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by Elza Syarief

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LEGAL CONSEQUENCES OF BANKRUPTCY AND POSTPONEMENT OF DEBT PAYMENT OBLIGATIONS: ARE THEY SIMILAR?

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Abstract

There is a main difference between the Postponement of Debt Payment Obligations/ PDPO (Penundaan Kewajiban Pembayaran Utang/PKPU) and bankruptcy. They may become a solution when a business is entangled in financial problems or debts. Due to their differences, this study aims to ascertain the legal consequences arising from bankruptcy and the Composition Plan under the PDPO by analysing the court decision relating the Homologation Decision (the Endorsed Composition Plan). It adopts normative juridical research, therefore the data used is secondary data. Data collection techniques are a literature study in the form of legislation and literature and document study, especially the decision No.9/Pdt.Sus-Pailit/2020/PN Smg in conjunction with No.13/Pdt.Sus-PKPU/2016/PN Smg. It uses a qualitative descriptive analysis method. The study found that both the bankruptcy and PDPO have legal consequences on debtors and relevant stakeholders. The PDPO based on the Composition Plan results in the bankruptcy of a company if it still does not pay the debt as stipulated in the Homologation Decision (the Endorsed Composition Plan).

Keywords: Bankruptcy, Postponement of Debt Payment Obligations, Legal Consequences

A. Background

People or business entities (companies) in the continuity of their business sometimes enter into debt-receivable relationships. In this legal relationship, the party who owes is called the debtor and the party who gives the debt or loan is called the creditor.[1] The term "bankruptcy" is basically a matter, where the condition of the debtor who has two or more creditors and does not pay at least one debt that has matured and is collectible. Stopping paying does not mean that he or she does not pay it at all, but for some reason the payment of the debt does not work properly, so if the debtor files for bankruptcy, the debtor cannot pay his or her debts or has no more income for his company to pay the debt.[2]

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[1] Ishak, "Upaya Hukum Debitor Terhadap Putusan Pailit," *Kanun - Jurnal Ilmu Hukum* 17, no. 1 (2015): 189–215.

[2] Ronald Saija, "Perlindungan Kreditur Atas Pailit Yang Diajukan Debitur Dalam Proses Peninjauan Kembali Di Pengadilan Niaga," *SASI* 24, no. 2 (2018): 114–23, https://doi.org/https://doi.org/10.47268/sasi.v24i2.126.

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The performance of a contract or agreement must be fulfilled by the debtor, if the debtor does not fulfill it because of his/her mistake as specified in the agreement, he/she can be regarded to be in default. Default means not fulfilling something that is required as stipulated in the agreement. The debtor's non-fulfillment of obligations is caused by two possible reasons, namely: due to the debtor's fault, either intentionally not fulfilling obligations or due to negligence and due to forced circumstances (*overmacht or force majeure*), in this regard, it is beyond the ability of the debtor. Legal consequences for debtors who have defaulted are the following legal penalties or sanctions, namely: The debtor is required to pay compensation for the losses suffered by the creditor (Article 1243 of the Civil Code); If the engagement is reciprocal, the creditor may demand termination or cancellation of the agreement through a judge (Article 1266 of the Civil Code); If the agreement is to provide something, the risk passes to the debtor since the default occurs (Article 1237 Paragraph (2) of the Civil Code); The debtor is required to fulfill the agreement if it can still be done, or the cancellation is accompanied by payment of compensation (Article 1267 of the Civil Code); The debtor is obliged to pay the court fees to the District Court, and the debtor is found guilty.

