Al-Risalah
Forum Kajian Hukum dan Sosial Kemasyarakatan
Vol. 22 No. 1, June 2022 (pp. 40-51)

p-ISSN: 1412-436X
e-ISSN: 2540-9522

RESTRUCTURING OF DEBT PAYMENT OBLIGATION SUSPENSION AGREEMENTS HOMOLOGATED DUE TO COVID-19 NON-NATURAL DISASTERS

Hanin Alya' Labibah
Universitas Bojonegoro
Jl. Lettu Suyitno No. 02, Kalirejo, Bojonegoro, Jawa Timur, 62119, Indonesia
email: haninalya8@gmail.com

DOI: 10.30631/alrisalah.v22i1.1229
Submitted: May 12, 2022; Revised: June 8, 2022; Accepted: June 19, 2022

Abstract: The quick spread of the Covid-19 pandemic weakened the economy and led to the non-performance of debtors' obligations because their business did not run smoothly during the period. Several business actors with homologated PKPU peace were hindered or prevented from achieving their aims including the force majeure qualifications associated with the Covid-19 pandemic. Therefore, this normative legal research conducted through statutory, conceptual, and case approaches was used to assess this situation. The findings showed that a debtor can request to restructure the homologation implementation based on the force majeure of the Covid-19 pandemic but the request needs to be based on the agreement between the debtor and creditor using Article 1338 paragraph (1) of the Civil Code as the premise. It was discovered from the PT Berlian Tenker case that the agreement was conducted without requiring further re-homologation in the court because the UUK-PKPU is not applicable in the matter due to the fact that the Covid-19 pandemic is a national disaster classified as a relative force majeure.

Keywords: Postponement of Debt Payment Obligations, Homologation, Covid-19.

Abstrak: Pandemi *Covid*-19 penyebarannya sangat cepat menular, yang mengakibatkan melemahnya perekonomian, yang mengakibatkan juga terkait tidak dilaksanakannya kewajiban atau prestasi bagi debitor, yang dikarenakan usahanya tidak berjalan dengan lancar. Sehingga banyak pelaku usaha yang dalam perdamaian PKPU nya yang telah dihomologasi terhalang atau tercegah untuk menjalankan prestasinya, yang mana masuk pada kualifikasi *force majeure* pandemi *Covid*-19. Jenis penelitian ini adalah penelitian hukum normatif dengan pendekatan perundang-undangan, pendekatan konseptual serta pendekatan kasus. Dari penelitian ini dapat disimpulkan bahwa debitor dapat meminta restrukturisasi lagi pelaksanaan homologasi dengan dasar adanya *force majeure* pandemi *Covid*-19, akan tetapi harus berdasarkan kesepakatan debitor dan kreditor serta tetap memperhatikan Pasal 1338 ayat (1) KUHPerdata. Dalam kasus PT.Berlian Tenker kesepakatan dilakukan dibawah tangan tanpa perlu rehomologasi lagi di Pengadilan, karena UUK-PKPU

tidak mengatur hal demikian. Pandemi *covid*-19 sebagai bencana nasional dapat diklasifikasikan *force majeure* yang bersifat relatif.

Kata Kunci: Penundaan Kewajiban Pembayaran Utang, Homologasi, *Covid*-19.

Introduction

World development due to globalization affects several sectors. An example of this is the economic sector where business actors are required to constantly think about the ways to achieve business success. Moreover, the existence of companies usually determines the progress of a country's development. These companies always need capital, labor, and others to support their businesses and this is the reason they are required to have good agreements with other firms or banks to have loan agreements, leasing, credit agreements, and several others needed for growth. This is in line with the provisions of Article 1313 of the Civil Code or the *Burgelijk Wetbook,* hereafter referred to as the Civil Code, that "an agreement is an act in which one or more people bind themselves to one or more other people". This implies an agreement is between two agreeing parties with rights and obligations freely determined by them. It is, however, important to note that these agreements do not always work as promised due to several hindering factors. An example is a disruption experienced by the world economy due to the Corona Virus Disease 2019 (Covid-19) Pandemic with a severe impact on the lives of the people and businesses. This is indicated by the cessation of business activities due to the imposition of restrictions by the government, thereby, interrupting the income of business actors and even causing the termination of employment relationships with workers.

