






## Cancellation Of A Settlement Agreement (Homologation) As Remedy Of Failure To Fulfill The Terms Of The Settlement Agreement

Sutrisno

Faculty of Law, Economic Law, University of Indonesia, email: [sutrisno.law@gmail.com](mailto:sutrisno.law@gmail.com)

### ABSTRACT

The goal of this research is to analyze the cancellation of a settlement agreement (homologation) as a remedy of failure to fulfill the terms of the settlement agreement. This research uses normative juridical methodology with social legal research approach. According to this study, if the requirements outlined in Article 224 paragraph (1), Article 222 paragraph (1) and paragraph (3), as well as Article 8 paragraph (4) of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (UUK-PKPU) have been met, the request for Postponement of Debt Payment Obligations (PKPU) may be approved. If approved, the Court will designate a Supervisory Judge and one or more administrators who will collaborate with the Debtor to manage the Debtor's assets in accordance with the terms of Article 225 paragraph (3) UUK-PKPU. By granting the PKPU, the Debtor will have the ability to present his creditors with a proposed peace plan. If the creditors accept the plan, they will subsequently ratify the peace as required by Article 285 paragraph (2) and Article 285 paragraph (3), provided the court finds no justification for rejecting the peace. UUK-PKPU (1). Over time, the debtor may neglect to adhere to the terms of the approved peace agreement, in which case the creditor may file an application with the Commercial Court to have the approved peace agreement revoked.

Keywords	Bankruptcy; Debt Payment Obligations; Postponement; Settlement Agreement
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### PRELIMINARY

The development of the world is currently growing rapidly and advanced, and many business actors, both individuals and companies carry out cooperation and business activities with other business actors. Business actors are trying to develop their business, one of which is business cooperation and borrowing funds. Funds are one of the important things for a company in carrying out its business activities. Funds are needed for companies and are obtained from various sources, both from capital (equity) and debt (loan)<sup>1</sup>, besides

<sup>1</sup> Sutan Remy Sjahdeni. (2010). *Hukum Kepailitan Memahami Undang-undang Nomor 37 Tahun 2004 Tentang*

that funds are needed to improve the quality and quantity of the continuity of the business being run.

Sometimes the business does not reach the target and business actors may experience losses. Business actors make loans to other parties and try to return the loan according to the agreed period.<sup>2</sup> The loan is made based on the agreement of the parties and will give rise to rights and obligations for the parties who make it and can become debt for the borrower (debtor). A debt is an obligation that is expressed or may be expressed in monetary terms in either Indonesian or foreign currencies, either directly or indirectly, contingent on future events, arising from contracts or laws, and that the debtor is required to fulfill. If the debtor fails to do so, the creditor has the right to obtain payment for the obligation from the debtor's assets.<sup>3</sup>

Disputes may occur if the debtor cannot fulfill its obligations, one of the efforts to resolve these problems is through the Debt Payment Obligation Delay (PKPU) mechanism. Munir Fuady defines Suspension of Payment (also known as *Surseance van Betaling*) as a legal period granted by a commercial judge's ruling during which creditors and debtors are permitted to negotiate ways to settle all or part of their debts, including restructuring the debt if necessary.<sup>4</sup>

A precise definition is not given by the UUK-PKPU PKPU regulation. However, it is clear from the formulation of the PKPU regulation in UUK-PKPU that PKPU is a method used by creditors and debtors to reach a peace plan (including an offer to pay all or part of the debt to creditors) so that the debtor does not have to file for bankruptcy if the creditor or debtor determines that the debtor cannot or is expected to no longer be able to pay his debts that are due and collectible. This is stated in Article 222 UUK-PKPU as follows:

1. Postponement of Debt Payment Obligation shall be filed by a Debtor who has more than 1 (one) Creditor or by a Creditor.
2. Debtors may request a deferral of debt payment obligations in order to submit a peace plan that includes an offer of partial or full payback to creditors, if they are unable or anticipate being unable to continue paying their debts that are due and collected.
3. In order to allow the Debtor to submit a peace plan that includes an offer to pay some or all of the debt to its creditors, a creditor who anticipates that the Debtor will not be able to continue paying its due and collectible debts may request that the Debtor's debt payment obligations be postponed.