There is a main difference between the Postponement of Debt Payment Obligations/ PDPO *(Penundaan Kewajiban Pembayaran Utang/PKPU*) and bankruptcy. They may become a solution when a business is entangled in financial problems or debts. The PDPO is a negotiation process between debtors and creditors in accordance with the time set by the court, whereas bankruptcy is when the debtor is declared unable to pay his/her obligations to the creditor. The PDPO submissions are addressed to the commercial court by complying the requirements, namely: a stamped application letter addressed to the head of the local commercial court signed by the debtor and his legal advisor; Original special power of attorney to file the application (appointment of power of attorney to the person not at the law-firm); Legalized attorney's license; Complete addresses and identities of concurrent creditors along with the amount owed to the debtor; Financial reports; and attach a composition plan which includes an offer to pay all or part of the debt bill to the parties (i.e. concurrent creditors). A PDPO application can only be processed by a judge in accordance with the procedures stipulated in the Bankruptcy and PDPO Law, after the administrative requirements have been met.

The PDPO procedure is divided into two stages, namely: Temporary PDPO is the first process in completing the PDPO application, the PDPO application will be submitted by the clerk to the head of the district court within a period of no later than 2 x 24 hours from the date the application is registered. Debtors and creditors may apply for a temporary PDPO and the court must immediately grant a temporary PDPO as stipulated in the provisions of Article 224 Paragraph (2) of the Bankruptcy and PDPO Law. Article 224 Paragraph (2) of the Bankruptcy and PDPO Law explains that the commercial court must grant the PDPO application by giving a maximum

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period of 45 days from the date the PDPO decision is pronounced to give the debtor the opportunity to present the proposed reconciliation plan before the creditors meeting is held; PDPO remains a condition if on the 45th day or the meeting of creditors has not been able to cast their vote on the composition plan, then a period of postponement and extension of a maximum period of 270 days after the provisional PDPO decision is made. Article 229 of the Bankruptcy and PDPO Law stipulates that the granting of PDPO is permanent.

It is clear that the PDPO is different from bankruptcy, therefore the purposes of the research are to ascertain the legal consequences arising from bankruptcy and the Composition Plan under the PDPO by analysing the court decision relating the Homologation Decision (the Endorsed Composition Plan).

B. Identified Problems

Postponement of Debt Payment Obligations (PDPO) and bankruptcy may become a solution when a business is entangled in financial problems or debts. PDPO and bankruptcy have been regulated in Law No 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (PDPO). Since the PDPO is different from bankruptcy, this research poses the following questions: 1) What are the legal consequences arising from bankruptcy? and 2) What are the legal consequences arising from of the Homologation Decision (the Endorsed Composition Plan) relating to the PDPO case.

C. Research Methods

This study adopts normative juridical research, therefore the data used is secondary data. Secondary Data obtained from primary and secondary legal materials. The primary legal materials used in this study consists of statutory regulations, namely Law No 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations and Law No. 40 of 2007 concerning Limited Liability Companies. Secondary legal materials in this study are the relevant legal opinions obtained from books and journals. Data collection techniques of this study are a literature study in the form of legislation and literature that are directly relating to the topic under discussions, namely bankruptcy and PDPO and a document Study, especially the decision No.9/Pdt.Sus-Pailit/2020/PN Smg in conjunction with No.13/Pdt.Sus-PKPU/2016/PN Smg. It uses a qualitative descriptive analysis method, namely analysing the data to provide the answers from the obtained qualitative data.

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D. Research Findings and Discussions

1. The Legal Consequences Arising from Bankruptcy

a. Legal Consequences of Bankruptcy Decisions on Debtor's Assets

According to the provisions of Article 21 of the Bankruptcy and PDPO Law, bankruptcy covers the entire assets of the debtor at the time the bankruptcy decision is pronounced as well as everything obtained during the bankruptcy. In Article 1 point 1 of the Bankruptcy and PDPO Law, it is stated that bankruptcy is a general confiscation of all debtor's assets whose management and settlement is carried out by the curator under the supervision of the supervisory judge as regulated in this law. If the above provisions are considered, it can be understood that a debtor who has been declared bankrupt can no longer control and manage his/her assets.[3]

