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## Impact and Legal Protection for Concurrent Creditors Due to the Rejection of Homologation of Peace Agreement by Commercial Court

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**Abstract:** This study examines the legal implications and obstacles that arise in the context of bankruptcy and the postponement of debt payment obligations, particularly concerning the settlement agreement between debtors and creditors. The primary focus is on the consequences of the rejection of the homologation of a settlement agreement, wherein the debtor is subsequently declared bankrupt and prohibited from seeking further attempts at reconciliation, in accordance with Article 175 paragraph (1) of the Indonesian Bankruptcy Law (UUK-PKPU). The research delves into the practical implications of bankruptcy, where the curator is responsible for managing the debtor's assets and distributing them to creditors. Concurrent creditors, despite having priority in the distribution of assets, may face the risk of losses if the assets are insufficient to cover the entire debt. Furthermore, obstacles to legal protection for concurrent creditors are also discussed, including bad faith in settlement agreements, such as collusion between debtors and creditors. The condition where the debtor's assets exceed the agreed-upon value in the settlement agreement is also a concern, with the court playing a role in ensuring a fair distribution of assets. By exploring these various aspects, this paper provides a comprehensive overview of the complex dynamics involved in situations of bankruptcy and the postponement of debt payment obligations. It offers insights into the key roles played by the court, creditors, and debtors in the relevant legal context.

**Keyword:** legal protection, homologation

### INTRODUCTION

This document discusses the vision of national development, with a particular emphasis on economic development as a primary focus for the Indonesian government. The overarching objective is to ensure the fair and prosperous well-being of the Indonesian people, as outlined in the Constitution of the Republic of Indonesia. To achieve this vision,

collaboration between the government and society is essential to safeguard and build the nation's economy. This involves establishing various business entities such as Firms (Fa), Limited Partnerships (CV), Cooperatives, and others, in accordance with prevailing positive laws in Indonesia. The Limited Liability Company (PT) has become a preferred choice for many individuals engaging in economic activities in Indonesia due to its ability to mobilize larger capital compared to other business structures. A PT is defined as an agreement formed by two or more individuals through an authentic deed made before a notary public. It includes the company's articles of association with a minimum authorized capital of IDR 50,000,000. The distribution of shares and the organization of the company are determined through a General Meeting of Shareholders, the Board of Directors, and the Board of Commissioners (Azkiya Kamila Rosadi, 2022).

When establishing a company, it is essential to have clear goals and business activities, as stipulated in Law Number 40 of 2007 concerning Limited Liability Companies, Article 2. The company's purpose and objectives must also be outlined in its Articles of Association, as regulated by Article 18 of the Limited Liability Companies Law.

The property sector is a thriving business in Indonesia, involving the sale of residential properties, including houses and apartments. With the increasing population in major cities and limited available land, property developers play a crucial role in providing affordable housing solutions. Developers offer innovations, strategic locations, and aesthetically pleasing housing options to cater to the growing demand. Apart from traditional housing, developers also market condominiums or apartments, often employing schemes such as pre-project selling or off-plan sales. Pre-project selling involves showcasing 3D visualizations of the planned apartments to potential buyers before the actual construction begins, typically displayed in malls or housing exhibitions to instill confidence in buyers.

While pre-project selling provides various payment options, buyers receive a Conditional Sale and Purchase Agreement instead of the property title. This aligns with the Minister of Public Works and Public Housing Regulation Number 16 of 2021 on the Implementation of Preliminary Sale and Purchase Agreements for Public Houses and Condominiums. Although pre-project selling allows developers to secure initial funds for construction, it poses uncertainties for buyers as the units are not yet built. Financial issues, such as difficulty in repaying funds or attracting investors, can lead to project discontinuation. In the event of bankruptcy, debtors can file for a Postponement of Debt Payment Obligation (PKPU) before a court declares bankruptcy, aiming to achieve reconciliation between the debtor and creditors. However, cases of rejection of a debtor's reconciliation proposal by the Commercial Court exist, as exemplified in Case Number 436/Pdt.Sus/PKPU/2020/PN Niaga Jkt Pst.

## **METHOD**

This research adopts a juridical normative approach, focusing its analysis on data obtained through the statute approach as a source of positive law (Aristeus, 2018). In addition to statutory regulations, this normative study also examines discussions by relating legal principles, norms, and regulations both vertically and horizontally (Aristeus, 2018). Furthermore, this research employs a qualitative method, collecting data from primary sources such as legal regulations and secondary sources including previous research and relevant books. Tertiary sources, such as dictionaries and other supporting materials, are also utilized to bolster the analysis in this study.