Debt is a normal phenomenon for business actors including individuals and legal entities in the business world. This concept is defined in Article 1 number 6 of Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (State Gazette of the Republic of Indonesia of 2004 Number 31, hereafter referred to as UUK-PKPU, as an obligation stated in an amount of money, both Indonesian and foreign currencies, to be fulfilled by a debtor either directly or in the future based on certain agreements and laws. The inability of a debtor to fulfill the payment agreement provides the creditor the direct right to confiscate the debtor's assets.

In the business world, "solvable" is not a strange term and it focuses on the ability of the actors or debtors to pay their debts while "insolvable" indicates the inability to pay. Moreover, the business actors with insufficient finances are often referred to as bankrupt. according to Article 1 point 1 UUK-PKPU, bankruptcy is the general confiscation of all assets of a bankrupt debtor where the management and a curator are expected to implement a settlement under the supervision of a supervisory judge. There are, however, situations when debtors cannot pay their debts and are allowed to apply for a Suspension of Debt Payment Obligations (PKPU) from the Commercial Court within their jurisdiction. In Articles 222 and 224 of the UUK-PKPU, the PKPU allows the debtor to have a grace period to repay the debts in a good way through the submission of a reconciliation plan without causing any harm to the creditor. In principle, there are two patterns of PKPU with the first being a rebuff from the debtor against the bankruptcy petition submitted by the creditor, and the second is based on the debtor's assessment of its inability to pay the debts.[1].

PKPU also has two processes and the first is temporary with a maximum period of 45 days

[1] M. Hadi Shubhan, *Hukum Kepailitan: Prinsip, Norma, dan Praktik di Peradilan* (Jakarta: Kencana Prenadamedia Group, 2008), p. 147.

after the provisional PKPU decision has been pronounced. This restricts the creditors from collecting the debts because, in this case, the debtor is not obliged to pay. Therefore, the debtor is free to control and manage its assets but needs to obtain permission from the management previously determined by the supervisory judge. This simply implies the debtor has lost the authority to manage its assets. The second process is permanent as approved by the panel of judges and this denotes there is no legal remedy. This is a golden opportunity for debtors because it allows them to submit a reconciliation plan related to their debts to creditors based on Article 144 of the UUK-PKPU which states that "bankrupt debtors have the right to offer a reconciliation to all creditors". The PKPU peace agreement needs to be ratified by a judge in court through homologation for it to be binding on all the parties involved.

The debtor is obliged to fulfill this homologation but there is an exception which involves filing a defense to explain some unforeseen circumstances hindering the fulfillment of the obligation such as force majeure. However, not all disasters are immediately classified as force majeure and this is the reason there is a need for proof to ensure the disaster fulfilled the required element for such classification.

The Covid-19 pandemic spread very quickly with a significant effect on human health which weakened the economy and stopped business transactions. It also caused non-performance of obligations by the debtors because businesses were not running smoothly. This hindered several business actors with homologated PKPU peace from fulfilling their obligations due to the Covid-19 pandemic force majeure qualification based on Presidential Decree No. 12 of 2020 concerning the determination of Non-natural Disasters for the Spread of Corona Virus Disease 2019 (Covid-19) as a National Disaster, hereafter referred to as Presidential Decree 12/2020. It is important to note that the PKPU peace agreements were homologated before the pandemic but the achievement was during the period. Therefore, it is interesting to critically study the legality of debtors requesting a restructuring of the homologation implementation based on force majeure.

The Binding Power of Peace Homologation

Bankruptcy laws are implemented in Indonesia to solve the problems of debt and receivables observed to be getting more complicated in companies every day along with the increasing trade. Every problem usually has consequences, including bankruptcy, for the parties involved. Therefore, the laws provide a period for the debtor and creditor to discuss ways to pay debts through the decision of the Commercial judge in order to prevent the debtor from going bankrupt. The debt can be restructured through the provision of a payment plan, either in whole or in part, as required by the debtor.[2]

Article 222 paragraph (2) of the UUK-PKPU provides debtors that cannot or without the ability to continue paying their due debts the opportunity to apply for PKPU which is in the form of a peace plan including the offer to pay part or all the debt to the creditors. Paragraph (1) of the article allows either the debtors or creditors to submit the PKPU. Meanwhile, these creditors are classified into three based on the types of bankruptcy and these include the separatist, preferred, and concurrent. In principle, this division is according to their respective portions such that the separatists are creditors holding security rights on the materials collateralized by the debtor, preferred are

[2] Kartika Irwanti, Anggit Sinar Sitoresmi, "Permohonan Penundaan Kewajiban Pembayaran Utang dan Akibat Hukum terhadap PT. Asmin Koalindo Tuhup berdasarkan Undang-Undang Nomor 37 Tahun 2004" *Pendecta*, 13, 2 (2019): 121, https://doi: 10.15294/pandecta.v14i2.16902.

concurrent creditors privileged by law, while concurrent creditors are those that do not hold collateral rights and are not privileged by law. This implies the debt repaid to concurrent creditors is the remainder of the proceeds from the payment of the separatist and preferred creditors. It is important to note that these remaining proceeds are usually divided proportionally or equally between one and other concurrent creditors.

