JIPRL Vol. 2, No. 2, February 2021
Journal of Indonesia Law & Policy Review 2715-498X

JURIDICAL REVIEW AGAINST REJECTION OF PEACE IN THE CASE OF BONDED COMPANY

Alfitra Rinaldo, Hasnati, Indra Afrita
Faculty of Law Student, Universitas Lancang Kuning, Riau, Indonesia
alfitrarinaldo@gmail.com

Abstract
Parties who take the initiative to apply for PKPU are generally debtors, namely debtors who are unable or expected to be unable to continue paying their debts, PKPU requests can also come from creditors who have calculated that the debtor will no longer be able to pay the debt. -the debt. The formulation of the problem in this research is how is the juridical review of the bankrupt company, how is it?Juridical Review of Refusal of Peace in Bankrupt Companies, and howLegal Consequences of Refusal of Reconciliation in Cases of Bankrupt Companies. The purpose of this study is to analyze the juridical review of the bankrupt company, to analyze the Juridical Review of Refusal of Peace in Bankrupt Companies, and To Analyze Legal Consequences of Refusal of Reconciliation in Cases of Bankrupt Companies.This research method is normative legal research. The conclusion in this study has answered the problems that arise, namely the Juridical Review of Bankrupt Companies that companies that have problems in their ability to fulfill their debt obligations take various alternative settlements. They can negotiate a request for debt relief, either in part or in full. They can also sell some of their assets or even their business, they can also convert the loan into equity participation, besides the possibility that the company can also negotiate a request for a postponement of debt repayment obligations as a final solution, then a solution is taken through the bankruptcy process if the peace process is not reachedJuridical Review of Refusal of Peace in Bankrupt Companies that Peace in bankruptcy is the right of the bankrupt debtor to file it. Legal Consequences of Refusal of Reconciliation in Cases of Bankrupt Companies that the continuation of the debtor's business due to the refusal of reconciliation is still possible in order to increase or at least maintain the value of the debtor's assets. The proposal to continue a bankrupt debtor company must be accepted if it is approved by the creditor representing ½ of all recognized and temporarily accepted receivables.

Keywords**:** Peace, PKPU, Bankruptcy

INTRODUCTION

The development and trade as well as the influence of globalization that has hit the business world, and considering that the capital owned by business actors, generally comes from loans originating from various sources, both from banks, investment, bond issuance or other permitted methods, have caused many problems. debt settlement in the community. In order for this debt problem to be resolved fairly, quickly, openly and effectively, a legal instrument is needed to regulate it, in this case formulated in Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations.

Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations Article 1 paragraph 1 states that Bankruptcy is a general confiscation of all assets of the Bankrupt Debtor whose management and settlement is carried out by the Curator under the supervision of the Supervisory Judge as regulated in this Law.[1]

Furthermore, Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations Article 21 states that "Bankruptcy" includes all assets of the Debtor at the time the bankruptcy declaration is pronounced and everything obtained during the bankruptcy.[2]

Reconciliation in this bankruptcy, can be offered by the Debtor to all Creditors, with the provisions as stipulated in Article 144 to Article 177 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. Based on the understanding in Article 1233 of the Civil Code that Peace is an agreement so that it gives birth to an agreement. Thus, in a peace there are rights and obligations of both parties in this case, especially for Debtors and Creditors in addition to of course there are things that must be considered. done by the Curator.[3]

The policy of resolving debt and receivable problems accompanied by guarantees is in turn expected to provide confidence and a sense of security to investors, both national and foreign, to invest or develop businesses in Indonesia. At that time, the Minister of Justice hoped that the settlement of debt and credit problems could be carried out quickly, fairly, openly, efficiently, effectively and professionally, so that the national business world could immediately operate normally, and in turn, economic activities would resume. Thus, the social pressure caused by the loss of many jobs will be reduced.[4]

Companies that have problems with the ability to meet debt obligations, take various alternative solutions. They can negotiate a request for debt relief, either in part or in full. They can also sell some of their assets or even their business, they can also convert the loan into equity participation, besides the possibility that the company can also negotiate a request for a postponement of debt repayment obligations as a final solution, then a solution is taken through the bankruptcy process if the peace process is not reached[5]

[1] Ibid
[2] Ibid
[3] Ibid
[4] Ibid
[5] Ibid

One of the legal means that forms the basis for the settlement of accounts payable and is closely relevant to bankruptcy in the business world is the regulation on Bankruptcy, including the regulation on Suspension of Debt Payment Obligations (PKPU).[6]

PKPU in Dutch is called surseance van betaling and in English it is called suspension of payment. UU no. 37 of 2004 does not define what is meant by PKPU, even though it is the title of Law no. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.

PKPU is a certain period given by law through a commercial judge's decision in which during that period creditors and debtors are given the opportunity to discuss ways to pay their debts by providing a plan to pay all or part of their debts, including if necessary to restructure the debt.[7]

Parties who take the initiative to apply for PKPU are generally debtors, namely debtors who are unable or expected to be unable to continue paying their debts, PKPU requests can also come from creditors who have calculated that the debtor will no longer be able to pay the debt. -the debt. This is in accordance with the provisions of Article 222 paragraphs (1) and (2) of Law no. 37 of 2004 concerning Bankruptcy and PKPU which stipulates that: ”(1) Suspension of Debt Payment Obligations is proposed by a Debtor who has more than 1 (one) Creditor or by a Creditor. (2) A debtor who is unable or predicts that he will not be able to continue paying his debts that are due and collectible, may request a postponement of the obligation to pay debts,

The PKPU application which has been designated as a temporary PKPU, the Commercial Court provides an opportunity for debtors and creditors to verify debtor debts, discuss and seek reconciliation in accordance with the debtor reconciliation plan proposal submitted to creditors under the supervision of the Supervisory Judge, in accordance with the provisions of Article 224 paragraph (4) of Law no. 37 of 2004 concerning Bankruptcy and PKPU which states that: "At the trial as referred to in paragraph (3), the Debtor shall submit a list containing the nature, amount of receivables and debts of the Debtor along with sufficient evidence and, if any, a reconciliation plan."