## **RESULTS AND DISCUSSION**

Bankruptcy is a scenario in which a debtor is no longer capable of repaying their debts to creditors, and the status of bankruptcy for a company is obtained through a bankruptcy petition filed by either the debtor or creditors. This petition is processed and confirmed by the

Commercial Court due to the debtor's inability to settle their debts. If the debtor is declared bankrupt, all of their assets can be distributed among the existing creditors in accordance with the prevailing laws in Indonesia. Fundamentally, bankruptcy laws are established to safeguard creditors when debtors are incapable of settling their entire debt load (Rai Mantili, 2021).

Munir Fuady provides his perspective on bankruptcy, stating that it is a comprehensive seizure of a debtor's assets to achieve reconciliation among creditors, ensuring a fair and pro-rata distribution of the seized assets. Bankruptcy is also defined as the inability of a debtor to make all payments owed to creditors, often stemming from the debtor's financial condition (financial distress) and business setbacks. The status of bankruptcy itself is a court decision by the commercial court resulting in the seizure of all present and future assets owned by the bankrupt debtor (DR. SUDJANTO SUDIANA, 2023)

In the event of difficulties in repaying debts, a debtor can file for a postponement of debt payment obligations with the commercial court through their legal representative. The purpose of the debtor's application to the commercial court is to reach an agreement aimed at demonstrating good faith by proposing a conciliation plan that includes the payment of all or part of their debts to creditors. Debtors with outstanding debts need to pay attention to and settle payments to preferential, separate, and concurrent creditors.

Regarding bankruptcy, there are three categories of creditors: separate creditors, preferential creditors, and concurrent creditors. Separate creditors rank second after preferential creditors because they hold collateral and must be prioritized over concurrent creditors. Collateral held by separate creditors includes pledges, fiduciary rights, mortgages, and hypothecation rights. Concurrent creditors, on the other hand, do not have special privileges like the other two creditors and are not obligated to be prioritized in the settlement of their debts, unlike preferential creditors, as regulated by Article 1139 of the Civil Code (Prastika, 2018).

In the case I will discuss, there is a developer facing difficulties in repaying debts to creditors, including preferential creditors, separate creditors, and concurrent creditors. In this case, the developer is involved in the construction of an apartment complex in the Bogor area, a project that commenced in 2016. However, financial difficulties arose in 2018-2019, preventing the developer from continuing the construction of apartment units that had already been purchased by buyers.

The delayed construction process has hindered the developer from meeting obligations to creditors. According to Article 222, paragraph 1 of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, if a debtor has more than two creditors and cannot fully pay their debts, the debtor can apply for a postponement of debt payment obligations.

The Commercial Court provides the debtor an opportunity to reconcile their debts with creditors by submitting a conciliation proposal supervised by a supervisory judge. This is in line with Article 224, paragraph 4 of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, which states, "In the hearing as referred to in paragraph (3), the Debtor submits a list containing the nature, amount of receivables, and debtor's debts along with sufficient evidence and, if any, a conciliation plan."

Additionally, certain conditions must be met if a debtor wishes to apply for a postponement of debt payment obligations, as outlined by (Saputra, 2020):

1. The debtor must have two or more creditors.
2. The debtor must not have paid overdue debts.
3. The debtor can apply on their own or at the request of their creditors.

The declaration of insolvency due to these causes can be detrimental to the creditors. Moreover, the debtor will face challenges in handling other financial matters. To address

these difficulties, various legal and non-legal approaches can be taken. However, it is essential to adhere to the legal procedures in Indonesia, considering the country's foundation as a legal state. This involves having a well-thought-out plan, demonstrating good faith, engaging in conciliation, exploring alternative dispute resolution, and considering both debt payment postponement and bankruptcy procedures. This perspective is supported by the views of R. Anton Suyatno, as mentioned in Rai Mantili's work on Postponement of Debt Payment Obligations (PKPU) related to Debt Settlement in Bankruptcy (2021).

"Through the process of applying for a postponement of debt payment obligations or bankruptcy to the commercial court, it is hoped that debtor's goodwill is demonstrated and the security and interests of the parties involved are ensured. This is because both institutions are official bodies related to and tasked by the government to resolve issues related to bankruptcy. The institutions or bodies referred to in this context include the Supervisory Judge and Curator. The roles of these two institutions must be regulated in legislation, specifically in bankruptcy and postponement of debt payment obligation laws. Thus, the rights and obligations of creditors and debtors must also be stipulated in legal regulations."