The material guarantees for separatist creditors are explained in Article 1134 paragraph (2) of the Civil Code that "pawns and mortgages are higher than special rights, except in cases where the law provides otherwise". Meanwhile, the privileges associated with the preferred creditor are formulated in Article 1139 of the Civil Code which is focused on specific objects, and Article 1149 of the Civil Code which generally emphasizes movable and immovable objects. Moreover, there is a special right that takes precedence over receivables on guaranteed claims with security rights by law.

In the case of concurrent creditors, Article 1131 of the Civil Code states that "all objects of the debtor, both movable and immovable, whether existing or those that will only exist in the future, become a liability for all individual engagement" and Article 1132 of the Civil Code states that "the object becomes a joint guarantee for all who owe it, the income from the object's sale is divided according to the balance and size of the respective receivables unless there is a reason between the debtor–legitimate reasons for precedence."

The position of creditors is not the same in this case, for example, those holding collateral rights are equated with those that are not, thereby, indicating the lack of justice for the creditors because the proceeds from the assets of bankrupt debtors sold are distributed based on the order of priority. The separatist creditors have a higher position compared to the others and have the main distribution while the others receive payments according to the prorate principle (pari passu pro rata parte) unless privileged by law to take precedence.

The PKPU can be submitted to the Commercial Court as long as the following formal requirements are fulfilled:

1. Commercial Court with jurisdiction covering the area where the debtor legally domicile is used to file an application.
2. The debtor and its legal representative sign the submitted application.
3. A debtor operating a limited liability company (PT) needs to attach a deed of establishment of the limited liability company (PT).
4. The number of receivables, debtor's debt, evidence, a list containing the nature, and attached with the reconciliation plan (if any) are stated in the application letter.

These are related to material requirements and there is also a need for two or more creditors and debt. The process involves the debtor submitting a PKPU application after which the Commercial Court has only three days to grant temporary PKPU after the application has been registered while a creditor has more time, twenty days, after the registration. The temporary PKPU time with a maximum of 45 days is normally followed by the implementation of the trial which is also for a maximum of 45 days from when the provisional PKPU decision is pronounced.

The temporary PKPU decision usually restricts the creditors from collecting the debt during the PKPU because the debtor has no obligation to make payments during the period. It also allows the management to oversee all the assets of the debtors, thereby, indicating the loss of authority to manage and transfer these assets unless it is approved by the appointed management. Moreover, the PKPU can be determined when it is approved by more than the number of concurrent creditors present at the trial and at least 2/3 of those representing all their claims and present at the trial.

It is, however, important to note that a PKPU application is not always 100% successful with the debtors going bankrupt in some cases. For example, Article 225 paragraph (5) of UUK-PKPU indicates the forfeiture of the temporary PKPU due to the absence of the debtor in court while Article 228 paragraph (5) is related to the failure of the court to implement a permanent PKPU. Moreover, Article 230 paragraph (1) stipulates the end of the temporary PKPU when the creditors do not agree to a permanent PKPU before the specified time limit to indicate the absence of reconciliation. These three articles showed the possibility of declaring a debtor bankrupt after filing for PKPU.

Reconciliation is not a way to avoid bankruptcy. However, when a debtor is bankrupt, a peace agreement is made with the creditor and the successful implementation of the reconciliation process automatically ends the bankruptcy. The process usually is confirmed by the court through the issuance of a homologation decision when the debtor and creditor have agreed without any conspiracy or deception, thereby, leading to the execution of the peace agreement. According to UUK-PKPU, there are two types of reconciliation with the first being a situation where the debtor declared bankrupt by the Commercial Court offers the peace agreement to its creditors (as stated in Article 144-177 UUK-PKPU) and the second is a situation where debt offers the peace agreement before the being declared bankrupt (Article 265-294 UUK-PKPU).