It is necessary to underline the existence of a "peace plan" in this provision to resolve the debtor's obligations to its creditors. PKPU has the following objectives:<sup>5</sup>

1. The debtor will have sufficient time to remedy his difficulties, and will eventually be able to repay his debts in the future;
2. For creditors, due to the PKPU, their receivables may be paid in full from the debtor, so as not to harm them.

Not only is PKPU meant to help the debtor, but it is also meant to help its creditors—particularly its concurrent creditors. The debtor can carry on with his firm by reorganizing it or restructuring his debts if he is given the time and opportunity. Thus, it can be said that PKPU is a tool used to give debtors a chance to reorganize and settle their obligations with a peace plan provided thereafter.

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*Kepailitan*, Jakarta: PT Pustaka Utama Grafiti, 290.

<sup>2</sup> Diza Pratama and Richard C. Adam. (2024). Tanggung Jawab Debitor dalam Proses Penundaan Kewajiban Pembayaran Utang Sementara. *Syntax Literate: Jurnal Ilmiah Indonesia*. 9 (1), 324-331

<sup>3</sup> Undang-Undang Republik Indonesia Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang

<sup>4</sup> Munir Fuady. (2014). *Hukum Pailit dalam Teori dan Praktek*. Bandung: Citra Adtya Bakti, 176.

<sup>5</sup> Sunarmi. (2017). *Hukum Kepailitan*. Depok: Kencana, 199

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Debt restructuring, according to Tjiptono Darmadji, is the process of reorganizing troublesome debt in order to strengthen the debtor's financial position.<sup>6</sup> Due to particular concessions made by creditors to debtors, debt restructuring refers to the payment of debt on terms that are softer or lighter than the terms of payment before the debt restructuring process. From the perspective of the debtor, debt restructuring is a necessary step because the business is no longer strong or able to pay its creditors as agreed. This commitment refers to the situation in which a creditor becomes unable to carry out the terms of the prior arrangement with the debtor and creditors, leading to default. If the company does not restructure its debt, there will be defaults or defects that will cause major problems for the survival of the company.<sup>7</sup>

In the process of requesting a postponement of debt payment obligations (PKPU) between debtors and creditors will be given the opportunity to conduct deliberations or negotiations related to existing debt and credit problems. In line with the objectives of PKPU, namely: to keep debtors from bankruptcy. The meaning of avoidance here is that debtors who experience financial difficulties and are petitioned for bankruptcy, but the debtor's condition is still in a state of being able to pay and there is a high probability of hope that they can pay off their debts, so they are given time not to be immediately bankrupted as in the principle of a business that will often experience an unfavorable situation.<sup>8</sup> To prevent bankruptcy, the debtor, through his legal representation, requests a delay of his debt payment obligations (*surseance van betaling*) in the commercial court. This allows the debtor to offer a peace plan that involves paying all or part of his debts to concurrent creditors.

Therefore, with the consideration that preventing bankruptcy can benefit many parties, including employees, business chains, shareholders, and creditors who will be paid their debts, the postponement of debt payment obligations is placed in the first rank in the decision when several cases are filed together. This means that the court must imperatively grant a "temporary" postponement of debt payment obligations. Thus, this research goal is to describe the implication of cancellation of a settlement agreement (homologation) as a remedy for failure to fulfill the terms of the settlement agreement

## METHOD

This type of research is normative juridical research with social legal research approach. This research is referred to as a type of research whose results are obtained by investigating library materials or secondary data.<sup>9</sup> Data analysis is carried out using qualitative descriptive analysis. The reason researchers use qualitative research is because qualitative research can describe an event in more depth and in qualitative research the researcher better understands the circumstances that occur, and he is the key instrument in the research.<sup>10</sup>

