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Analysis of the Surabaya commercial court's decision rejecting the creditor's request for a postponement of debt payment obligation

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ABSTRACT

This study seeks to investigate and elucidate the legal implications arising from the rejection of the Creditor's PKPU Application as determined by the Commercial Court Decision in the Surabaya District Court, case number 79/PDT.SUS-PKPU/2020/PN Niaga Sby., to examine and evaluate the legal options accessible to creditors when the debtor cannot repay the debt. This research is a document study, which uses various secondary data such as laws and regulations, court decisions both at the first level, appeal, and cassation levels, as well as reviews, and legal theory, which can be in the form of opinions of scholars in the field of law. The research analyzed the Commercial Court Decision at the Surabaya District Court Number 79/Pdt.Sus-PKPU/2020/PN Niaga Sby., which is the rejection of the PKPU Application from the Creditor. It is done to see the positive application of law to concrete cases in the community, especially to the judge's considerations that are the basis for issuing decisions. The study results show that the Decision of the Judicial Panel Number 79/PDT. SUS-PKPU/2020/PN Niaga SBY is not following the Law 37 of 2004 concerning PKPU and Bankruptcy, where the Submission of PKPU Creditors (PT. Bank ABC) has met the requirements of Article 222 paragraph 1 of the Law and PKPU, where the Panel of Judges of the Commercial Court considers the Interlocutory Decision of the Panel of Judges of the District Court (Number: 324/pdt.g/2020/PN. Sby) is not yet an inkracht van gewijsde.

Keywords:

bankruptcy

PKPU

suspension of obligations

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INTRODUCTION

The development of Indonesia's economy is inseparable from the business world and the legal regulations in our country. The business world will increase rapidly when it is supported by an adequate legal system to protect business actors in Indonesia. The role of private companies in fostering competition among business players amidst the growth of globalization (Adomako et al., 2024; Lei & Xie, 2023; Liu et al., 2022; Otegui, 2024) and the application of information and communication technology has further pushed Indonesian companies to more easily penetrate the global market (Al-Fadhat, 2022; Andriani & Prihantoro, 2022; Haqqi, 2023; Rachmawati et al., 2021; Suryanegara, 2020). Likewise, globalization has led to an influx of many foreign companies and products into Indonesia (Susilo, 2020). However, globalization also presents a dilemma. On one hand, it offers benefits, such as driving economic growth, increasing per capita income, and reducing poverty; on the other hand, it raises awareness of various problems and the negative impacts of globalization.

Negative impacts change over time, as do their consequences. In 1997, the global financial crisis had a significant impact on the economies of many countries, leading to widespread collapses. Indonesia was particularly affected, experiencing a substantial failure of banks that had serious repercussions for companies in the real sector. Several private firms went bankrupt, and even large conglomerates that played a crucial role in Indonesia’s economy faced insolvency. From a legal perspective, the development of economic law has introduced legal transplantation, which is the transfer of one legal rule or system from one country to another. Legal transplantation in Indonesia began during the Dutch colonial period and has rapidly expanded during globalization (Radjagukguk, 2002). Global economic developments have influenced the evolution of laws, particularly economic law. Radjagukguk (2002) stated that the globalization of law would cause changes in the

regulations of developing countries regarding investment, trade, services, and other financial sectors to align more closely with those of developed countries.

In line with national development, the business sector in Indonesia has also expanded rapidly. Many entrepreneurs have emerged, with similar or different types of businesses, acting individually or in the form of companies, all aiming to make a profit. However, businesses, whether individual or corporate, do not always run smoothly as expected. Sometimes, entrepreneurs face difficulties in various areas, such as finance, human resources, and suitable natural resources for the type of developed business.

At the beginning of 2020, the world faced a tough situation with the emergence of a virus called COVID-19. COVID-19 also entered and hit Indonesia, penetrating the fabric of Indonesian society. Many entrepreneurs and employees succumbed to the virus. Consequently, many companies closed because they could no longer meet their needs. A fundamental cause of business bankruptcy is financial difficulties. Companies or business actors who have borrowed working capital from banks and face financial problems struggle to meet their loan obligations. Running a business requires capital, both in the form of money and goods (Radjagukguk, 2002).

