actions required by the Management for the benefit of the debtor's assets;
5. During the time of suspension of obligation for payment of debt, the condition of the assets of the Debtor is no longer possible to continue the Suspension of Obligation for Payment of Debt, or
6. The condition of the assets of the Debtor cannot be expected to fulfill its obligations to the Creditors on time.

The application for termination of the suspension of debt payment obligations must be completed within 10 (ten) days after the application is submitted and the Court's Decision must be pronounced within 10 (ten) days from the completion of the examination. If the suspension of debt payment obligations is terminated under the provisions of this article, the Debtor must be declared bankrupt in the same decision. The provisions for terminating the suspension of debt payment obligations at the request of one of the parties are regulated in Article 255 of Law Number 37 of 2004.

As the intent and purpose of the proposed postponement of debt payment obligations by both the Debtor and Creditor is to provide an opportunity for the Debtor to propose a settlement. In the Bankruptcy Law, there are 2 (two) types of reconciliation, namely reconciliation proposed in the bankruptcy process and reconciliation in the process of delaying debt payment obligations.³⁰ The debtor has the right to submit a settlement to the creditor, at the same time as the postponement of the obligation to pay debts is submitted or after the application is submitted. Peace in the suspension of debt payment obligations, which contains the following provisions:

1. Before the decision to ratify the peace in the postponement of the obligation to pay debts has permanent legal force, the reconciliation plan will be void if there is a court decision that decides the

³⁰. Sunarmi, *Op, Cit*, page 219.

suspension of the obligation to pay the debt ends.

2. The requirements for the acceptance of a reconciliation plan are contained in Article 281 of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Obligation to Pay Debts, namely:
 - a. Approval of more than (one half) of the number of concurrent Creditors whose rights are recognized or temporarily recognized who are present at the Creditors' Meeting, which together represent at least 2/3 (two thirds) of all claims recognized or temporarily recognized from concurrent creditors or their proxies who are present at the meeting; and
 - b. Approval of more than (one half) of the number of creditors whose receivables are guaranteed by pledge, fiduciary guarantee, mortgage, mortgage, or other collateral rights in attendance and represent at least 2/3 (two thirds) of all claims from the creditor or his proxies present.

Even though the Creditors through the Creditors Meeting approve the reconciliation plan proposed by the Debtor in the postponement of debt payment obligations, the Commercial Court may refuse to ratify the reconciliation plan. This happens when the provisions in Article 285 paragraph (2) of Law Number 37 of 2004. As for the case that the peace plan is ratified and has permanent legal force through a decision ratifying the peace by the Commercial Court, it is the basis for the right to execute the minutes that have been made in the Commercial Court. Article 282 of Law Number 37 of 2004.

The agreed terms of settlement generally contain debt restructuring between Creditors and Debtors, with the aim of giving the Debtor an opportunity to renegotiate the terms of his debt with the Creditors. Debt restructuring itself can be interpreted as an adjustment or rearrangement of the debt structure that reflects the opportunity for the Debtor to plan to fulfill his debt obligations.³¹

Peace that has been received in the verification meeting (based on voting or acclamation), in order to have legal force, it must be ratified by the judge who decides the bankruptcy which is called homologation. The trial for the homologation of peace is held at least 8 (eight) days, or no later than 14 (fourteen) days after the voting on peace is held. In general, the trial for homologation is held in a short and simple manner. The contents of the minutes of the peace meeting are as follows:³²

1. Contents of peace
2. Names of creditors who are entitled to vote on their attendance at the meeting;
3. Votes cast by each;
4. Voting results and others discussed in the meeting.

The judge of the Commercial Court has the obligation to carry out the ratification of the peace and does not always give approval or ratification of the peace that has been received in the previous verification meeting. The judge of the Commercial Court, conducts research on the assets and liabilities of the bankrupt and the news of the collection of the settlement. Based on the results of the research, the Judge of the Commercial Court determines the attitude, refuses or gives approval or ratification of the peace. Usually the Judge of the Commercial Court gives ratification of the peace (homologation) if:³³