"In the case of a postponement of debt payment obligations, debtors are essentially given an opportunity to rectify their financial management to settle their debts with creditors. Financial improvement can also be achieved by increasing capital or restructuring the company, including changes in the board of directors or commissioners. This is aimed at improving the company's performance to rescue it from bankruptcy status. Therefore, financial improvement and capital injection can be implemented once the debtor has been declared and received a court decision from the Commercial Court stating that it is valid to postpone obligations in debt payment. (Rai Mantili, Postponement of Debt Payment Obligations (PKPU) Related to Debt Settlement in Bankruptcy 2021)."

"The application for Postponement of Debt Payment Obligations (PKPU) submitted to the Commercial Court, whether by the debtor or the creditor, must meet several formal and substantial requirements. This application document must be signed by the debtor along with their licensed legal representative. There is also an option to attach a conciliation plan along with the PKPU application, or this pl (Rai Mantili, Postponement of Debt Payment Obligations (PKPU) Related to Debt Settlement in Bankruptcy, 2021) can be submitted later in the process. After the PKPU application is accepted by the commercial court, within a maximum of three days, the court must grant temporary payment postponement approval. Furthermore, the court will appoint a supervisory judge and one or more administrators responsible for managing the interests of the debtor and creditors. These administrators will promptly announce the temporary PKPU decision in the Official Gazette of the Republic of Indonesia and at least two daily newspapers designated by the supervisory judge. This announcement will include an invitation to attend the judge's negotiation session, specifying the date, place, and time of the session, as well as the name of the supervisory judge and the address of the administrators. The commercial court judge has a 45-day deadline, supervised by the clerk, to summon creditors, debtors, and administrators to the hearing. In this hearing, a vote will be taken among concurrent creditors to determine whether the PKPU application should be approved or rejected. The results of this vote will be the basis for the court to issue a final (definitive) decision on the PKPU application. If during this process concurrent or secured creditors do not approve the PKPU or its extension, or if the set time frame (maximum of 270 days) has passed without reaching an agreement on the conciliation plan, the administrators can notify the commercial court. In this situation, the commercial court will declare that the debtor is bankrupt (Ni Nyoman Juliantini, 2021)."

In relation to the debtor's postponement of debt payment obligations and the process of submitting a conciliation proposal to creditors, there is another aspect to consider—what happens if the homologation of the conciliation agreement is rejected by the judge. Several

legal consequences arise, particularly for concurrent creditors who lack tangible or fiduciary collateral like some other creditors.

As a result of the rejection of homologation by the judge and the valid declaration of the debtor as bankrupt, as stipulated in Article 285, paragraph (3), it is stated that if the court rejects the conciliation agreement proposed by the debtor, the court must declare the debtor bankrupt, and the decision must be published and announced in the Official Gazette of the Republic of Indonesia and at least 2 (two) daily newspapers, as regulated in Article 226, within a maximum period of 5 days after the decision is received by the supervisory judge and curator.

Based on this, concurrent creditors are those without preferential rights or receiving debt settlements first. Due to their different position compared to other creditors, such as preferential creditors who have the privilege of being prioritized, concurrent creditors are somewhat disadvantaged.

Consequently, concurrent creditors receive the remaining debt settlements from the proceeds of the liquidation of the bankrupt assets, after preferential and separate creditors have been satisfied. However, if the bankrupt assets owned by the debtor do not generate sufficient funds through auction and sale, the pro-rata principle comes into play. This principle dictates that the distribution of the debtor's bankrupt assets will be proportional and balanced according to the value of each creditor's claim. This aligns with Article 1132 of the Civil Code, which states that if the debtor's bankrupt assets are insufficient to cover their debts to creditors, the distribution will be made equally and proportionally based on each creditor's claim.

Therefore, the rejection of the homologation of the conciliation agreement by the commercial court judge can indeed be detrimental to concurrent creditors. There is no guarantee that the debtor's bankrupt assets will be sufficient to cover the losses resulting from the debtor's bankruptcy, even if the conciliation agreement has been rejected, despite the debtor's goodwill to settle their debts to creditors. The consequence of the rejection is that once the debtor is declared bankrupt, a second attempt at conciliation cannot be filed, as stated in Article 175, paragraph (1) of the PKPU Law. This means that once the debtor is declared bankrupt, conciliation cannot be pursued again, and the curator will promptly settle the debtor's assets. Concurrent creditors will then seek payment and reconcile their claims with the curator.

#### Legal Protection Obstacles for Concurrent Creditors Due to the Rejection of Conciliation Agreement Homologation by the Commercial Court

The principle of *pacta sunt servanda*, also known as the principle of adherence to agreements, focuses on the consequences of agreements. This principle represents the view that judges or third parties must respect the essence of agreements made by the parties, similar to the respect for laws, and they are prohibited from interfering in the substance of the agreement. The *pacta sunt servanda* principle is rooted in Article 1338, paragraph 1 of the Civil Code, which asserts that "valid agreements are binding as law."