The case of PT Trisakti Putra Mandiri is one example of a case that was sentenced to bankruptcy and declared in a state of insolvency which was decided by the Semarang Commercial Court with Register Number: 01/PAILIT/2005/PN.NIAGA.SMG on January 12, 2006 whose warning reads between others stated that PT Trisaki Putra Mandiri was in a state of bankruptcy, determined Hj. Nirwana, SH, MH as Supervisory Judge, appointed Semarang Relics Hall as Curator.

PT Spectra Tirtasegara Line whose bankruptcy process ended in peace, regarding the dispute resolution process through reconciliation in bankruptcy based on the Decision of Reg. No. 47/Bankruptcy/2007/PN. Commerce. Jkt. Pst jo No. 107 K/Pdt.Sus/2007 dated January 8, 2009.

The bankruptcy decision statement changes the legal status of a person to be incompetent to carry out legal actions, control and manage his assets since the bankruptcy declaration decision is pronounced.

[6] Ibid
[7] Ibid

Regarding this bankruptcy decision, sometimes there is an inaccurate assumption, namely that if someone has been decided by a judge to be in a state of bankruptcy, it means that he has received the death knell. Such an assumption is certainly not correct because the decision to declare bankruptcy does not mean that all of his assets must be executed immediately. The bankrupt debtor concerned can make various efforts to prevent this matter, such as carrying out legal and conciliatory efforts.[8]

In contrast to reconciliation in civil cases, reconciliation in bankruptcy cases requires ratification (homologation) of the peace that has been agreed upon by the parties by the Commercial Court through a homologation trial.[9]

The settlement offered by the Debtor to the Creditor may be accepted or rejected by the Creditor, which will have a different impact on the Debtor's company going bankrupt. With the availability of the cassation procedure to the Supreme Court for the decision to reject the reconciliation by the Commercial Court as regulated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Payment Obligations Article 160 paragraph (1), there are consequences resulting from the rejection decision, namely the settlement decision has not been made. can be executed the termination of the bankruptcy can not occur. This cassation legal effort is carried out because it is impossible for a reconciliation to be submitted 2 (two) times in the bankruptcy process,

RESEARCH METHODS

This research can be classified as normative legal research or library research method, namely legal research conducted by reviewing and researching library materials in the form of primary legal materials and secondary legal materials.[10] Judging from the type, this research can be classified into normative legal research or library research methods, namely legal research carried out by reviewing and researching library materials in the form of primary legal materials and secondary legal materials.[11]The data source comes from secondary data. Secondary data in this type of research is divided into three types of data, namely primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials are legal materials originating from Law Number 37 of 2004 concerning Suspension of Debt Payment Obligations, secondary legal materials in the form of draft laws, research results, scientific works from legal experts and tertiary legal materials[12] such as the Big Indonesian Dictionary, the Legal Dictionary and articles that can help with this research.

[8] Ibid
[9] Ibid
[10]Soerjono Soekanto and Sri Mamudji, Research on Normative Law A Brief Action, (Jakarta: Raja Grafindo, 2007), p. 13-14
[11]Soerjono Soekanto and Sri Mamudji, Research on Normative Law A Brief Action, (Jakarta: Raja Grafindo, 2007), p. 13-14
[12]Soerjono Soekanto and Sri Mamudji, Normative Legal Research A Brief Action, Op.Cit., p. 12

Collecting data using documentary studies/library studies. In certain circumstances, non-structured interview techniques can be used which serve only as a support, not as a tool to obtain primary data. The data were analyzed descriptively qualitatively, this analysis technique does not use statistical figures, but rather an explanation in the form of sentences that are presented in a straightforward manner. The data that has been analyzed and described is then concluded by using a deductive method, namely concluding from a general statement into a specific statement.

RESULT AND DISCUSSION

A. Juridical Review of Bankrupt Companies

Companies that have problems with the ability to meet debt obligations, take various alternative solutions. They can negotiate a request for debt relief, either in part or in full. They can also sell some of their assets or even their business, they can also convert the loan into equity participation, besides the possibility that the company can also negotiate a request for a postponement of debt repayment obligations as a final solution, then a solution is taken through the bankruptcy process if the peace process is not reached[13]

One of the legal means that forms the basis for the settlement of accounts payable and is closely relevant to bankruptcy in the business world is the regulation on Bankruptcy, including the regulation on Suspension of Debt Payment Obligations (PKPU). PKPU in Dutch is called surseance van betaling and in English it is called suspension of payment. UU no. 37 of 2004 does not define what is meant by PKPU, even though it is the title of Law no. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.