The debtor's assets that already existed when the bankruptcy decision was pronounced and which were obtained by the debtor after the decision ended in bankruptcy, are under the management of the curator (Property and Heritage Agency or individual curator) for the benefit of the debtor and its creditors. Debtor assets that have been declared bankrupt are in general confiscation from the time the bankruptcy decision is pronounced until the bankruptcy ends. However, in Article 22 of the Bankruptcy and PDPO Law there are several types of debtor's assets that are excluded from general confiscation, namely, objects including animals that the debtor really needs in connection with his/her work, his/her bed and his/her family and food for 30 (thirty) days for the debtor. and everything that is obtained by the debtor from his/her work as a salary, wages, pension, waiting fee or allowance to the extent determined by the supervisory judge or given to meet an obligation to provide a living according to the law.[4] Apart from being for the benefit of the debtor and his/her family, it is also beneficial for creditors. If objects and animals are really required by the debtor to carry out his work is not confiscated, then there is a possibility that the debtor can add assets while in the bankruptcy process. The assets of the debtor that enter the bankruptcy estate is a general confiscation along with what was obtained during the bankruptcy. The essence of the general confiscation of the debtor's assets is that the bankruptcy estate is suspended from all kinds of transactions and other law-making. General confiscation of bankrupt assets does not require a special action to carry out the

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[3] Ronald Saija, "Penyalahgunaan Keadaan Dalam Prosedur Permohonan Pailit Di Pengadilan Niaga," *SASI* 24, no. 1 (2018): 11–18, https://doi.org/https://doi.org/10.47268/sasi.v24i1.114.

[4] Muhammad Hadi Shubhan, *Hukum Kepailitan: Prinsip, Norma, Dan Praktik Di Peradilan* (Jakarta: Prenada Media Group, 2012).

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confiscation. General confiscation of bankrupt assets occurs by law. The general confiscation may also raise other special confiscations if at the time of the declaration of bankruptcy, the debtor's assets are or have been confiscated.[5]

Bankruptcy also has legal consequences for sealing the bankruptcy estate. In Article 99 of the Bankruptcy and PDPO Law, it is stated that the curator may request the sealing of the bankruptcy estate at the court (commercial court), based on the reason for securing the bankruptcy estate, through the supervisory judge. The sealing is carried out by the bailiff at the place where the property is located and attended by 2 (two) witnesses, one of which is a representative from the local government. In the explanation it is stated that what is meant by a representative from the local regional government is a village head or what is referred to by another name. The sealing of bankrupt assets is important in the bankruptcy process because general confiscations that apply in bankruptcy are not involved in the confiscated assets at all. Especially for movable goods, it is still possible for the bankrupt debtor to transfer it to a third party. If an object has been sealed, if the debtor opens the seal, the debtor can be subject to criminal sanctions. The provisions in the Bankruptcy and PDPO Law regarding the sealing of bankrupt assets are intended to avoid the transfer or hiding of bankrupt assets by debtors. This is to protect the interests of creditors regarding the payment of their receivables from bankrupt assets. If the bankruptcy estate decreases due to the actions of the debtor, the creditors' receivables will not be paid off or will be paid off in high amounts.[6]

b. Legal Consequences of Bankruptcy Decisions for Debtors

The bankruptcy decision has serious legal consequences for the debtor, since the date the bankruptcy decision is pronounced, the bankrupt debtor no longer has the authority to control and manage his/her assets. One of the most fundamental legal consequences or legal consequences of bankruptcy is that the bankrupt debtor loses his right to control and manage his/her wealth since the bankruptcy declaration decision is pronounced. This is as stipulated in Article 24 of the Bankruptcy and PDPO Law. The power lost from the debtor is the management and control of his wealth. Matters that are not included in the management and control of assets are still owned by the bankrupt debtor's authority. Since the bankruptcy decision is made, by law the debtor is no longer entitled to act freely, including managing

[5] Muhammad Hadi Shubhan, *Hukum Kepailitan: Prinsip, Norma, Dan Praktik Di Peradilan* (Jakarta: Kencana Prenada Media Group, 2008).
[6] Zainal Asikin, *Hukum Kepailitan Dan Penundaan Pembayaran Di Indonesia* (Jakarta: RajaGrafindo Persada, 1994).