The government issued restructuring programs and loan payment deferrals through the Financial Services Authority to prevent business actors from going bankrupt (Financial Services Authority Regulation No. 11/POJK.03/2020 on National Stimulus as a Countercyclical Measure in Response to the Spread of Coronavirus Disease 2019). As a result, many entrepreneurs survived under these conditions, while others went bankrupt or defaulted despite restructuring efforts or deferred payments.

This situation has created a legal need: how should a company face the dilemma of bankruptcy? Indonesia already has bankruptcy laws, but they are outdated, being two legacies from the Dutch colonial government, nearly 100 years old, regulated in *Faillissement Verordening* Stb.1906 No. 217 juncto No. 348. Perpu No. 1 of 1998 was enacted into Law No. 4 of 1998 on bankruptcy. Debt in the business world is a common thing for individual business actors and organizations. Business actors who can still repay their debts are considered solvent, showing their capability of paying debts.

Conversely, business actors who cannot repay their debts are called insolvent, meaning they cannot pay. A business does not always run smoothly, and often, its financial condition deteriorates to the point where it ceases to pay, a situation in which the business actor can no longer pay their due debts (Mitchell, 2023). Loans are given based on the creditor's assumption that the debtor can repay the debt on time. Repayment from debtor to creditor does not always proceed as expected. Sometimes, a debtor cannot repay a loan to the creditor or bank despite the date passing. If a business actor fails to meet their obligations to the bank or creditor, the debtor’s assets, both current and future, become collateral for the debt (Subekti & Tjitrosudibio, 1999).

The bank or creditor, aware that their debtor can no longer repay their debts, will try to collect what is owed by forcing the debtor to surrender their assets. Additionally, a debtor may take actions that benefit only one or a few creditors, disadvantaging others. Such actions create uncertainty for other good-faith creditors, whose claims are unsecured. Unfair treatment of creditors by debtors can be effectively mitigated through the utilization of bankruptcy or debt restructuring mechanisms, such as PKPU. These frameworks serve to protect the interests of creditors while providing a structured approach to address the financial challenges faced by debtors. Regarding this, Hartono (2000) states: “The bankruptcy institution provides a solution for parties when a debtor is insolvent. It prevents two forms of unfair conduct that could harm all parties: mass execution by creditors or fraud by the debtor themselves.”

Bankruptcy is essentially the realization of two fundamental principles in Articles 1131 and 1132 of the Civil Code. Article 1131: "All of the debtor’s assets, both movable and immovable, present and future, are collateral for all individual obligations." Article 1132: "These assets are collective collateral for all creditors, and the proceeds from their sale are distributed proportionately, except when there are lawful reasons for prioritizing some creditors over others." Articles 1131 and 1132 of the Civil Code provide creditors with legal certainty that a debtor's obligations will remain and must be fulfilled with the debtor’s current and future assets. Bankruptcy affects the legal status of the debtor, whether personally or as a company, and must follow certain procedures to be declared bankrupt by a court ruling.

This study seeks to investigate and elucidate the legal implications arising from the rejection of the Creditor's PKPU Application as determined by the Commercial Court Decision in the Surabaya District Court, case number 79/PDT.SUS-PKPU/2020/PN Niaga Sby., to examine and evaluate the legal options accessible to creditors when the debtor cannot repay the debt. This study investigates the legal implications of the rejection of the Creditor's PKPU (Postponement of Debt Payment Obligation) Application by the Commercial Court in Surabaya (case number 79/PDT.SUS-PKPU/2020/PN Niaga Sby.), providing valuable insights into the legal framework governing creditor-debtor relationships in Indonesia. By analyzing the court's rationale for the rejection, the research enhances understanding of creditors' rights and the available legal options when debtors cannot repay their debts. It identifies challenges creditors face in pursuing claims, highlighting potential areas for legal reform, and offers practical recommendations for navigating the legal landscape effectively.