PKPU is a certain period given by law through a commercial judge's decision in which during that period creditors and debtors are given the opportunity to discuss ways to pay their debts by providing a plan to pay all or part of their debts, including if necessary to restructure the debt.[14]

Some of the provisions for the settlement of the bankruptcy estate are as follows: [15]:

a) Possibly in the insolvency phase, it is proposed that the debtor company's bankruptcy continue. This is if the reconciliation meeting is not offered a reconciliation plan or if the proposed reconciliation plan is not accepted, and the Curator or Creditor proposes the right. If such matter is proposed by the Creditor, the committee of creditors (if any) and the Curator must provide their opinion.

   The discussion regarding the proposal to continue the bankrupt debtor company is discussed in a meeting that specifically discusses this matter. In order to hold the said meeting, the usual process must be followed, with an invitation or written notification and an announcement in at least 2 daily newspapers determined by the Supervisory Judge The relevant meeting is held no later than 14 days after the proposal is submitted.

[13] Ibid
[14] Ibid
[15] Ibid

b) The proposal to continue a bankrupt debtor company must be accepted if it is approved by the creditor who represents of all receivables that are temporarily recognized and accepted (recognized and accepted temporarily) which is the term used in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. Article 180. Creditors who approve the proposal are Creditors who are not secured by liens, fiduciary guarantees, mortgages, mortgages, or collateral rights on other objects.
The results of the voting at the meeting must be made in a complete report, and must be kept at the Court Registrar's Office no later than 7 days after the meeting ends. Interested parties can view the minutes for free.

c) After the ongoing efforts to continue the bankrupt debtor company, there is a possibility that the continuation of the company is terminated at the request of the Curator or Creditor. Before the Supervisory Judge orders the discontinuation of the Debtor's company, the opinion of the Curator must be heard, if the person concerned does not propose, the Creditors Committee if there is such a committee. In addition, the Supervisory Judge can hear the opinion of the Bankrupt Creditors and Debtors.

d) The Curator must begin to settle and sell all bankrupt accounts without the need for approval or assistance from the Debtor if:
(1) The proposal to take care of the Debtor's company was not submitted within a predetermined period or there is a proposal but it was rejected
(2) The management of the debtor's company is terminated.

If the debtor's company is continued, the sale of goods including the bankruptcy allowance can be made, which are not required to continue the company In this regard, the bankrupt debtor may be provided with only home furnishings and equipment, medical equipment used for health, or office furniture as determined by the Supervisory Judge.

Parties who take the initiative to apply for PKPU are generally debtors, namely debtors who are unable or expected to be unable to continue paying their debts, PKPU requests can also come from creditors who have calculated that the debtor will no longer be able to pay the debts. the debt. This is in accordance with the provisions of Article 222 paragraphs (1) and (2) of Law no. 37 of 2004 concerning Bankruptcy and PKPU which stipulates that: ”(1) Suspension of Debt Payment Obligations is proposed by a Debtor who has more than 1 (one) Creditor or by a Creditor. (2) A debtor who is unable or predicts that he will not be able to continue paying his debts that are due and collectible, may request a postponement of the obligation to pay debts, with a view to submitting a reconciliation plan which includes an offer to pay part or all of the debt to the creditor.” The PKPU application submitted by the debtor pursuant to Article 224 paragraph (2) of Law no. 37 of 2004 concerning Bankruptcy and PKPU, must be accompanied by a list containing the nature, amount of receivables, and debts of the debtor along with sufficient evidence, and a proposal for a peace plan may also be attached. The provisions of Article 224 paragraph (1) of Law no. 37 of 2004 concerning Bankruptcy and PKPU states that the application itself is signed by the applicant together with his lawyer, then the PKPU application is submitted

to the Commercial Court whose jurisdiction includes the legal domicile of the debtor. 37 of 2004 concerning Bankruptcy and PKPU, must be accompanied by a list containing the nature, amount of receivables, and debts of the debtor along with sufficient evidence, and a proposal for a peace plan may also be attached. The provisions of Article 224 paragraph (1) of Law no. 37 of 2004 concerning Bankruptcy and PKPU states that the application itself is signed by the applicant together with his lawyer, then the PKPU application is submitted to the Commercial Court whose jurisdiction includes the legal domicile of the debtor. 37 of 2004 concerning Bankruptcy and PKPU, must be accompanied by a list containing the nature, amount of receivables, and debts of the debtor along with sufficient evidence, and a proposal for a peace plan may also be attached. The provisions of Article 224 paragraph (1) of Law no. 37 of 2004 concerning Bankruptcy and PKPU states that the application itself is signed by the applicant together with his advocate, then the PKPU application is submitted to the Commercial Court whose jurisdiction includes the legal domicile of the debtor.[16]

The PKPU application which has been designated as a temporary PKPU, the Commercial Court provides an opportunity for debtors and creditors to verify debtor debts, discuss and seek reconciliation in accordance with the debtor reconciliation plan proposal submitted to creditors under the supervision of the Supervisory Judge, in accordance with the provisions of Article 224 paragraph (4) of Law no. 37 of 2004 concerning Bankruptcy and PKPU which stipulates that at the trial as referred to in paragraph (3), the Debtor shall submit a list containing the nature, amount of receivables and debts of the Debtor along with sufficient evidence and, if any, a reconciliation plan. approved by the creditor turns into a binding peace agreement for the debtor and creditor, where the debtor is required to pay his debts in accordance with what was agreed in the peace agreement, against the proposal for a reconciliation plan which was rejected by the creditor, then by law the debtor becomes bankrupt based on Article 230 paragraph (1) of Law no. 37 of 2004 concerning Bankruptcy and PKPU.