## RESULT AND DISCUSSION

### Postponement of Debt Payment Obligation (PKPU)

As per Article 222 paragraph (2) UUK-PKPU, the objective of filing PKPU is to provide a peace plan that encompasses an offer to settle part or all of the amount owed to creditors. As per the elucidation provided in Article 222 paragraph (2) UUK-PKPU, the term "creditors" encompasses both concurrent and preceding creditors. A legal process known as

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<sup>6</sup> Tjiptono Darmadji. (2001). *Restrukturisasi: Memulihkan dan Mengakselerasi Ekonomi Nasional*. Jakarta: Grasindo, 69

<sup>7</sup> Paryanti and Arya Samudra Mahardhika. (2020). Kebijakan hutang dengan pendekatan agency theory pada perusahaan property dan real estate. *Jurnal Ekonomi Keuangan dan Manajemen*. 16 (2). 327-338

<sup>8</sup> Dian Adriyanto. 2021. Begini Perusahaan Bisa Disebut Pailit, Bagaimana Hak Pekerja? Cited April 21, 2024, From <https://bisnis.tempo.co/read/1486760/begini-perusahaan-bisa-disebut-pailit-bagaimana-hak-pekerja>

<sup>9</sup> Jonaedi Efendi. (2018). *Metode Penelitian Hukum: Normatif dan Empiris*, Jakarta: Prenada Media, 149

<sup>10</sup> Ajat Rukta. (2018). *Pendekatan Penelitian Kualitatif (Qualitative Research Approach)*. Jakarta: Deepublish. 21

Postponement of Debt Payment Obligations (PKPU) grants rights to any debtor and creditor who is unable to forecast whether or not their due debts will be paid in full.<sup>11</sup>

PKPU is also linked to the issue of insolvency, or a circumstance in which the debtor is unable to make payments on several obligations that have reached maturity and are subject to collection at any time. Furthermore, the inability to pay is a state of insolvency." In the event PKPU is approved, the Court designates a Supervisory Judge and one or more administrators who work with the Debtor to manage the Debtor's assets by Article 225 paragraph (3) UUK-PKPU. In the event of PKPU, the administrator is chosen (Article 225, paragraphs (2) and (3) UUK-PKPU).

The management's responsibilities are restricted to planning the PKPU process's administration, which includes sending out announcements and scheduling creditor meetings.<sup>12</sup> It also oversees the debtor's business management activities to ensure that the debtor doesn't take any actions that could endanger his property. The management team that is appointed needs to be impartial and free from any conflicts of interest with the debtor or creditors. According to UUK-PKPU Article 234 Paragraphs (1) and (3), curators may become administrators in the following ways:

- a A people who live in the Republic of Indonesia and possess the specialized knowledge required to handle the debtor's assets, and
- b Registered with the ministry, which oversees laws and regulations as part of its mandate.

As stated in Article 234 paragraph (4) UUK-PKPU, the management is accountable for any errors or carelessness in the performance of their management responsibilities that result in losses to the debtor's assets. Article 301 paragraph (3), Article 282 paragraph (1), Article 284 paragraph (1), Article 67 paragraph (1), Article 158 paragraph (1), Article 156 paragraph (1), Article 194 paragraph (2), Article 229 paragraph (2), and other provisions indicate the responsibilities and powers of the Supervisory Judge in PKPU cases, though they are not stated in the UUK-PKPU. In order to avoid being deemed bankrupt by the court, debtors have the opportunity to fulfill their duties and pay off their debts through PKPU.<sup>13</sup>

In other cases, the Law also expressly explains that during PKPU, a Bankruptcy petition cannot be filed against the debtor.<sup>14</sup> PKPU can be filed by an Applicant who is a Creditor of the Debtor who requests the Commercial Court to grant a Postponement of Debt Payment Obligation to the Debtor. The PKPU Respondent has more than one (one) creditor and has matured debts to the PKPU Applicant that can be recovered, which is why the PKPU Applicant filed the PKPU. Written testimony may be presented by the PKPU Applicant and the PKPU Respondent. The judges will then review and weigh the evidence that has been supplied by the parties.