Furthermore, the study lays the groundwork for future research on creditor-debtor dynamics and insolvency law, contributing significantly to the understanding of debt recovery in Indonesia.

METHOD

This research employs a systematic approach to investigate the legal implications of the rejection of the Creditor's PKPU (Postponement of Debt Payment Obligation) Application by the Commercial Court in Surabaya (case number 79/PDT.SUS-PKPU/2020/PN Niaga Sby). The methodology centers on document study, utilizing a range of secondary data sources, including legislation, court decisions from various levels (first instance, appellate, cassation, and judicial review), legal theories, and expert opinions. The analysis focuses on the court's decision to observe the application of positive law in concrete cases, particularly examining the judge's considerations that informed the ruling.

The research relies on secondary data, which encompasses official documents, books, research reports, and academic literature relevant to the field of law. This includes pertinent laws, the Civil Code, academic journals, and literature discussing PKPU and bankruptcy. By analyzing these sources, the study aims to provide scientifically accountable insights into the legal framework governing creditor-debtor relations in the context of PKPU applications.

RESULTS AND DISCUSSION

The Commercial Court in the PKPU Decision of PT. MS and CV. MS

With the establishment of the Commercial Court, the practice of bankruptcy law in Indonesia has entered a new phase. However, activities related to bankruptcy in the Commercial Court are not always supported by clear legal theoretical concepts. Thus, the development of bankruptcy law today is influenced not only by legislation in the field of bankruptcy but also by customary practices and jurisprudence.

The Commercial Court has jurisdiction to adjudicate the petition for PKPU (Suspension of Debt Payment Obligations) filed by Bank ABC against PT. MS and CV. MS because the Commercial Court is a specialized court within the general judicial system. In bankruptcy law, the basis for the Commercial Court's authority to adjudicate bankruptcy cases is Article 1, number 7, which states: "The Court is the Commercial Court within the general judicial system." The legal jurisdiction of the Commercial Court established in the Central Jakarta District Court covers the entire territory of Indonesia. The establishment of other Commercial Courts will be implemented gradually by Presidential Decree, considering the needs and the readiness of the necessary human resources (Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations).

The procedural law applied in the Commercial Court is HIR (*Herziene Indonesisch Reglement*). Under the provisions of Article 299 of the Bankruptcy Law (UUK), it is stated that, unless specified otherwise in this law, the applicable procedural law shall be civil procedure law. Within civil procedure law, certain requests lead to determinations, and lawsuits result in judgments. Proceedings in the Commercial Court are considered unique or different from those in the District Court. It is because the submission is a request that results in a decision, not a determination.

The examination of PKPU and bankruptcy petitions is conducted in the Commercial Court, while appeals against the decision are cassation and judicial review to the Supreme Court based on new evidence (novum) or a serious error in the law application. In the Commercial Court and the Supreme Court, the cases are handled by a panel of judges, while the judicial review will be handled by a Special Panel of Judges to deal with bankruptcy or PKPU petitions (Yuki, 1999). The decision of the Commercial Court Panel of Judges at the Surabaya District Court, based on Law No. 37 of 2004 concerning Bankruptcy and PKPU, in the case between Bank ABC and PT. MS and CV. MS ultimately rejected the PKPU petition of Bank ABC.

The basis for the PKPU lawsuit filed by PT. Bank ABC against PT. MS and CV. MS was registered with the Surabaya Commercial Court on October 20, 2020. PT. Bank ABC is the petitioner of PKPU, while PT. MS and CV. MS, along with Mr. M. Sundoro, are the first, second, and third respondents of PKPU. On November 28, 2012, the PKPU petitioner, Bank ABC, provided a working capital facility to PT. MS amounting to IDR 50,000,000,000 (fifty billion Rupiahs). After several years, on November 20, 2017, PT. Bank ABC restructured the Credit Agreement, recorded in Addendum Deed No. 194 made before Notary Yatiningsih SH., MH, granting PKPU respondent PT. MS an amount of IDR 24,300,000,000 (twenty-four billion three hundred million Rupiahs). PKPU Respondent III was the leader/director/owner of PKPU Respondents I and II. To secure the credit agreement, PKPU Respondent III, as recorded in the Personal Guarantee (*Borgtocht*) Deeds dated November 28, 2012 (No. 180) and June 3, 2015 (No. 34), guaranteed the debts of PKPU Respondents I and II.