The application can be submitted by the debtor himself or by his creditors, be it separatist creditors, preferred creditors or concurrent creditors through their legal counsel. The PKPU application is filed by the commercial court where the debtor's legal domicile is, and must meet formal and substantial requirements.

Formal requirements are in the form of complete case files, including receipts for payment of court fees, list of names, addresses and amounts of claims for each creditor, list of invoices to third parties, if the applicant is a debtor then additional documents are required in the form of a list of fixed assets of the debtor company and a reconciliation plan. , but a peace plan can also be provided as long as the Temporary PKPU is running.

Substantial conditions that must be met and proven by the PKPU applicant at trial, namely if the PKPU applicant is a debtor must be able to prove the existence of a debt, the debt has matured and can be collected, there are two or more other creditors, and the debtor cannot or expects to be unable to continue to pay its debts.

[16] Ibid

In the event that the PKPU applicant is a creditor, then there are 4 (four) conditions that must be met or must be proven in order for the application to be granted, namely the existence of debt, the debt has matured and can be collected, there is one creditor who has a receivable against the debtor, and the creditor estimates that the debtor cannot continue to pay his debts

The substantial requirements mentioned above are cumulative, meaning that all requirements must be proven by the PKPU applicant. If one of the conditions cannot be proven by the PKPU applicant, the legal result of the application will be rejected by the Panel of Judges who examine and decide on the PKPU application.

The Panel of Judges within no later than 3 (three) days from the date of registration, must decide and grant Temporary PKPU for applications that come from debtors. Meanwhile, if the PKPU application is submitted by a creditor, the Panel of Judges within a period of no later than 20 (twenty) days from the date of registration must decide and grant the Temporary PKPU. The PKPU decision is final and binding, meaning that no legal remedies can be submitted. The management is obliged to announce the decision of the Temporary PKPU in the State Gazette of the Republic of Indonesia and in 2 (two) daily newspapers appointed by the Supervisory Judge.

The PKPU application submitted by the debtor or by the creditor is submitted to the commercial court. The debtor may also attach a proposal for a peace plan together with a letter of application or the proposal for a peace plan can be submitted later during the Temporary PKPU period.

The proposal for the peace plan is intended to propose a framework for peace in the form of a proposal that includes offers for partial or full payment of debts to creditors. The proposal for this reconciliation plan is intended to become a new agreement as a renewal of the debt and credit agreement previously made by the debtor and creditor, this is because the debtor is expected to no longer be able to continue to pay his debts to creditors in accordance with the debt agreement that binds the debtor and creditor. Previously, new procedures were needed for the payment of debtors' debts that could convince creditors to accept them.

B. Juridical Review of Refusal of Peace in Bankrupt Companies

Bankruptcy begins with a debtor who apparently does not pay off his debt on time for a certain reason, resulting in the debtor's assets, both movable and immovable, both existing and future, becoming collateral for his debts which can be sold to be a source of repayment. his debts. The debtor's assets that are used as collateral are not only used to pay their debts, but also become collateral for all other obligations arising from other engagements as well as obligations arising from the law. This is regulated in Article 1131 of the Civil Code.[17]

Delaying 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. Suspension of Debt Payment Obligations provides temporary relief to the Debtor in dealing with the pressured Creditors in

[17] Ibid

order to reorganize and continue the business and finally fulfill the debtor's obligations to the creditors' claims.[18]

PKPU can be submitted by debtors who have more than 1 (one) creditor or creditors who estimate that the debtor cannot continue to pay its debts that are due and collectible. Creditors can request that the debtor be given a postponement of the obligation to pay debts, to enable the debtor to submit a reconciliation plan which includes an offer to pay part or all of the debt to his creditor (Article 222 paragraph (3) of Law Number 37 of 2004).

There are two possibilities as a result of the submission of the peace plan. First, the reconciliation plan proposed by the debtor was not accepted by the creditors, thus bringing the consequence that the Court had to declare the debtor bankrupt. The bankrupt debtor may not offer a new reconciliation if the reconciliation plan offered by the debtor or the reconciliation is rejected/not homologated (Article 163 of Law Number 37 of 2004). Second, the reconciliation plan proposed by the debtor is accepted by the creditors. If the reconciliation is approved by the creditors, then the reconciliation requires ratification by the Commercial Court (ratification) in a trial called homologation. The ratified settlement applies to all creditors to whom the postponement of payment applies.[19]

Reconciliation is defined as an agreement between the debtor and his creditors in which the claims of the creditors are agreed to be paid in part or in full.[20]In the event that a reconciliation has been reached, but then for whatever reason it turns out that the bankrupt debtor cannot carry out the reconciliation, in accordance with the provisions in Article 170 paragraph (1) of Law no. 37 of 2004, the settlement was annulled by the commercial court at the request of one of the creditors and then the bankruptcy process was reopened. The procedure for canceling this settlement is the same as the procedure for filing a bankruptcy suit, as determined by Article 171 of the Bankruptcy Act. If the proposal for the termination of the peace is accepted and has definite force, as already stated, the bankruptcy process is reopened and the provisions relating to the bankruptcy process are re-applied with all its legal consequences.[21]

Basically, before the declaration of bankruptcy, the debtor's rights to take all legal actions regarding his wealth must be respected. Of course, by taking into account the contractual rights and obligations of the debtor according to the laws and regulations.[22]

Since the court pronounces the bankruptcy decision in a trial that is open to the public against the debtor, it will result in the debtor losing the right to manage and control his assets (personastandy in ludicio) and the bankruptcy rights are transferred to the curator to manage and control the budget.