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his/her bankruptcy estate. All rights and obligations are transferred to the curator appointed by the commercial court in its decision. The debtor since the bankruptcy decision is pronounced, he/she loses the right to manage and control his/her assets (*persona standi inludicio*). The control and management of the bankruptcy estate will be transferred to the curator.[7] If the bankrupt company is a limited liability company, criminal sanctions will be imposed on the directors and/or commissioners and even shareholders. The threat of criminal sanctions is in the form of imprisonment, the length of which depends on which article is violated. The criminal threats range from 1 (one) year 4 (four) months in prison up to 7 (seven) years in prison.[8]

According to the provisions of Article 93 of the Bankruptcy and PDPO Law, the commercial court with a bankruptcy decision or at any time after that, at the suggestion of the supervisory judge, the request of the curator or creditor may order that the bankrupt debtor be detained in state detention or in his/her own home under the supervision of a prosecutor appointed by the supervisory judge. The said detention period is a maximum of 30 (thirty) days, at the suggestion of the above party, the court may extend it each time for a maximum period of 30 (thirty) days. The cost is charged to the bankrupt assets as bankrupt assets payable. In Article 95 of the Bankruptcy and PDPO Law, it is stated that a request to detain a bankrupt debtor must be granted, if the bankrupt debtor intentionally does not fulfill the obligations as referred to in Article 98, Article 110, or Article 121. In the Bankruptcy and PDPO Law there is no specified minimum amount of debt or the age of the bankrupt debtor to be detained or held hostage. According to the Ministry Regulation No. 1 of 2000, the debtor's debt with bad intentions is at least one billion rupiah and the debtor is not yet 75 (seventy five) years old. According to Munir Fuady, if the debtor declared bankrupt is a limited liability company, cooperative, foundation or association, the hostage shall also apply to directors or management, but not to commissioners, shareholders or members.[9]

The bankruptcy declaration decision also results in the bankruptcy debtor, the directors or commissioners of a company being declared bankrupt, not being allowed to become directors or commissioners of another company, if the person concerned is guilty of causing the company to go bankrupt. These provisions are not stated in the Bankruptcy and PDPO Law and other bankruptcy regulations but are listed in the Law on Limited

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[7] Parwoto Wignjosumarto, *Hukum Kepailitan Selayang Pandang* (Bandung: Alumni, 2003).
[8] Raisa Inayati, "Tugas, Wewenang Dan Tanggung Jawab Balai Harta Peninggalan Dalam Pemberesan Harta Pailit," *Notaire* 1, no. 2 (2018): 341–53, https://doi.org/10.20473/ntr.v1i2.9283.
[9] Munir Fuady, *Hukum Pailit Dalam Teori Dan Praktek* (Bandung: Citra Aditya Bakti, 2005).

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Liability Companies. Law No. 40 of 2007 concerning Limited Liability Companies (*Undang-Undang Perseroan Terbatas*), Article 93 paragraph (1) states, among others, that those who can be appointed as directors are individuals who are capable of carrying out legal actions, unless within 5 (five) years before their appointment has been declared bankrupt or a member of the board of directors or a member of the board of commissioners of a limited liability company. The bankruptcy declaration decision also results in the bankruptcy debtor, the directors or commissioners of a company being declared bankrupt, not being allowed to become directors or commissioners of another company, if the person concerned is guilty of causing the company to go bankrupt. These provisions are not stated in the Bankruptcy and PDPO Law and other bankruptcy regulations, but are listed in the Law on Limited Liability Companies.