If the commercial court has ratified (homologated) a conciliation plan, the plan will have legal force that binds all involved parties. In this context, the legal effects of the court's approval of the conciliation plan on the parties are as follows: once the debtor and creditors agree on the conciliation plan, whether with or without changes, and the plan receives approval from the commercial court, the conciliation agreement will bind both the debtor and all creditors. Furthermore, the indirect approval of the agreement will also bind the shareholders of the debtor, who are part of the corporate entity. In the context of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (PKPU), this law is considered *lex specialis*, meaning that to ensure legal certainty, especially regarding payments to creditors by debtors based on a homologated conciliation agreement, changes to the terms of the homologated conciliation agreement cannot be made.



The filing of a Bankruptcy and Postponement of Debt Payment Obligations (PKPU) petition aims to give the debtor an opportunity to formulate a conciliation plan that includes an offer to pay part or all of the debt to various creditors, including preferential and concurrent creditors. If both bankruptcy and PKPU petitions are filed simultaneously, the court must first decide on the PKPU petition. However, if the PKPU petition is filed after a bankruptcy petition, the PKPU submission must be made at the first hearing of the bankruptcy petition.

However, in the process, there are obstacles that may lead the judge to reject the homologation of the conciliation agreement, such as the lack of approval from concurrent creditors, who must represent at least  $\frac{1}{2}$  of the total number of concurrent creditors and at least  $\frac{2}{3}$  (two-thirds) of the acknowledgment of all claims from each creditor present at the meeting. Additionally, at least  $\frac{1}{2}$  of the creditors whose claims are secured by mortgages, fiduciary guarantees, encumbrances, mortgages, or other property rights must be represented by at least  $\frac{2}{3}$  (two-thirds) of the total creditors present at the meeting, as stipulated in Article 281, paragraph (1) of the Bankruptcy and Postponement of Debt Payment Obligations Law, which states:

"Conciliation plans can be accepted based on:

a. Approval from more than  $\frac{1}{2}$  (one-half) of the total number of concurrent creditors whose rights are acknowledged or provisionally acknowledged present at the creditors' meeting as referred to in Article 268, including creditors as referred to in Article 280, who together represent at least  $\frac{2}{3}$  (two-thirds) of the total acknowledged or provisionally acknowledged claims from concurrent creditors or their representatives present at the meeting; and

b. Approval from more than  $\frac{1}{2}$  (one-half) of the total number of creditors whose claims are secured by mortgages, fiduciary guarantees, encumbrances, mortgages, or other property rights present at the meeting and representing at least  $\frac{2}{3}$  (two-thirds) of the total claims of these creditors or their representatives present at the meeting."

Additionally, the legal protection efforts that should occur through the submission of a conciliation agreement between the debtor and creditors may not materialize due to several reasons as mentioned above, hindering the legal protection process for creditors, especially concurrent creditors. Furthermore, it is explicitly reinforced in Article 159, paragraph 2, that the court can also reject the approval of conciliation if the debtor's wealth is significantly greater than the agreed-upon amount in the conciliation agreement. Additionally, if the agreement is tainted with bad faith by either the debtor or creditor, involving fraudulent attempts, it cannot be approved by the judge. These factors impede the legal protection process for concurrent creditors, creating the possibility that they may not receive their rights for outstanding debts or that the payments received may not be sufficient to cover the debtor's obligations."

The research discussed above focuses on the hindrance in legal protection and the impact of the rejection of the peace agreement's homologation by the commercial court judges on concurrent creditors. This situation led to several losses for the concurrent creditors, who are among the creditors having claims against the debtor. In future research, there could be an exploration of the legal measures that concurrent creditors can pursue to safeguard their rights.

## CONCLUSION

In bankruptcy and the postponement of debt payment obligations between the debtor and creditors, there are legal consequences and obstacles that affect creditors, especially concurrent creditors. In this case, the legal consequences arise from the rejection of the homologation of the peace agreement. If the debtor is declared bankrupt, a conciliation attempt cannot be re-submitted for the second time, in accordance with Article 175 paragraph (1) of the Law on Bankruptcy and Postponement of Debt Payment Obligations (UUK-

PKPU). This means that once the debtor is declared bankrupt, they cannot pursue conciliation, and the curator will promptly settle the debtor's assets. Concurrent creditors will then demand and reconcile debts with the curator. This can be detrimental to concurrent creditors as they do not have security rights like separate or preferred creditors. Additionally, obstacles to achieving legal protection for concurrent creditors include peace agreements conducted in bad faith, collusion between the debtor and creditor, or the debtor itself, and debtor assets exceeding the agreed-upon value in the peace agreement.

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