[18] Ibid
[19] Ibid
[20] Ibid
[21] Ibid
[22] Ibid

Bankrupt debtors are still allowed to take legal actions in the field of assets, for example making an agreement, if the legal action will benefit the bankrupt property (boedel), on the contrary if the agreement or legal action will actually harm Budel, then the loss is not tie knot.

Likewise, the personal rights of the Debtor which cannot produce wealth or property belonging to a third party which happens to be in the hands of the bankrupt, cannot be subject to execution, for example: the right to use and the right to occupy a house.[23] Bankruptcy consists of 2 phases or 2 periods, namely: [24]

1. Custody or sequestration phase (cocervatoir)
2. The insolvency or execution phase.

Bankruptcy does not always move into a second phase. The possibility of bankruptcy has ended in the first phase or in the sequestration phase, namely if:

a. Legal efforts in the form of cassation or judicial review are successful or granted
b. Peace is approved or accepted and homologated (ratified)
c. Bankruptcy is revoked by a court decision because the bankruptcy estate is not sufficient to pay the bankruptcy costs as regulated in Law Number 37 of 2004 concerning Bankruptcy and the postponement of the obligation to pay debts in Article 18 (Opheffing).

On the other hand, bankruptcy switches from the first phase to the second phase if, among others, due to:

1) Peace not proposed
2) The settlement is proposed but not approved or not accepted by creditors who have voting rights
3) The settlement is proposed, approved or accepted by creditors who have voting rights, but are not ratified or not homologated by the judge
4) Legal efforts are not granted, peace is not proposed
5) Legal efforts are not granted, peace is not accepted
6) Legal efforts were not granted, peace was accepted but not approved by the judge.

Under the circumstances as mentioned above, bankruptcy has reached the insolvency phase, which means that the bankruptcy estate must be settled which has been clearly regulated in Law Number 37 of 2004 concerning Bankruptcy and Postponement of Obligation for Payment of Debt Articles 178 to 203.

The policy of settling debts and receivables with the guarantee, in turn, is expected to provide confidence and security to investors, both national and foreign, to invest or develop businesses in Indonesia. At that time, the Minister of Justice hoped that the settlement of debt and credit problems could be carried out quickly, fairly, openly, efficiently, effectively and professionally, so that the national business world could immediately operate normally, and in turn, economic activities would resume. Thus, the social pressure caused by the loss of many jobs will be reduced.[25]

[23] Ibid
[24] Ibid
[25] Ibid

The proposal for the reconciliation plan is discussed at a creditors' meeting chaired by a supervisory judge, which is attended by debtors, creditors and also the management. The creditors' meeting is held during the Temporary PKPU period, which is 45 (forty five) days after the decision on the PKPU application is received by the Panel of Judges.

The peace plan proposal can be rejected or accepted by creditors, this is influenced by how the debtor can convince creditors that the debtor is still eligible to be given the opportunity to pay off his debts as stated in the peace plan proposal. If there is no agreement between the debtor and the creditor regarding the reconciliation, the supervisory judge shall vote to submit voting rights, in addition to accepting the proposal for the peace plan, the creditors may also reject the proposal for the peace plan if they are not sure about the content and the offer submitted by the debtor.

On the 46th (forty-sixth) day after the decision on the Temporary PKPU application is received by the Panel of Judges, the Supervisory Judge is again present before the Panel of Judges in a trial to hear reports on the results of the creditor meeting, the management is also present to provide reports on financial condition and the debtor company, the trial is also attended by the debtor and creditor to hear whether their statements are in accordance with the reports provided by the supervisory judge and the management.

The case of PT Trisakti Putra Mandiri is one example of a case that was sentenced to bankruptcy and declared in a state of insolvency which was decided by the Semarang Commercial Court with Register Number: 01/PAILIT/2005/PN.NIAGA.SMG on January 12, 2006 whose warning reads between others stated that PT Trisaki Putra Mandiri was in a state of bankruptcy, determined Hj. Nirwana, SH, MH as Supervisory Judge, appointed Semarang Heritage Center as Curator

With a total Preferred Creditor bill of Rp. 67,759,539,616,- (sixty-seven billion seven hundred fifty-nine thousand five hundred thirty-nine six hundred and sixteen rupiah), Separatist Creditors Rp. 523,912,500,- (five hundred twenty three million nine hundred and twelve thousand five hundred rupiah) and Concurrent Creditors Rp. 9,240,143,143, - (nine billion two hundred forty million one hundred forty three thousand one hundred and forty three rupiah). The curator based on Article 184 paragraph (1) of Law no. 37 of 2004 concerning Bankruptcy and PKPU can initiate settlement by selling all assets of the bankrupt debtor.

All assets of the bankrupt debtor are sold in public or at auction in accordance with Article 185 paragraph (1), but if the sale by auction is not achieved, then it can be sold under the hands of the Supervisory Judge. The proceeds from the sale of the assets of PT Trisakti Putra Mandiri are then distributed first to all holders of collateral rights who obtain priority positions such as pawns, fiduciaries, mortgages, mortgages or so-called separatist creditors (the so-called separatist creditors are creditors holding rights collateral), the following are payments to the separatist creditor PT Trisakti Putra Mandiri.

Those entitled to take precedence for subsequent payments are the holders of privileged claims (referred to as preferred creditors are creditors holding privileges referred to in the provisions of Article 1139 and Article 1149 of the Civil Code). The holder of special privileges

or holders of special privileges and therefore he is a preferred creditor has the right to prioritize claims, preferential claims on the results of the execution of certain objects belonging to the debtor.