Article 93 paragraph (1) of Law No. 40 of 2007 concerning Limited Liability Companies states that those who can be appointed as directors are individuals who are capable of carrying out legal actions, unless within 5 (five) years before their appointment has been declared bankrupt or a member of the board of directors or a member of the board of commissioners of a company is declared bankrupt. Furthermore, in Article 110 paragraph (1) of the Law states that among others, individuals who can be appointed as board of commissioners are individuals who are capable of carrying out legal actions, unless within 5 (five) years prior to their appointment they have been declared bankrupt or members of the board of directors or board of commissioners of a company declared bankrupt. A debtor or director or commissioner of a limited liability company who has been declared bankrupt and bankrupt because of his fault, the bankrupt debtor, director or commissioner cannot be elected by the founder of the limited liability company in the general meeting of shareholders (GMS) as directors or commissioners. This is because they are considered as people who are unable to manage the company so that the company is declared bankrupt.

2. Legal Consequences of the Composition Plan under the Postponement of Debt Payment Obligations

The definition of "composition" (*perdamaian*) according to Article 1851 of the Civil Code is an agreement in which both parties submit, promise or withhold an item. Composition in the PDPO is regulated in Chapter III, Second Part, Article 265 to Article 294 of the Bankruptcy and PDPO Law. Article 265 of the Bankruptcy and PDPO Law explains that after the debtor submits a PDPO, the debtor has the right to offer a reconciliation plan to the creditor. The proposed composition plan must be prepared in such a way by the debtor so that the creditors will be willing to accept the composition plan. Only the

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composition plan judged by the creditors as feasible and profitable for the creditors will be accepted by the creditors. The composition plan in the PDPO is accepted by the commercial court if it is approved by more than (one half) of the number of creditors present at the meeting and whose rights are recognized and represent at least 2/3 (two thirds) of the total receivables from concurrent creditors recognized in the agreement meeting. The composition plan must also get endorsed (homologation) by the commercial court so that it has permanent legal force (*inkracht*). The commercial court can accept or refuse to endorse the composition plan based on the reasons set out in Article 284 and Article 285 of the Bankruptcy and PDPO Law.

Based on the provisions of Article 284 Paragraph (1) of the Bankruptcy and PDPO Law, if the composition plan is accepted, the supervisory judge is obliged to submit a written report to the court on a predetermined date for the purpose of endorsing it and on the specified date the management and creditors can convey the reasons that require the ratification or rejection of the said composition plan. Article 285 Paragraph (2) of the Bankruptcy and PDPO Law explains that the commercial court is obliged to refuse to endorse the composition if:

1. The debtor's property, including the object for which the right to retain the object is exercised, is far greater than the amount agreed in the composition agreement;
2. The implementation of composition is not sufficiently guaranteed;
3. The settlement was reached due to fraud, or conspiracy with one or more creditors, or due to the use of other dishonest measures and regardless of whether the debtor or other parties cooperated to achieve this; and
4. Fees for services and costs incurred by experts and administrators have not been paid or are not guaranteed for payment.

Legal consequences of Homologation Decision (the Endorsed Composition Plan) for the Parties are that the composition has binding legal force for the parties, as for the legal consequences of the said composition plan that has been endorsed by the court against the parties, namely:

a. **For Debtors and Creditors:** the composition plan agreed upon by the debtor and creditors, either with or without any changes and after the agreement is endorsed by the commercial court, the composition agreement is binding on both the debtor and all creditors. The relationship between the debtor and all of its creditors is no longer regulated by the previous bilateral provisions in the form of a debt agreement, the agreement is no longer valid after the composition plan has been agreed upon and then endorsed

(homologation) by the commercial court but is regulated by terms and conditions in the composition agreement.

b. **For Debtor Shareholders:** the composition that is endorsed indirectly also binds the debtor shareholders who are one of the company's organs. The Bankruptcy and PDPO Law does not explicitly stipulate that the composition plan must obtain approval at the general meeting of shareholders, but the achievement of the settlement or the consequences of the rejection of the composition plan will affect the shareholders. The composition plan which was rejected by the court resulted in the debtor being immediately declared bankrupt and all assets owned would be immediately liquidated. In addition, changes to the company's performance because of the rejection or acceptance of composition will also affect shareholders.