Apart from that, in order for a PKPU application to be granted, the conditions specified in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUK-PKPU) must be met, as follows:

- a. PKPU application is signed by the Applicant and its Advocate (Article 224 paragraph (1) UUK-PKPU)

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<sup>11</sup> Nugraha Budi Raharja and Ariawan Gunardi. (2023). Penundaan Kewajiban Pembayaran Utang (PKPU) Dalam Hukum Kepailitan. *Jurnal Kewarganegaraan*. 7 (2). 2009-2016

<sup>12</sup> Gede N.W Yudha, et.al. (2022). Akibat Hukum Penolakan Rencana Perdamaian Debitur Oleh Kreditur Dalam Proses Penundaan Kewajiban Pembayaran Utang. *Jurnal Konstruksi Hukum*. 3 (1) 196-200

<sup>13</sup> Ratu Alawiyah Rifani, et.al. (2021). Efektifitas Pelaksanaan Penundaan Kewajiban Pembayaran Utang (PKPU) Dalam Mencegah Kepailitan (Studi Pengadilan Niaga Pada Pengadilan Negeri Jakarta Pusat). *Jurnal Jurisdictie*. 3 (2), 146-161

<sup>14</sup> Haris Satiadi. 2022. Begini Perlindungan Debitor dalam Proses PKPU. Cited April 21, 2024, From <https://www.hukumonline.com/klinik/a/begini-perlindungan-debitor-dalam-proses-pkpu-lt623b0578d5926/>

- b. According to Article 224 paragraph, PKPU applications must be filed with and heard by the court that has jurisdiction over the Respondent's legal abode. (1) jo. UUK-PKPU Article 3
- c. The Respondent does not fall into the category specified by Article 223 UUKPKPU;
- d. The Applicant has a debt claim against the Respondent that has fallen due and collectible but has not been paid by the Respondent (Article 222 paragraph (3) UUK-PKPU
- e. The Respondent has debts of more than 1 (one) Creditor (Article 222 paragraph (1) UUK-PKPU and the existence of the Respondent's debts can be proven by simply as referred to in Article 8 paragraph (4) UUK-PKPU.

If the PKPU application is granted by the Panel of Judges, Supervisory Judges and Administrators will be appointed to manage the debtor's assets and oversee the PKPU process.<sup>15</sup> Furthermore, the Debtor and its Creditors are given space to discuss the peace proposal submitted by the Debtor. The Supervisory Judge ordered the Management Team to announce the Decision of the Commercial Court in 2 (two) daily newspapers containing the stipulation of schedules for the running of the temporary PKPU and permanent PKPU processes, including the First Meeting of Creditors, Deadline for Filing Tax Bills and Creditors' Bills, Matching Meeting (verification) of Tax Bills and Creditors' Bills, Peace Plan Discussion Meeting, and lastly the Peace in the Debt.<sup>16</sup>

The payment Obligation Delay stage is the most important because, in peace, the Debtor will offer his peace plan to the Creditors. The peace plan allows for the restructuring of the debt. For there to be peace, there must be an agreement between the debtor and his creditors.<sup>17</sup> The debtor agrees to pay back his creditors, either in full or in part, and must then carry with the terms of the agreement to avoid incurring new debt. The granting of authority to the creditor to apply for PKPU for the debtor, means that the debtor's debt can be paid to the creditor in a way that is by the conditions and situation of the debtor at that time, and if the debtor and creditor are in good faith, then both parties hope to achieve a peace plan that can cover the debtor's obligations and the rights of creditors, which can then be agreed upon jointly in a peace meeting and the ratification of the peace by the commercial court (homologation)

The voting that has been carried out and considering Article 28 paragraph (1) UUKPKPU, the principle of justice, the interests of the majority of creditors, the peace plan has legal grounds to be ratified (homologation). These provisions require the Court to ratify the peace and give consideration to Article 281 paragraph (1) letters a and b, Article 285 paragraph (1) and paragraph (2) of the UUK-PKPU, if there are no grounds to reject the ratification of the peace plan as per Article 285 paragraph (2) of the UUKPKPU.