After all receivables from separatist creditors and preferred creditors have been paid in full, there will be remaining assets of the bankrupt debtor which will then be distributed on a pro-rata basis to the concurrent creditors based on a percentage in accordance with the number of concurrent creditors recorded in the list of receivables.

As soon as all receivables from creditors, both preferred creditors, separatist creditors and concurrent creditors, have been divided, then based on Article 202 of Law no. 37 of 2004 concerning Bankruptcy and PKPU, the bankruptcy of PT Trisakti Putra Mandiri ended. Then the Curator makes an Accountability Report which is sent to the Supervisory Judge of the Commercial Court and also the Bankrupt Debtor. Based on the Curator's Accountability Report, the Supervisory Judge issues a Decision stating that the Bankruptcy has ended, then announced in the State Gazette of the Republic of Indonesia and in 2 (two) Newspapers.

C. Legal Consequences of Refusal of Reconciliation in Cases of Bankrupt Companies

The development and trade as well as the influence of globalization that has hit the business world, and considering that the capital owned by business actors, generally comes from loans originating from various sources, both from banks, investment, bond issuance or other permitted methods, have caused many problems. debt settlement in the community.

In order for this debt problem to be resolved fairly, quickly, openly and effectively, a legal instrument is needed to regulate it, in this case formulated in Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations. Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations Article 1 paragraph 1 states that Bankruptcy is a general confiscation of all assets of the Bankrupt Debtor whose management and settlement is carried out by the Curator under the supervision of the Supervisory Judge as regulated in this Law.[26]Furthermore, Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations Article 21 states that "Bankruptcy" includes all assets of the Debtor at the time the bankruptcy declaration is pronounced and everything obtained during the bankruptcy.[27]

The declaration of a bankruptcy decision changes a person's legal status to become incompetent to carry out legal actions, control and manage his assets since the bankruptcy declaration decision is pronounced. Regarding this bankruptcy decision, sometimes there is an inaccurate assumption, namely that if someone has been decided by a judge to be in a state of bankruptcy, it means that he has received the death knell. Such an assumption is certainly not correct because the decision to declare bankruptcy does not mean that all of his assets must be

[26] Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations
[27] Ibid

executed immediately. The bankrupt debtor concerned can make various efforts to prevent this matter, such as carrying out legal and conciliatory efforts.[28]

Reconciliation in this bankruptcy, can be offered by the Debtor to all Creditors, with the provisions as stipulated in Article 144 to Article 177 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. Based on the understanding in Article 1233 of the Civil Code that Peace is an agreement so that it gives birth to an agreement. Thus, in a peace there are rights and obligations of both parties in this case, especially for Debtors and Creditors in addition to of course there are things that must be considered. done by the Curator.[29]

In contrast to reconciliation in civil cases, reconciliation in bankruptcy cases requires ratification (homologation) of the peace that has been agreed upon by the parties by the Commercial Court through a homologation trial.[30]The settlement offered by the Debtor to the Creditor may be accepted or rejected by the Creditor, which will have a different impact on the Debtor's company going bankrupt.

A peace that has been decided to be accepted or approved, cannot be executed immediately. To have the power to be executed, the peace that has been agreed must be approved or homologated by the Court. The court hearing to discuss the ratification of the peace was held open to the public. In the trial the Supervisory Judge gives a written report, and each Creditor or his proxies can explain the reasons as to why the person concerned wants or refuses ratification.[31]On the other hand, the bankrupt debtor may state the reasons so that the person concerned proposes reconciliation and asks for its ratification.[32]

A reconciliation in bankruptcy, even though it has been approved by the creditors according to the applicable procedures, but the reconciliation still requires ratification by the Commercial Court (ratification) in a trial called Homologation.[33] This homologation trial may ratify or reject the ratification of the reconciliation in accordance with the reasons stated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligation for Payment of Debt Article 159 paragraph (2) which reads that the Court is obliged to refuse the ratification of the reconciliation if:

1. Debtor's assets, including objects for which the right to retain an object is exercised, is far greater than the amount agreed in the settlement
2. The implementation of peace is not sufficiently guaranteed and/or
3. The settlement is 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 cooperate to achieve it.

[28] Ibid
[29] Ibid
[30] Ibid
[31] Ibid
[32] Ibid
[33]Munir Fuady, Op. Cit. p. 107.

It is possible that in the homologation trial, the Commercial Court does not ratify the reconciliation plan proposed by the Debtor, even though the reconciliation plan has been accepted by the Creditor. If the rejection of this ratification occurs and has permanent force, of course the peace will end for the sake of law. And if the Commercial Court rejects the ratification of the reconciliation in the homologation trial, according to Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations Article 160 paragraph (1), there is an cassation procedure to the Supreme Court for parties who object to the refusal.

Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligation for Payment of Debt Article 160 paragraph (1) reads as follows:

> "In the event that the ratification of the settlement is rejected, both the Creditor who approves the reconciliation plan and the Bankrupt Debtor, within 8 (eight) days after the date the Court's decision is pronounced, may file an appeal."