In Article 1 of the Personal Guarantee deed, PKPU Respondent III waived all privileged and exception rights, including but not limited to those contained in Articles 1430, 1831, 1837, 1843, 1847, and 1849 of the Civil Code. Thus, the PKPU petitioner, as a creditor, has the right to take legal action against PKPU Respondent

III to demand repayment of the principal debtor's debts, namely PKPU Respondent I and II. Moreover, in Article 2 of the Personal Guarantee deed, it is stated that the guarantor accepts the debt calculation as the amount payable to the PKPU petitioner if PKPU Respondents I and II fail to fulfill their obligations.

The grounds for the joint PKPU petition against Respondents I, II, and III are in line with:

1. Article 1284 of the Civil Code: A claim against one debtor does not prevent the creditor from exercising his rights against the other debtors.
2. Article 1832 of the Civil Code: A guarantor cannot demand that the debtor's assets be seized and sold first unless the guarantor has waived this right.
3. PKPU Petitioner's arguments are supported by several jurisprudence cases, including Decision No. 39K/N/1999 and Decision No. 43K/N/1999, which affirm the legal position of guarantors as debtors when they waive their privileged rights.
4. PKPU Respondents I and II defaulted on their debt payments starting in May 2020. Despite several warning letters, no payments were made, even though the company's directors (Respondent III) were aware of the failure to settle debts. The PKPU petitioner, seeing the potential for business continuity, requested the Commercial Court in Surabaya to grant PKPU, allowing the respondents to propose a settlement plan for their debts.

According to Article 222, paragraph (3) of the Bankruptcy Law, creditors who estimate that a debtor cannot continue to pay their due debts can petition for PKPU to allow the debtor to propose a settlement plan, which may include partial or full payment to creditors.

Legal Efforts and Protection for Creditors Provided by the PKPU Law Regarding Outstanding Debt Issues in Bankruptcy Cases

The protection offered by the PKPU Law is preventive through PKPU, but PKPU is often ineffective due to the short time allowed for debt restructuring. Consequently, creditors must explore other avenues to secure debt repayment. One such legal remedy is filing for the bankruptcy of the debtor's new business if the debtor continues to default. However, even this approach is not always successful, as all creditors, including new ones, are entitled to file claims.

If these methods fail to resolve the outstanding debts, the creditor must pursue alternative legal actions, such as a breach of contract lawsuit or arbitration, to avoid court proceedings. Arbitration is a form of private adjudication based on an arbitration agreement made in writing by the disputing parties. Additionally, out-of-court settlements, including Alternative Dispute Resolution (ADR), such as negotiation, mediation, and conciliation, are also options. Mediation, particularly through institutions like Prakarsa Jakarta, reflects societal demands for faster and more efficient dispute-resolution methods.

Problem Position

A cooperation relationship has been established between PT. Bank ABC and PT. MS, along with CV. MS, through a Credit Agreement, with PT. Bank ABC as the Creditor, and PT. MS and CV. MS as the Debtors. This situation arose from a PKPU (Suspension of Debt Payment Obligations) lawsuit filed by PT. Bank Pembangunan Daerah Papua against PT. Manunggal Sejati, CV. Manunggal Sejati, and Mr. HM.S, who serves as the director and owner of the company. The petition was registered on October 20, 2020, at the Surabaya Commercial Court. The basis of PT. BPD Papua's debt claim was a working capital loan of IDR 50,000,000,000 (fifty billion Rupiah) on November 28, 2012, with a due date of November 28, 2013. In submitting this PKPU petition, PT. BPD Papua could not prove that PKPU Respondents I, II, and III had overdue debts that were collectible and did not meet the simple evidence requirement based on the following:

1. The credit facility provided by the PKPU Petitioner to PKPU Respondents I, II, and III was related to the planned expansion or development of a company intending to build an iron and steel foundry in Mojokerto, East Java.
2. The construction of the iron and steel foundry in Mojokerto, East Java financed by BPD Papua, was halted due to a decree by the Minister of Education and Culture of the Republic of Indonesia, as per Decree No. 260/M/2013 on the decision of the Trowulan geographical area is designed as a national cultural heritage site on December 30, 2013, the area includes the heritage area around Trowulan, Mojokerto, coinciding with the location of the steel factory associated with PKPU Respondents I, II, and III.
3. This situation was not due to the negligence of PKPU Respondents I and/or PKPU Respondent II but rather a force majeure (Act of God).
4. Thus, the claim of overdue debts and collectibility did not meet the simple evidence requirement.
5. As a result, the situation impacted the ability of PKPU Respondents I and II to repay the credit provided by the PKPU Petitioner.

6. PKPU Respondents I and II submitted a request for payment relief following their financial capabilities. However, this request was denied by the PKPU Petitioner.
7. Feeling that they were treated unfairly due to their inability to pay not being caused by their negligence, PKPU Respondents I and II filed a lawsuit against the PKPU Petitioner through the Surabaya District Court, as registered at the Surabaya District Court clerk on March 20, 2020, with case register number: 324/Pdt.G/2020/PN.Sby.

Considerations of the Judicial Panel

The Decision of the Commercial Court Panel of Judges in the Case of PT. Bank ABC vs. PT. MS and CV. MS

Efforts to save a company from bankruptcy can be carried out in two ways: juridical and non-juridical. Debt restructuring is one part that can be categorized as a combination of both juridical and non-juridical methods. However, this effort can be done outside and within the bankruptcy process. Considering, after examining the arguments of the PKPU petition and the rebuttals of the PKPU Respondents as mentioned above, referring to:

1. Provisions of Article 222, paragraphs 1 and 3 of Law No. 37 of 2004, number 1.2.2, letter j, and number 5.1.2, letter a, sub-letters a and b). The Supreme Court of the Republic of Indonesia's Decree No. 109/KMA/SK/IV/2020 on the enforcement of the guidebook on the settlement of bankruptcy cases and suspension of debt payment obligations.
2. The Decree of the Minister of Education and Culture of the Republic of Indonesia, as per Decree No. 260/M/2013 on the determination of the Trowulan geographical area as a national cultural heritage site dated December 30, 2013, which halted the construction of the iron and steel foundry in Mojokerto, East Java, financed by the credit facility.
3. The lawsuit by PKPU Respondents I and II against the PKPU Petitioner filed with the Surabaya District Court, as registered on March 20, 2020, with case register number 324/Pdt.G/2020/PN.Sby.

The Surabaya District Court's interim decision, documented as Decision Number 324/Pdt.G/2020/PN. Sby dated July 28, 2020, has suspended the payment of principal and interest on the credit facilities of Respondents I and II. This suspension is effective from the date of the lawsuit filing until the case reaches a permanent legal resolution.

Expert testimony by Dr. M. Hadi Subhan, SH., MH., CN, under oath according to his religion, provided the following opinions:

1. In a PKPU petition, the material requirement (i) is that at least one debt must be overdue, collectible, and unpaid in full, and (ii) there must be at least two creditors. Therefore, if there is one petitioner, there must be another creditor.
2. The formal requirements must be provable in a simple manner.
3. If these conditions exist, it must be preceded by a lawsuit before the bankruptcy process.
4. In bankruptcy cases, simple evidence is used because the consequences of bankruptcy are extraordinary, as they can result in the execution of all assets. Therefore, if the evidence is not considered simple, the judge should rule that it is not simple and not declare bankruptcy but instead pursue a civil lawsuit, arbitration, mediation, or other legal measures.
5. If there is a judge's order not to pay, there is a temporary order not to pay, meaning the debt cannot be collected or has not yet matured.
6. Three types of debts can be collected: the first is *"natuurlijk verbintennisen"* (natural obligations), such as gambling or wagering debts, which cannot be collected; the second is a collectible debt that has expired; the third is a debt affected by force majeure; and the fourth is a debt for which the judge has issued an order not to pay, making it uncollectible (*opeisbaar*).
7. The concept of force majeure should not be resolved through bankruptcy or PKPU mechanisms because its proof is comprehensive. Resolving force majeure or hardship requires the judge's function to balance the conditions, and therefore, it should be settled through other mechanisms.