Homologation is the ratification of the peace agreement between the debtor and creditor by the court to end bankruptcy. The parties usually involved in the process are the debtors, creditors, administrators, and judges. Article 1 point 1 UUK-PKPU states that "a debtor is a person who has debt due to an agreement or law, the payment of which can be collected before the court." Article 222 of the UUK-PKPU further states that a debtor can apply for a PKPU when it cannot or is expected not to have the ability to pay the due debt. The following parties are creditors based on Article 1 point 2 UUK-PKPU "creditors are people who have receivables due to agreements or laws that can be collected before the court". This covers all types of creditors including the separatist, preferred, and concurrent. Article 222 paragraph (3) further states these creditors can apply for a PKPU against a debtor when they are sure the debtor cannot continue to pay the debts.

Another party in the homologation process is an administrator and Article 234 paragraph (1) states that "in appointing a person to become a board of directors, one who is independent and has no interest in debtors or creditors is selected. This is important because the debtor needs to obtain approval from the management which is expected to be composed of individuals with the ability and expertise to always assist the debtors. Furthermore, the Supervisory Judge is explained in Article 1 point 8 of the UUK-PKPU to be "judges appointed by the Court in a bankruptcy decision or suspension of debt payment obligations". Article 225 paragraph (2) also states that the supervisory judges are to be appointed to decide and examine the PKPU case after the provisional PKPU is granted. Moreover, Articles 266 and 284 of the UUK-PKPU related to the homologation provisions in the case of PKPU state that:

1. An application for peace can be made before the day of the permanent PKPU trial and the court clerk is not allowed to provide the peace.
2. The peace can be ratified in a court session open to the public.
3. There is a maximum of 14 days after the trial date which the court is authorized to determine and postpone ratifying the peace.

However, there is presently a confusion on the party bound by the decision of homologation in the UUK-PKPU between a creditor that agrees to the peace only or applies the entire

reconciliation plan (approves and rejects the peace).[3]

The reconciliation process does not have permanent legal force until it is approved by the court and normally ends based on the decision of the court. The court has the authority to reject the ratification when the peace agreement is believed to be formulated based on deception as stated in Article 285 paragraph (2) of the UUK-PKPU. Meanwhile, the peace agreement ratified by the court has a permanent legal force and is binding on all parties including the debtors and creditors with certain consequences which are stated as follows:

1. Debtor
   The debtor is required to pay the debts to the creditors in order to avoid a bankruptcy decision. Some of the legal consequences of the agreement include the fact that the a) ratification of the settlement binds the debtor, b) PKPU attached to the debtor ends with the peace ratification as stated in Article 288 UUK-PKPU, c) the debtor has a new relationship based on the terms and conditions regulated in the peace agreement and confirmed by the homologation, d) debtor's shareholders are also indirectly bound by the ratification of the reconciliation because they are affected by either the acceptance or rejection of the settlement and e) debtor does not have the right to manage its assets anymore.
   An accord or a reconciliation process provides benefits to both the debtor and the creditor. The debtor benefits from the fact that the burden of debt is relieved because it is required to pay less than the approved amount after the settlement and auction of assets based on the decision of a judge. In a situation the funds obtained are insufficient, the remaining payments will remain as debt but the bankruptcy ends when the accord is fulfilled.
2. Creditor
   Concurrent creditors do not have the right to force the peace agreement and this is the reason some creditors normally agree while others reject the peace ratification process. Some of the consequences associated with the ratification include a) payment of compensation based on the collateral with the lowest value for all the creditors except for those that do not agree to the reconciliation plan as stated in Articles 286 and 281 paragraph (2) of the UUK-PKPU and b) the homologation of PKPU peace as the basis of rights executed on the debtor and the guarantor when the creditor is disputed by the debtor as indicated in Article 287 UUK-PKPU.
3. Assets
   The debtor is allowed to manage all its assets independently due to the fact that the assistance of the management appointed by the court is no more required after the decision to ratify the reconciliation has been made. However, in PKPU, the debtor does not have the authority to manage its assets because approval needs to be obtained approval from the management.
   There is a difference between a manager and a curator. A curator is tasked with managing and settling the estate of a debtor declared bankrupt (Article 69 paragraph (1) UUK-PKPU) by being in the position of the debtor. Meanwhile, a manager does not replace but joins the debtor in managing the assets. The management is required to be independent without any conflict of interest with both the debtors and creditors (Article 234 paragraph (1) UUK-PKPU).