#### **Cancellation of Peace Agreement (Homologation)**

It is possible that the debtor would eventually stop upholding the terms of the homologated peace agreement, in which case creditors will be able to petition the Commercial Court to have the homologated peace agreement canceled. The creditors may bring a claim for cancellation of the agreement if the debtor fails to fulfill the homologation decision or is careless in meeting its responsibilities.<sup>18</sup> Article 170 paragraph (1) UUKPKPU, which says that creditors may demand the annulment of a ratified settlement if the debtor

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<sup>15</sup> Zeffrianto Sihotang. (2021). Duties And Authority of PKPU Management Based on Law No. 37 of 2004 Concerning Bankruptcy and Suspension Debt Payment Obligations. *Journal of Law Science*, 3(1), 15-24

<sup>16</sup> Arijna Nurin Sofia. (2020). Kedudukan Hak Suara Kreditor Preferen dalam Persetujuan Rencana Perdamaian Penundaan Kewajiban Pembayaran Utang (PKPU). *Jurist Diction*. 3 (4). 1415-1430

<sup>17</sup> Horman Siregar. (2021). Peace (Homologation) in Bankruptcy After the Debtor is Declared in Bankrupt Because Peace (Homologation) in PKPU is not Accepted. *Awang Long Law Review*, 4(1), 103-109

<sup>18</sup> Juniarti Maria Mahdalena. (2023). "Breach of Peace Agreement (Homologation) Between PT Lautan Warna Sari and PT Kertas Leces (Persero)". *Indonesia Private Law Review*, 4 (2), 137-48

fails to comply with the terms of the settlement, governs the claim for the annulment of peace made by creditors on PKPU.<sup>19</sup>

The procedure for submitting the cancellation of peace is regulated in the provisions of Article 171 in conjunction with Article 294 UUK-PKPU, stated:

**Article 171 UUK-PKPU**

The demand for the annulment of the peace must be submitted and decided in accordance with the guidelines for the petition for declaration of bankruptcy provided in Articles 7, 8, 9, 11, 12, and 13.

**Article 294 UUK-PKPU**

Except in cases where they are filed by management, applications submitted in accordance with the provisions mentioned in Articles 237, 255, 256, 259, 283, 285, 290, and 291 must be signed by an advocate working under a special power of attorney.

With the decision to cancel the peace agreement, it will result in the Debtor being declared Bankrupt, as stated in the provisions of Article 291 UUK-PKPU, namely:

**Article 291 UUK-PKPU**

- (1) The provisions as referred to in Article 170 and Article 171 shall apply mutatis mutandis to the annulment of peace.
- (2) In a Court decision invalidating the settlement, the debtor must also be declared bankrupt.

Because the Debtor has not fulfilled its responsibilities under the terms of the peace agreement, which has been approved by the commercial court, the Creditor has filed a motion to annul the agreement.<sup>20</sup> The application will then be reviewed by the Commercial Court's panel of justices. Article 170 paragraph (1) stipulates that the petitioner's power in a petition for annulment of peace shall be fulfilled by the creditor.

Under the terms of Article 17 paragraph (1) of UUK-PKPU, Creditors may demand the annulment of a ratified peace agreement in the event that the Debtor fails to comply with the terms of the arrangement. (1) According to UUK-PKPU, the process for filing and deciding a claim for annulment of the peace must be the same as that which is mentioned in Articles 7, 8, 9, 11, 12, and 13 for a petition for a declaration of bankruptcy. According to Article 7 UUK-PKPU, an advocate must submit the demand for the annulment of the peace.