Considering the explanations above, the case no longer involves simple evidence, as required by Article 222, paragraphs 1 and 3 of Law No. 37 of 2004, number 1.2.2, letter j, and number 5.1.2, letter a, sub-letters a and b of the Supreme Court of the Republic of Indonesia's Decree No. 109/KMA/SK/IV/2020. Determining whether the debts of PKPU Respondents I and II are overdue and collectible still requires careful proof, given the force majeure situation and the interim decision (provision) of the Surabaya District Court, decision number 324/Pdt.G/2020/PN. Sby, dated July 28, 2020 (interim decision). Considering that, in addition to the reasons outlined above, regarding the PKPU Petitioner's argument that the PKPU Respondents have other creditors, proven by the financial information system printout of the PKPU Respondents, the panel of judges will consider the existence of overdue and collectible debts, and the existence of more than one creditor as follows:

1. Considering that these requirements are cumulative, not alternative, meaning if one requirement is not met, the PKPU petition cannot be granted.
2. Considering that the panel of judges has determined that the requirement of overdue and collectible debts is complex and not simple, the panel does not need to consider whether there are other creditors.
3. Given that the PKPU petition submitted by the PKPU Petitioner has been declined, the PKPU Petitioner is required to cover the court expenses.
4. Considering Articles 222, paragraphs 1 and 3 of Law No. 37 of 2004, number 1.2.2, letter j, and number 5.1.2, letter a, sub-letters a and b, of the Supreme Court of the Republic of Indonesia's Decree No. 109/KMA/SK/IV/2020 on the enforcement of the guidebook on the settlement of bankruptcy cases and suspension of debt payment obligations, and other related legal sources, the Court rules:
    a. Rejects the PKPU petition filed by the PKPU Petitioner, PT Bank ABC, as described above. Orders the PKPU Petitioner to pay the court fees amounting to IDR 4,365,000 (four million three hundred sixty-five thousand Rupiah).
    b. The Decision of the Surabaya District Court Panel of Judges in the Case of PT. MS and CV. MS (formerly PKPU Respondents) vs. PT. Bank ABC (formerly PKPU Petitioner). Feeling that they were treated unfairly due to their inability to pay not being caused by their negligence, PKPU Respondents I and II filed a lawsuit for Abuse of Circumstances categorized as an Unlawful Act (PMH) against the PKPU Petitioner through the Surabaya District Court, as registered at the Surabaya District Court clerk on March 20, 2020, with case register number: 324/Pdt.G/2020/PN.Sby.

The Surabaya District Court panel of judges hearing the case issued an Interim Decision (provision), as per the Surabaya District Court's decision number: 324/Pdt.G/2020/PN. Surabaya, dated July 28, 2020, with the following rulings:

1. In the provisional ruling: a) Grants the provisional request of the plaintiffs (formerly PKPU Respondents). b) Suspends the principal and interest payments on the plaintiffs' credit facilities from the filing of this lawsuit until the case has permanent legal force (inkracht van gewijsde).
2. In the exception: Rejects the exception of the defendant (formerly PKPU Petitioner).
3. In the main case: a) Partially grants the plaintiffs' lawsuit. b) Declares that the defendant committed an Unlawful Act of Abuse of Circumstances (misbruik van omstandigheden) against the plaintiffs concerning the credit agreement, addendums, and restructuring, as the defendant maintained high interest rates despite knowing the consequences of Decree No. 260/M/2013 on the designation of the Trowulan geographical area as a national cultural heritage site, which prevented the plaintiffs from executing their business expansion plan to build a steel factory in Trowulan, Mojokerto, resulting in financial difficulties for the plaintiffs. Declares the credit agreements between the plaintiffs and the defendant valid, including:
    a. The Credit Agreement and Debt Acknowledgment No. 178, dated November 28, 2012, made before Yutiningsih, SH., MH, notary in Surabaya, along with all addendums/changes to the agreement, including:
        a) Addendum I Credit Agreement and Debt Acknowledgment of PT. MS No. 294, dated November 28, 2013.
        b) Addendum II Credit Agreement and Debt Acknowledgment of PT. MS No. 216, dated November 27, 2014.
        c) Addendum III Credit Agreement and Debt Acknowledgment of PT. MS No. 154, dated November 27, 2015.
        d) Addendum IV Credit Agreement and Debt Acknowledgment of PT. MS No. 213, dated November 30, 2016.
    b. The Credit Agreement and Debt Acknowledgment No. 32, dated June 3, 2015, made before Yutiningsih, SH., MH, notary in Surabaya, along with all addendums and changes to the agreement, including Addendum Credit Agreement and Debt Acknowledgment of CV. MS No. 284, dated June 30, 2016.

Legal Remedies for Creditors in the Event the Debtor Has Not Repaid the Debt

Appeal to the High Court

The High Court is responsible for adjudicating criminal, civil, and corruption cases at the appellate level. The High Court also has the authority to adjudicate at the first and final levels disputes over jurisdiction between district courts within its territory. PT Bank ABC, as a creditor, should submit an appeal to the Surabaya

High Court. However, as of today, it is unclear whether PT Bank ABC has pursued further legal action or has accepted the decision of the Surabaya District Court panel of judges.

Filing for Asset Auction

Mortgage Rights

Law No. 4 of 1996 concerning Mortgage Rights on Land and Land-related Objects defines mortgage rights as security rights over land as stipulated in Law No. 5 of 1960 concerning Basic Agrarian Law, along with or without other objects that form an integral part of the land, to secure a specific debt that gives the creditor priority over other creditors.

Article 14, paragraphs 3 and 4 of Law No. 4 of 1996 on Mortgage Rights states that the Mortgage Rights Certificate has the same executorial power as a court ruling with permanent legal force and serves as a substitute for the "*Grosse acte*" of *Hypotheek* as long as it concerns land rights unless otherwise agreed.

The State Asset and Auction Service Office (KPKNL)

According to Law No. 4 of 1996 on Mortgage Rights, Article 14, paragraph 3, PT. Bank ABC, as a creditor, can file for an auction of the debtor's assets at the State Asset and Auction Service Office (KPKNL), which will then send an approval letter for the auction request. The debtor will be notified through a first to third notice regarding the unpaid debt obligations. Afterward, PT. Bank ABC or the creditor, together with KPKNL, will issue an Auction Notice, specifying the day, date, and time, and the auction can be conducted either online or in person at the KPKNL office. PT. Bank ABC has already auctioned some assets of the debtor, PT. MS and CV. MS, located in Surabaya, East Java. From this auction, only a few of the debtor's assets have been sold, covering part of the debtor's debt. The asset auction process is still ongoing, but limited interest in the debtor's assets has made it difficult for PT. Bank ABC to sell all of the assets, such as land and factory properties, which were collateral for the debtor's loans.

CONCLUSION

The ruling in case number 79/PDT.SUS-PKPU/2020/PN Niaga SBY by the Panel of Judges did not align with Law No. 37 of 2004 regarding PKPU and Bankruptcy, despite the PKPU petition from creditor PT. Bank ABC meeting the criteria in Article 222, paragraph 1 of the law. The judges considered an Interim Decision from a lower court that had not yet gained permanent legal force, which could disadvantage the petitioner if PT. Bank ABC prevails in the cassation process. Future research suggestions include analyzing judicial discrepancies in PKPU cases, investigating the impact of interim decisions, exploring creditor rights and protections, conducting longitudinal studies of PKPU outcomes, assessing the need for enhanced judicial training on bankruptcy law, and examining the effects of cassation decisions on lower court rulings.

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