The consequence is that because the rejection decision is not final and binding (inkracht), then the reconciliation decision cannot be implemented (it is not a uitvoorbaar bij vooraad decision), and the bankruptcy process also cannot result in insolvency or the termination of the bankruptcy cannot occur, this is regulated by law. It is clear in Law Number 37 of 2004 concerning Bankruptcy and Postponement of Obligation for Payment of Debt Article 166 in conjunction with Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligation for Payment of Debt Article 178. Because, if the settlement is accepted, and the ratification of the settlement has obtained permanent legal force , resulting in the end of the bankruptcy and the reconciliation process will soon be realized, namely the distribution of the assets of the bankrupt. However, if peace is rejected, the bankruptcy process immediately enters the insolvency stage. Because it is impossible for a reconciliation to be proposed 2 (two) times in the bankruptcy process. This means that if a settlement has been rejected by creditors or has been rejected for ratification by the Commercial Court, the reconciliation may not be submitted again as stated in Law Number 37 of 2004 concerning Bankruptcy and Postponement of Obligation for Payment of Debt Article 163 in conjunction with Article 292.

The nature of the PKPU's decision is faster to have definite legal force, where the decision is Final and Binding (final and binding) meaning that no legal action can be filed against the PKPU rejection decision, be it an appeal, cassation, or submission for judicial review as stated in Article 235 paragraph (1) Law Number 37 of 2004.

A declaration of bankruptcy as a result of the refusal to ratify the peace also cannot be submitted for a cassation or judicial review as stated in Article 293 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and PKPU. According to the author of Law Number 37 of 2004 concerning Bankruptcy and PKPU, the law adheres to the principle of a single peace.

This single principle of peace is reflected in Article 289 which states that parties can only submit a peace plan once. If the peace plan is rejected, a second peace plan can no longer be submitted. Because, after the reconciliation plan is rejected, the supervisory judge is obliged to immediately notify the Commercial Court and the debtor is immediately declared bankrupt by the Commercial Court. The principle of single reconciliation is also reflected in the provisions in

Article 292. In that article it is determined that if the reconciliation has been rejected in the PKPU process and then the debtor is declared bankrupt, in the bankruptcy process the debtor may no longer submit a reconciliation plan.

As a result of the legal consequences of the creditors rejecting the reconciliation plan based on the above provisions, there has been a change in the legal process, which was previously pursued amicably based on the PKPU process, changed to using the applicable process in the bankruptcy provisions.

Elucidation of Article 292 of Law Number 37 of 2004 concerning Bankruptcy and PKPU, states that the decision to declare bankruptcy on the refusal of a reconciliation results in the PKPU debtor being unable to apply for reconciliation again and therefore the debtor's bankruptcy estate is immediately in a state of insolvency. In terms of the general public, insolvency is called bankrupt. JackP. Friedman in his book entitled Dictionary Of Business Term provides the following understanding:[34] "Insolvency is:

a. Inability to meet financial obligations when they fall due as in business; or
b. Excess liabilities compared to assets in a certain time.

Article 178 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and PKPU states that insolvency occurs (by law) if there is no reconciliation and the bankruptcy estate is in a state of being unable to pay all of its debts that must be paid.

Insolvency brings certain legal consequences to the bankrupt debtor. Curator appointed by the Commercial Court through a bankruptcy decision based on Article 261 jo. Article 15 of Law Number 37 of 2004 concerning Bankruptcy and PKPU has the authority to settle bankruptcy assets, including checking accounts receivable lists, then the bankruptcy assets are immediately executed and distributed to creditors. By law, the debtor's assets become a bankrupt bill which will be distributed to creditors proportionally.

The curator referred to here can be a curator from the Balai Harta Peninggalan which is under the Ministry of Law and Human Rights and also other curators who are not commonly referred to as private curators. A limited liability company as a legal entity that has assets separate from the assets of the company can be declared bankrupt based on a court decision. The existence of a bankruptcy statement by the court resulted in the legal entity losing the right to manage its assets, because the right to manage the company's assets was transferred to the curator, this is in accordance with Article 26 of Law Number 37 of 2004.

The bankruptcy declaration decision has legal consequences for the debtor, Article 19 of Law Number 4 of 1998 jo. Article 21 of Law Number 37 of 2004 stipulates that bankruptcy covers the entire assets of the debtor at the time the bankruptcy declaration is made, along with everything obtained during the bankruptcy. Another legal consequence for the company is that the debtor who is declared bankrupt loses all civil rights to control and manage the assets that

[34]Jack P. Friedman, Dictionary of Business Terms, (USA: Barron's Educational Series Inc, 1987), p. 289

have been included in the bankruptcy estate. This "freezing" of civil rights is effective as of the time the bankruptcy decision is pronounced.[35]

The legal consequences of bankruptcy decisions have consequences on the company's bankruptcy assets (debtors). All engagements between a debtor who are declared bankrupt and a third party made after the declaration of bankruptcy will not and cannot be paid from the bankruptcy estate, unless the engagements bring benefits to the bankruptcy estate.

Based on the bankruptcy decision, a curator is given duties in accordance with the authority in managing and/or settling the assets of the bankrupt debtor under the supervision of a supervisory judge. Theoretically, the appointment of a curator as stated in the decision of the bankruptcy statement by the Panel of Judges of the Commercial Court, means that the curator legally has the authority to manage the assets of the bankrupt debtor to replace the authority of the debtor as the owner of the bankrupt property.