A ratified peace agreement has a permanent legal force which is binding on the parties involved, thereby, leading to the existence of certain rights and obligations. This means the debtor is obliged to implement the content of

[3] Maranatha Purba, "Homologasi Penundaan kewajiban Pembayaran Utang (PKPU) Sebagai Upaya Preventif Terjadinya Pailit (Studi Putusan Mahkamah Agung No 137K/PDT.SUS-PKPU/ 2014)," *Tesis*, (Medan: Unversitas Sumatera Utara, 2019, p. 18

the agreement. It is also important to note that the guarantor is also bound. Moreover, the debtor can run the business again because the creditors have obtained a legal certainty for the payment of the debts owed.

Legal Consequences of Debtor Negligence in the Implementation of Peace Homologation

It is necessary to understand the achievement which is an object related to the rights and obligations of all the parties first before discussing the negligence aspect. The creditor is allowed, in this case, to sue the debtor when the achievements are not fulfilled. Meanwhile, the debtor is required to fulfill the achieve-ments agreed upon by the parties and outlined in the peace agreement. A situation where a debtor fails or is late in the fulfillment process or refused to align with the agreement is known in civil law as being negligent. Moreover, the negligence in civil and bank-ruptcy law is the same because the debtors in both conditions are obliged to implement the achievements stated in an agreement.

All court decisions have legal consequences for the parties involved, including those related to the declaration of bankruptcy which significantly affect the debtors and creditors. Article 19 of Law Number 4 of 1998 in conjunction with Article 21 of the UUK-PKPU state that a declaration of bankruptcy includes all the assets of the debtor and those obtained during the bankruptcy. There are periods when the debtor does not have the ability to pay the due debt and rather submits a PKPU to the creditors to be ratified by the court (homologation). In this case, the debtor is required to fulfill the achievements of the ratified peace agreement and declared negligent when they are not fulfilled. For example, when a debtor does not make installment payments before the deadline, a creditor has the legal remedies to demand the cancellation of the peace agreement as indicated in Article 170 UUK-PKPU. However, Commercial Court does not always accept the application for cancellation of the agreement when the debtor proves beforehand that the reconciliation has been implemented or vice versa based on Article 170 paragraph (2).

The decision of the Commercial Court to cancel the peace agreement also has legal consequences for the parties involved by applying the provisions of the UUK-PKPU. The first is that debtors are expected to lose the right to control and manage their wealth due to the pronouncement of the bankruptcy declaration decision and in relation to the date the decision was made starting from 00.00[4]. The management and control of the assets automatically become the responsibility of the authorized curator. The second is that the cancellation of the reconciliation is related to the declaration of bankruptcy against the debtor based on Article 291 paragraph (2) of the UUK-PKPU which states that the debtor is declared bankrupt when the court decides to cancel the peace agreement. Article 1, point 4, UUK-PKPU defines a bankrupt debtor as a debtor declared bankrupt through a court decision. The third is the inability to apply for a peace agreement after the bankruptcy is reopened. It is important to note that the bankruptcy estate is required to be cleared immediately by the curator as stated in Article 175 UUK-PKPU.

The legal consequences associated with the creditors when the peace agreement is canceled are related to the distribution of the bankruptcy assets when they reopened as stated in Article 176 of the UUK-PKPU. Some of these are stated as follows:

1. The deducted bankruptcy assets are divided on a pro-rata basis for both old and new creditors that have not received payment.
2. Both the old and new creditors are to be paid based on the percentage of the payments agreed upon in the peace agreement

[4] Article 24 paragraph (1) and (2) UUK-PKPU.

as long as the old creditor has been paid part of the debt.
3. The remaining proceeds from the part payment of the debt made by the debtor can be divided on a pro-rata basis for the old and new creditors until the recognized receivables are fully paid.
4. There is no obligation for old creditors to refund the payments received.

In conclusion, the legal consequence of the debtor's negligence in implementing homologation is that the creditor can request for the cancellation of the peace agreement and that the debtor be declared bankrupt.

Homologation Restructuring Due to Force Majeure

People are usually indebted to separatist, preferred, and concurrent creditors with a maturity period for payment but are sometimes unable to pay the debt, thereby, leading to the declaration of bankruptcy. A curator is usually tasked with the responsibility of settling and managing a bankruptcy estate and this can also be restructured to avoid debtor insolvency. As previously stated, insolvency is the stage where there is no reconciliation until the ratification of a peace agreement which is normally applied to settle bankruptcy estate. When debtors project that they do not have the ability to pay matured debts and are willing to avoid bankruptcy, they can submit PKPU to the creditors as a reconciliation plan. This can be used to restructure the debts as an effort to improve the capital structure by force because the debtor is in an insolvable condition[5] through what is known as debt renewal, including debt and corporate restructuring.