The creditors will then authorize their advocates to represent, sign, and file a petition for annulment of the peace in the commercial court. It must be demonstrated that the creditor accepted the peace proposal that the debtor submitted, and his name and identity must be made explicit in the peace agreement that the commercial court has approved.<sup>21</sup> The creditor must also be one of the parties permitted to file a petition for annulment of the peace agreement that has been approved by the commercial court.

Article 286 UUK-PKPU stipulates that the court-approved peace agreement binds all creditors, except those who object to the peace as mentioned in Article 281 paragraph (1) letter b UUK-PKPU. After the formal conditions outlined in Articles 7 and 170 of the UUK-PKPU for filing a petition for annulment of the peace agreement have been satisfied, the panel

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<sup>19</sup> CHica Octa Andinda and Richard C. Adam. (2023). Impact and Legal Protection for Concurrent Creditors Due to the Rejection of Homologation of Peace Agreement by Commercial Court. *UNES Law Review*, 6(2), 5040-5046

<sup>20</sup> Ivan Harsono and Paramita Pranangtyas. (2019). Analisis Terhadap Perdamaian Dalam PKPU dan Pembatalan Perdamaian Pada Kasus Kepailitan PT. Njonja Meneer. *Notarius*, 12 (2), 1067-1088

<sup>21</sup> Najib A. Gisymar and Elya Kusuma Dewi. (2024). Bankruptcy because the Honor of the Management has not been agreed between the Management and the Debtor in PKPU (Case Study of the Commercial Court Decision at the Surabaya District Court Number 13 / PDT. SUS-PKPU/2023/PN NIAGA SBY). *Greenation International Journal of Law and Social Sciences*. 2 (1), 1-7

will review the petition's content to determine whether or not it complies with the legal requirements.<sup>22</sup>

### **CLOSING**

The trial process provides an opportunity for creditors and debtors to corroborate their arguments and answers through the mechanism of proving them. Evidence is submitted with sufficient stamps and must be matched with its counterpart. What is interesting in the procedural law for the cancellation of this peace, the Court is authorized to give leeway to debtors to fulfill their obligations for a maximum of 30 (thirty) days after the decision to grant such leeway is pronounced as stipulated in the provisions of Article 170 paragraph (3) UUK-PKPU.

The implementation of the provisions of the article provides an opportunity for the debtor to prove that he is not negligent and has fulfilled the contents of the peace agreement as authorized by the Court. It is reasonable to suspect that the debtor is not being diligent in carrying out its responsibilities as stipulated in the ratified peace agreement if, during this opportunity, the debtor fails to provide evidence and fails to implement the peace agreement according to the terms agreed upon by the debtor and its creditors at the time of signing the agreement. Examining the possibility of reversing a peace deal still requires a straightforward method of proof. The provisions of Article 8 paragraph (4) and its elucidation which are meant by the existence of simple facts and circumstances are about the existence of debts that have fallen due and collectible, as well as the existence of 2 (two) creditors or more, these things must be proven simply. This is important to fulfill the requirements for granting the annulment of peace.

The bankruptcy declaration decision indicates that the debtor's bankruptcy estate is instantly in a state of insolvency by declaring the debtor bankrupt with all its legal ramifications. Article 292 UUK-PKPU stipulates that "A settlement cannot be given in the Bankruptcy Declaration Decision decided upon in accordance with Article 291 requirements. To carry out the provisions of Articles 291 and 172, as well as Article 15 paragraph (1) of UUK-PKPU, a Curator Team member who will oversee the debtor's obligations to all creditors will be appointed as a Supervisory Judge, who will be chosen from among the Commercial Judges at the Commercial Court.

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<sup>22</sup> Eva Puspita Sari and Evi Kongres. (2023). Kepastian Hukum Terhadap Proses PKPU Pasca Putusan Mahkamah Konstitusi Nomor 23/PUU-XIX/2021. *Jurnal Hukum Magnum Opus*. 6 (1), 1-13

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