According to the analysis that the author has done, after the debtor is declared bankrupt by the Panel of Judges of the Commercial Court, then in the first stage, the curator must manage the assets of the bankrupt debtor before making asset settlements to creditors, as follows:

a. Securing bankruptcy assets and keeping all letters, documents, money, jewelry, securities and other securities (Article 98);
b. No later than 2 days, make a record of bankruptcy assets (Article 100);
c. Not later than 5 days, announcing the existence of bankruptcy in the State Gazette of the Republic of Indonesia and at least 2 (two) newspapers (Article 15 paragraph 4) containing, among others:
   - Bankrupt debtor identity
   - Curator ID.
   - Superintendent's name.
   - Identity of the temporary creditor committee, if it has been appointed. - The place and time of the first creditor meeting is approximately 30 (thirty) days after the bankruptcy decision.
   - Place and deadline for submitting creditor bills.
   - Place and deadline for tax verification.
   - Place and time of the accounts receivable/verification meeting. The Supervisory Judge determines the deadline for filing claims, the deadline for tax verification to determine the amount of tax liability in accordance with the laws and regulations in the field of taxation and determines the day, date, time and place of the creditors meeting to discuss the verification of receivables.

After the decision has been made by the supervisory judge, the curator will notify the creditors of the deadline for submitting the said receivables and also the schedule for the meeting of the creditors to match the receivables. If the address of the creditor is known, it will be notified

[35] Ibid

by written letter, but if it is not known, it will be notified in 2 (two) daily newspapers as determined by the Supervisory Judge.

CONCLUSION

Juridical Review of Bankruptcy Companies that companies that have problems in their ability to fulfill their debt obligations take various alternative settlements. They can negotiate a request for debt relief, either in part or in full. They can also sell some of their assets or even their business, they can also convert the loan into equity participation, in addition to the possibility that the company can also negotiate a request for a postponement of debt repayment obligations as a final solution, then a solution is taken through the bankruptcy process if the peace process is not reached.

Juridical Review of Rejection of Reconciliation in Bankruptcy Companies that reconciliation in bankruptcy is the right of the bankrupt Debtor to file it. If the Debtor submits a reconciliation plan and no later than 8 days before the meeting of accounts receivable verification, it provides it at the court clerk's office. This is so that it can be seen free of charge by interested parties, so that interested parties can prepare it. The discussion of the proposal for reconciliation is attempted and decided upon completion of the reconciliation meeting, unless the right is postponed. The rejected peace plan cannot be submitted again for the second peace plan which causes the PKPU to remain unacceptable, so that the debtor immediately becomes bankrupt with all the legal consequences.

Legal Consequences of Refusal of Reconciliation in Bankruptcy Cases that the continuation of the debtor's business due to refusal of reconciliation is still possible in order to increase or at least maintain the value of the Debtor's assets The proposal to continue the bankrupt debtor company must be accepted if it is approved by the creditor who represents of all recognized and temporarily accepted receivables. After the continuation of the Debtor's business continuation proposal, it is still possible to terminate the Debtor's business continuity at the request of the Curator and Creditor after obtaining a decision from the Supervisory Judge. With the availability of an cassation procedure to the Supreme Court on the decision to reject the reconciliation by the Commercial Court as regulated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Payment Obligations Article 160 paragraph (1), then there are consequences resulting from the rejection decision, namely the peace decision cannot be carried out, the termination of the bankruptcy cannot occur. This appeal was carried out because it was impossible for a reconciliation to be filed 2 (two) times in the bankruptcy process, this is in accordance with the provisions of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Obligation to Pay Debt Article 163 in conjunction with Law Number 37 of 2004 Regarding Bankruptcy and Suspension of Debt Payment Obligations Article 292.

REFERENCE

Edward Manis, Easy Ways to Understand the Bankruptcy Process and Deferment of Debt Payment Obligations (completed with bankruptcy case studies), Bandung: Mandar Maju, 2012.

Gunawan Widjaja, Responsibility of the Board of Directors for Bankruptcy of the Company, Jakarta: RajaGrafindo Persada, 2004.

Hoff, J, Bankruptcy Laws in Indonesia, Jakarta: Tatanusa, 2000.

Imran Nating, Roles and Responsibilities of Curators in the Management and Settlement of Bankrupt Assets, Jakarta: Raja Grafindo Persada, 2004.

Jack P. Friedman, Dictionary of Business Terms, USA: Barron's Educational Series Inc, 1987.

M. Fuady, Bankruptcy Law in Theory & Practice, Bandung: PT. Image of Aditya Bakti, 2014.

Man S. Sastrawidjaja, Law on Bankruptcy and Postponement of Obligations for Payment of Debt under Law No. 37 of 2004 and Law No. 4 of 1998 (A Comparative Study), Bandung: PT. Alumni, 2010.

Munir Fuady, Bankruptcy Law in Theory and Practice, Bandung: PT Citra Aditya Bakti, 2010.

Munir Fuady, Bankruptcy Law in Theory and Practice, Revised Edition (Adapted to Law Number 37 Year 2004, Bandung: PT. Citra Aditya Bakti, 2005.

Rudhy A. Lontoh, Deny Kailimang, Benny Ponto (eds), Settlement of Debts Through Bankruptcy and Postponement of Debt Payment Obligations, Bandung: PT. Alumni, 2001.

Santiagio, F, Introduction to Business Law, Jakarta: Mitra Wacana Media Publisher, 2012.

Sjahdeini, S. R, Bankruptcy Law: Understanding Faillissements Verordening Juncto Law Number 4 Year 1998, Jakarta: Graffiti, 2002.

Soerjono Soekanto and Sri Mamudji, A Short Action Normative Law Research, Jakarta: Raja Grafindo, 2007.

Zainal Asikin, Bankruptcy Law and Suspension of Debt Payment Obligations, Jakarta: Raja Grafindo Persada, 2000.

Legislation

Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.