The Covid-19 pandemic has impacted the economy significantly and this prevented several debtors from implementing the contents of their PKPU peace agreement homologated. Therefore, most of these debtors are proposing restructuring related to peace homologation due to force majeure. Covid-19 pandemic is a national disaster but it is not necessarily a force majeure that can lead to the cancellation of an agreement as stated in Presidential Decree 12 of 2020. It is important to first understand the concept of disaster using the provisions of Article 1 point 1 of Law Number 24 of 2007 concerning Disaster Management (hereafter referred to as Law 24/2007) that:

> "A disaster is an event or series of events that threatens and disrupts people's lives and livelihoods caused by natural or non-natural factors and human factors, resulting in casualties, environmental damage, property losses, and psychological impacts."

This article indicates three causes of disasters to include natural, non-natural, and human but the pandemic was defined by Presidential Decree 12/2020 to be a non-natural disaster. Meanwhile, a pandemic is defined as a disease that spreads worldwide. The obstruction that stopped the debtors from fulfilling their obligations needs to be supported with evidence. For example, some were discovered to have misused their loan funds and this is the reason they were unable to pay the debt and not because of the pandemic. Another important factor to be proved is the state of the force majeure, either temporary or permanent. There are, however, two types of force majeure by nature which are the absolute and relative force majeure.

The absolute type is the inability to fulfill certain obligations due to a compelling situation, thereby, affecting the fulfillment of the contents of an agreement.[6] According to Article 1244 of the Civil Code, this incapability

[5] Wimba Respatia, "Kebijakan Restrukturisasi Utang Melalui Debt to Equity Swap," *Ekuitas*, 4, 1 (2010):84, https://doi: 10.24034/j25485024.y2010.v14.i1.231.

[6] Putu Parama A.W., & I Ketut A., "Akibat Hukum Terhadap Debitor atas Terjadinya Force Majeure (Keadaan Memaksa)," *Jurnal Kertha Semaya*, 2, 6 (2014):5, https://doi: ojs.unud.ac.id/kerthasemaya/10277/7513.

implies the debtor is freed from the responsibility as long as it is proved that there is an unforeseen event not caused by the debtor that led to the achievement of the obligation. An absolute force majeure ends the agreement because the object of the agreement has been destroyed (unless agreed otherwise) based on Article 1382 of the Civil Code.

Relative force majeure is a state of coercion without a decisive impact on the fulfillment of an obligation. An example is the need for great sacrifices by the debtor to fulfill an achievement because of the coercive circumstances. It is also reflected in the efforts made to accomplish the obligation after a coercive condition that temporarily stopped the process disappears[7]. In this type of force majeure, the release is only temporary and does not lead to the termination of the agreement with the debtor required to fulfill the obligations to the creditor when the event disappears. Business activities can be conducted after such an event with the debtor paying the debt depending on the problems or cases that occurred. The Covid-19 pandemic is an unexpected event that occurred without the input of the debtor and this is the reason it is classified as a relative or temporary force majeure.

An example of homologation with a force majeure situation is between the PT Berlian Laju Tanker Tbk as the debtor with PT Rojan International Tbk as the creditor. It was stated in the agreement that most creditors need to have another agreement when the debtor is unable to pay at the specified time without the need for re-homologation in court and this is known as an indirect restructuring. A PKPU decision was made in 2012 with the debtor bearing the legal consequences and a homologation decision was made by the Central Jakarta Commercial Court to ratify the peace plan in 2013, thereby, ending the PKPU. In 2015, the debtor amended the peace agreement through a restructuring proposal citing several events that hindered the successful implementation of the homologation. Some of the conditions to consider the proposal are stated as follows:[8]

1. The debtors have businesses to pay the debt when provided with a PKPU or condition relief or even a new debt.
2. It has been appropriately assessed that the debts need restructuring with the creditor getting a payment more significant than when the debtor is declared bankrupt. A proportional is also provided when the creditor is concurrent.
3. Creditors benefit more with the approval of restructuring than without.

Some of the possible several restructuring programs in the peace agreement include the following:[9]

1. Moratorium which is related to payments of dues to be postponed.
2. Haircut related to deduction of interest principal and loan.
3. Interest rate reduction.
4. Extension of the repayment period.
5. Conversion of debt into shares.
6. Debt forgiveness or better known as debt relief.
7. Bailout which is a debt takeover, for example, the takeover of the private sector by the government.
8. A write-off which is the elimination of debts.