The example of the Homologation Decision (the Endorsed Composition Plan) relating to the PDPO Case is clearly explained under the decision No.9/Pdt.Sus-Pailit/2020/PN Smg in conjunction with No.13/Pdt.Sus-PKPU/2016/PN Smg "which was submitted by Sismono Rekso Wardoyo and V.Eliani Erawati S as the applicant and a legal entity, namely the Savings Cooperative Borrow Central Java. In the application submitted by the Applicant states that the applicant is a private individual who is a customer and has a time deposit that has matured in the amount of Rp. 500,000,000 (five hundred million rupiah) with the following details:

- Time deposit letter number Sg 1254847 in the name of V Eliani Erawati S or Sismono with a minimum amount of 250,000,000 (two hundred and fifty million rupiah) which matures on November 8, 2014.
- Futures deposit letter number SG 125 in the name of Sismono Rekso Wardoyo with a minimum amount of 250,000,000 (two hundred and fifty million rupiah) which matures on 2 November 2014.

The Commercial Court at the Semarang District Court has handed down the adjournment decision, it has rendered the decision proposed by the IR. Sl Sadu Perdana Adidharma et al to the Central Java Mandiri Savings and Loans cooperative with number 13/Pdt.Sus-PKPU /2016.PN Niaga Smg dated 22 September 2016 which then ended with a composition decision (homologation) on 20 December 2016. As for the aquo compistion decision in Article 5 in letters a and b, it is affirmed that the debtor is obliged to make interest payments:

a. From July 2017 to June 2019 interest is paid at 5% per year;
b. From July 2019 to December 2020, interest is paid at 7% annually.

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The Respondent did not pay the interest in accordance with the decision of the composition agreement under article 5 in letters a and b. The time deposit belonging to the applicant no. SG 125811 amounting to Rp.2500.00 which matured on November 2, 2014, the Respondent only paid the principal instalments of Rp. 25,000,000 to the Applicant. The Respondent did not make principal payments on a *pro rata* basis in accordance with the decision on the existing case, which was stated in the Presidential Decree Article 7 in letters b, c, d, e and letter f. This proves that the Respondent has failed to comply with the contents of the composition decision (Homologation) No. 13 /Pdt.Sus.PKPU/2016/PN Niaga SMg dated December 20, 2016. Furthermore, in the contents of the Composition Decision page 15 article 14 regarding sanctions for debtor negligence, it is stated: "even though this agreement has been agreed and signed by the debtor and creditors as well as their legal proxies and received a Commercial Court Decision at the Semarang State Court which has permanent legal force, Cancellation of this agreement can be requested by one of the creditors if the debtor has failed to fulfil the terms and conditions of the agreement".

Article 291 paragraphs 1 and 2 of the Bankruptcy and PDPO Law reads:

1. The provisions as referred to in articles 170 and 171 shall apply *mutatis and mutandis* to the cancellation of the composition.
2. In the decision of the Court which annuls the composition, the Debtor must also be declared bankrupt.

Furthermore, Article 110 paragraph (1) states that among others, individuals who can be appointed as board of commissioners are individuals who are capable of carrying out legal actions, unless within 5 (five) years prior to their appointment they have been declared bankrupt or a member of the board of directors or board of commissioners of a company is declared bankrupt.[10] A debtor or director or commissioner of a limited liability company who has been declared bankrupt and bankrupt because of his fault, the bankrupt debtor, director or commissioner cannot be elected by the founder of the limited liability company in the general meeting of shareholders (GMS) as directors or commissioners. This is because they are considered as people who are unable to manage the company so that the company is declared bankrupt.

E. Conclusions

Both the bankruptcy and PDPO have legal consequences on debtors and relevant stakeholders, yet the PDPO is different from bankruptcy. The PDPO based on the Composition Plan results in the legal consequence for a company

[10] Law Number 40 Year 2007 concerning Limited Liability Companies.

if it still does not pay the debt as stipulated in the Homologation Decision (the Endorsed Composition Plan). In this regard, the company has been negligent in fulfilling the said decision. As the result, the legal consequence is that the company must be declared bankrupt.

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