1. The assets of the bankrupt person are in fact more than the reconciliation offered by the bankrupt;

31. *Debt restructuring is a process of restructuring debt with the aim of improving the financial position of the Debtor, Tjiptono Darmadji, Restructuring: Restoring and Accelerating the National Economy, Grasindo, Jakarta, 2001, p. 69. Debt restructuring is the payment of debt with terms that are softer or lighter than the terms of debt repayment before the debt restructuring process is carried out, because special concessions are given by the Creditor to the Debtor. Such concessions are not granted to the Debtor if the Debtor is not in a state of financial difficulty. Such concessions can come from agreements, court decisions, or legal regulations. Larassatya, Debt Restructuring with Debt To Equity Swap (Debt To Equity Swap) Pattern: A Case Study of Delaying Debt Payment Obligations of PT. Argo Pantes Tbk and PT Sekar Laut Tbk, Thesis University of Indonesia, Jakarta, 2009, p 25.*

32. *Bernadette Waluyo, Hukum Kepailitan dan Penundaan Kewajiban Pembayaran Utang, Mandar Maju, Bandung, 1999, page. 60.*

33. *Zainal Asikin, Op, Cit, page 91.*

2. It is considered that the guarantee is sufficient, the peace will be fulfilled properly;
3. The occurrence of reconciliation is not marked by elements of fraud, for example the bankrupt promises a creditor or more special benefits if the creditor supports the reconciliation.

The court must reject the ratification of the peace if:³⁴

1. Wealth of the bankruptcy estate, including all goods to which the right to retain goods (right of retention) applies, exceeds the amount promised in the peace agreement;
2. The peace is not fully guaranteed;
3. Reconciliation is achieved due to fraud, which unfairly benefits a Creditor or several Creditors, or due to the use of other dishonest means regardless of whether or not the bankrupt Debtor participates in this matter.

If the Commercial Court rejects the ratification of the peace in the homologation trial, there is an cassation procedure to the Supreme Court for parties who object to the refusal. As a consequence, the decision to reject is not final and binding (*inkracht*), then the peace decision cannot be implemented (it is not a *uitvoerbaar bij voorraad* decision), and the bankruptcy process cannot result in insolvency, or the termination of the bankruptcy cannot yet occur. Because if peace is accepted, the bankruptcy will end soon and the peace process will be realized (*divided*). However, if the reconciliation is rejected, the bankruptcy process immediately enters the insolvency stage.

If the ratification of the reconciliation is rejected by the Judge, within 8 (eight) days after the stipulation, the Creditors who support the ratification of the reconciliation, as well as the Debtors themselves, may file an cassation to the Supreme Court regarding the stipulation. If there is no reason for the Judge to reject the homologation of peace, then he will ratify the peace with a decision. If the judge's decision has definite legal force, then the bankruptcy ends, with the consequence that the settlement that was originally to be carried out by the judge will change to settlement outside the judge.

In connection with the approval of the reconciliation, and the settlement is carried out by the bankrupt himself, it is the responsibility of the curator or the *Balai Harta Peninggalan* to provide calculations and accountability to the bankrupt regarding the assets of the bankrupt, namely by returning goods, money and securities and other assets with witnessed by the Supervisory Judge.

Peace or reconciliation proposals in the process of postponing debt payment obligations are not always approved or ratified. In certain cases, certain parties have the authority to refuse to approve or refuse to ratify the peace plan. None of the Creditors is not bound by the peace agreement reached between the Debtor and its Creditors, this is in line with the provisions of Article 286 of Law Number 37 of 2004, which states: The settlement that has been ratified is binding on all Creditors, except for Creditors who do not approve the peace plan as referred to in Article 281 paragraph (2). Then from the explanation above, the peace agreement that has been ratified in the postponement of debt payment obligations is a form of debt renewal or novation.

CLOSING

In deferring the obligation to pay debts through homologation, the reconciliation has been ratified and has permanent legal force through a ratification decision by the Commercial Court. The protection of the interests of the parties in deferring the obligation to pay debts through homologation is one way to prevent the debtor from going bankrupt, but the opportunity for proposals for a peace plan is disproportionate and has a favorable attitude or prioritizes unilateral interests, so that it is difficult to reach an agreement, Auditors, Legal Consultants, Financial and Business Management and Experts. It is necessary to explicitly include the essence and benchmarks of good faith in the peace agreement in the framework of

³⁴. *Ibid*, page 60.

postponing the obligation to pay debts. Then an insolvency test is held before the trial for cancellation of the peace agreement in the framework of delaying debt payment obligations to find out whether the Debtor or Creditor has good faith or not, as well as knowing the Debtor's financial prospects and whether or not the Debtor is still able to carry out his obligations.

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