[7] Putu Bagus T.A.K & Ni Ketut S.D, "Kajian Force Majeure terkait Pemenuhan Prestasi Perjanjian Komersial Pasca Penetapan Covid-19 sebagai Bencana Nasional," *Jurnal Kertha Semaya*, 8, 6 (2020):898, https://doi: ojs.unud.ac.id/kertha-semaya/60631/35194.

[8] Yudi Kornelis & Florianus Yudhi P.A, "Implementasi Restrukturisasi dalam Proses Kepailitan dan PKPU di Indonesia", Jurnal Selat, 7, 2 (2020):270, dikutip langsung dari Sutan Remy Sjahdeini, *Sejarah, Asas & Teori Hukum Kepailitan* (Jakarta: Kencana 2016).

[9] Hadi Shubhan, *Hukum Kepailitan: Prinsip, Norma, dan Praktik di Peradilan*, p. 150.

The existence of restructuring allows the debtors to continue operating their business and return with stronger finances. Some of the debt restructuring methods often used in the business world include:

1. Rescheduling is a method of extending the time for repayment. It involves changing the deadline previously stated in the agreement.
2. Haircut is a method of reducing or giving discounts on interest and debt payments. This method expects no more significant losses when the debtor does not pay the debt.
3. Debt to asset swap is another method and it involves transferring the assets of the debtor to the creditor. The control of the asset is only temporary and the proceeds of selling the assets to another party are to be used to pay off the debts.
4. Debt to equity swap is a method which involves changing the debt into part of the capital. It can be applied when the creditor believes the debtor has good value and business prospects.

Covid-19 pandemic is a national disaster classified as a relative or temporary force majeure and presents an opportunity for both debtors and creditors. This is due to the fact that the debtor can fulfill the obligations when the situation allows the conduct of business activities while the creditors have the probability of not experiencing more significant losses by restructuring the debts compared to when the debtor is declared bankrupt due to the very minimal liquidation ratio of the assets to pay off the debts. It is, however, important to note restructuring needs to be based on the agreement between the debtor and creditor and according to Article 1338 paragraph (1) of the Civil Code. The debtors also need to prepare related restructuring patterns with good intentions for the creditors.

Conclusion

The debtor has the opportunity to request the restructuring of a homologation based on the declaration of the Covid-19 pandemic as a force majeure. This plan is, however, required to be based on the agreement with the creditor and in line with the provisions of Article 1338 paragraph (1) of the Civil Code. It was discovered from the PT Berlian Tenker case that the agreement was implemented without further re-homologation in the Court because the UUK-PKPU is not applicable in the matter. Bankruptcy arrangements (UUK-PKPU) are widely developed in jurisprudence, practice, and doctrine. The pandemic was observed to be a national disaster classified as a relative or temporary force majeure because it was only for a certain period. The inability of the debtor to fulfill the debt obligations due to the suspension of business activities at the period can lead to a shift in the time to repay the debt based on the agreement of the parties involved. The debtor is allowed to estimate the time to fulfill the obligation based on the knowledge of its business. This implies the classification of the pandemic as temporary force majeure is an opportunity for both parties because it allows to shift the payment to a better and convenient time and also ensures the creditors do not experience more significant losses compared to when the debtor is declared bankrupt.

Bibliography

Journal Articles

Anand, Ghansam. "Prinsip Kebebasan Berkontrak dalam Penyelesaian Kontrak." *Yuridika*, 26, 2 (2011): 90. DOI: 10.30742/perspektif.v11i3.276

Bagus, Putu & Ni Ketut S.D. "Kajian Force Majeure terkait Pemenuhan Prestasi Perjanjian Komersial Pasca Penetapan *Covid*-19 sebagai Bencana Nasional." *Jurnal Kertha Semaya*, 8, 6 (2020): 898. DOI: ojs.unud.ac.id/kerthasemaya/60631/35194

Hernoko, Agus Yudho. "*Force Majeur Clause* atau *Hardship Clause* Problematika dalam Perancangan Kontrak Bisnis." *Jurnal Perspektif*, XI, 2 (2006): 208. DOI: 10.30742/perspektif.v11i3.276

Irwanti, Kartika & Anggit Sinar Sitoresmi, "Permohonan Penundaan Kewajiban Pembayaran Utang dan Akibat Hukum terhadap PT. Asmin Koalindo Tuhup berdasarkan Undang-Undang Nomor 37 Tahun 2004." *Pandecta*, 13, 2 (2019): 121. DOI: 10.15294/pandecta.v14i2.16902

Kornelis, Yudi & Florianus Yudhi P.A. "Implementasi Restrukturisasi dalam Proses Kepailitan dan PKPU di Indonesia." *Jurnal Selat*, 7, 2 (2020): 270. DOI: 10.24034/j25485024.y2010.v14.i1.231

Parama, Putu A.W. & I Ketut A. "Akibat Hukum terhadap Debitor atas Terjadinya Force Majeure (Keadaan Memaksa)." *Jurnal Kertha Semaya*, 2, 6 (2014): 5. DOI: ojs.unud.ac.id/kerthasemaya/10277/7513

Respatia, Wimba. "Kebijakan Restrukturisasi Utang Melalui Debt To Equity Swap." *Ekuitas*, 4, 1 (2010):84. DOI: 10.24034/j25485024.y2010.v14.i1.231

Books

Fred, BG Tumbuan dalam Rudy A Lontoh et.al (Editor). *Hukum Kepailitan: Penyelesaian Utang Melalui Pailit atau Penundaan Kewajiban Pembayaran Utang*. Bandung: Alumni, 2001.

Fuady, Munir. *Hukum Pailit dalam Teori dan Praktek*, Bandung: Sinar Aditya Bakti, 2014.

Hartini, Rahayu. *Hukum Kepailitan*. Edisi Revisi. Malang: UMM Press, 2007.

Hernoko, Agus Yudha. *Hukum Perjanjian, Asas Proporsional dalam Kontrak Komersial*, Cetakan Keempat, Jakarta: Kencana Media Group, 2014.

Marzuki, Peter Mahmud *Penelitian Hukum Edisi Revisi Kencana Perdana,* Jakarta: Kencana Perdana Media Group, 2016.

Mertokusumo, Sudikno. *Mengenal Hukum Suatu Pengantar*, Yogyakarta: Liberty, 2003.

Mulyadi, Lilik. *Perkara Kepailitan dan Penundaan Kewajiban Pembayaran Utang (PKPU); Teori dan Praktik Dilengkapi Putusan-Putusan Pengadilan Niaga.* Bandung: Alumni, 2013.

Sanjaya, Umar Haris. *Penundaan Kewajiban Pembayaran Utang dalam Hukum Kepailitan*. Yogyakarta: NFP Publishing, 2014.

Santiago, Faisal. *Hukum Niaga dan Kepailitan*. Jakarta: Cintya Press, 2008.

Shubhan, M. Hadi. *Hukum Kepailitan : Prinsip, Norma, dan Praktik di Peradilan.* Jakarta: Kencana Prenadamedia Group, 2008.

Sjahdeini, Sutan Remy. *Hukum Kepailitan*. Jakarta: Fajar Interpratama Mandiri, 2015.

Thesis

Purba, Maranatha. "Homologasi Penundaan kewajiban Pembayaran Utang (PKPU) Sebagai Upaya Preventif Terjadinya Pailit (Studi Putusan Mahkamah Agung No 137K/PDT.SUS-PKPU/2014)." *Thesis*, Medan: Unversitas Sumatera Utara, 2019.

Websites

"*Force Majeure* dalam Kepailitan dan PKPU (presentasi webinar yang diselenggarakan oleh SNP Law Firm bekerjasama dengan benihbaik.com, 2020)", accessed on 13 December 2021. https://www.hukumonline.com/klinik/detail/ulasan/lt5eb434d290044/perpanjangan-pkpu-sementara-imbas-wabah-covid-19/.

"Komite Penanganan Covid-19 dan Pemulihan Ekonomi Nasional, Data Sebaran", accessed on 15 February 2020. https://covid19.go.id/.

Laws

Republik Indonesia, Undang-Undang Dasar Negara 1945.

Hindia Belanda, Kitab Undang-Undang Hukum Perdata (*Burgerlijk Wetboek)*.

Republik Indonesia, Undang-Undang Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia.

Republik Indonesia, Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang.

Republik Indonesia, Keputusan Presiden Republik Indonesia Nomor 12 Tahun 2020 Tentang Penetapan Bencana Nonalam Penyebaran *Corona Virus Disease* 2019 (Covid-19) sebagai Bencana Nasional.