

## **Analysis of Position and Legal Responsibility of Creditors not Registered in the Homologation Decision Post Decision of Debt Payment Obligation**



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**ABSTRACT:** The decision on ratification of the peace which has obtained permanent legal force in relation to the minutes, for all Creditors which is not disputed by the Debtor, is the basis of rights that can be exercised against the Debtor and all persons who have bound themselves as guarantors for the reconciliation. The formulation of the problem in this thesis, regarding the position of creditors who are not registered in the homologation decision after the decision on suspension of debt payment obligations and legal remedies that can be taken by unregistered creditors on the grounds of rejecting the homologation decision after the decision on suspension of debt payment obligations. This thesis uses a normative legal research method with secondary data collection which is analyzed qualitatively to obtain conclusions about the position of creditors who are not registered in the homologation decision after the decision to postpone the payment of debt obligations, which are bound in the homologation decision and are entitled to the payment of their receivables. Legal remedies that can be taken by unregistered creditors on the grounds of refusing the homologation decision after the decision to postpone the obligation to pay debts due to an unfair position with registered creditors are to file a lawsuit for the cancellation of homologation to the commercial court and file a bankruptcy petition as legal facts based on the Supreme Court Decision Number 708 K/Pdt.Sus-Pailit/2015 Decision of the Central Jakarta Commercial Court Number 20/Pailit/2009/PN. Niaga Jkt. Pst. between PT Rasico Industry and PT Panda Trading Indonesia. Both cases prove that there are circumstances where the petition for a declaration of bankruptcy submitted by one of the creditors against the debtor in the PKPU can be accepted, even though previously the reconciliation plan proposed by the debtor has been homologated.

**KEYWORDS:** Creditors, PKPU, Homologation

### **A. INTRODUCTION**

PKPU is not only intended for the benefit of the debtor, but also for the benefit of creditors, especially concurrent creditors. So, basically, the ultimate goal of PKPU is peace between debtors and creditors to agree together and set out in a peace plan which includes an offer to pay part or all of the debt to creditors after the PKPU application is granted. When the debtor submits the reconciliation plan, the creditor has the right to reject or accept the proposed reconciliation plan. Meanwhile, if the majority of creditors agree with the proposed reconciliation plan, then the reconciliation plan cannot be implemented immediately but must be approved by the Court which will then be stated in the homologation decision.

Creditors who do not agree, in this case, which is interpreted as rejecting the reconciliation plan, will be compensated for the lowest value of the collateral value or the actual value of the loan which is directly guaranteed with collateral rights to the property. The provisions regarding the homologation decision in question are binding on all creditors, including creditors who do not agree or reject the settlement.

Furthermore, the provisions in Article 287 of the PKPU and Bankruptcy Law explain that "a decision on ratification of peace which has obtained permanent legal force in relation to the official report, for all creditors which is not disputed by the debtor, is the basis of rights that can be exercised against the debtor and all those who have bind themselves as guarantor for the peace. The formulation of the problem in this thesis is regarding the position of creditors who are not registered in the homologation decision after the decision on suspension of debt payment obligations and legal remedies that can be taken by unregistered creditors on the grounds of rejecting the homologation decision after the decision on suspension of debt payment obligations.

### **B. RESEARCH METOD**

In this study used normative legal research methods or also called the library method. Normative legal research is research by only processing and using secondary data. In normative research, library materials in the form of basic data in the study are classified as

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secondary data. Secondary data can include primary material, secondary material, and tertiary legal material.<sup>1</sup> The data obtained from the search are then analyzed descriptively analytically which reveals the laws and regulations relating to legal theories that are the object of research. Based on the nature of this research, the analytical data used is a qualitative approach to secondary data.<sup>2</sup>

### **C. DISCUSSION**

#### **1. Position of Creditors Not Registered in the Homologation Decision After the Decision on Suspension of Debt Payment Obligations (PKPU)**

Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (Bankruptcy Law and PKPU) so that debtors can avoid the threat of their assets being liquidated when the debtor has or will be in an insolvency state, namely by applying for Postponement of Debt Payment Obligations (PKPU). PKPU is regulated in Chapter III, Article 222 to Article 294 of the Bankruptcy Law and PKPU. Based on Article 222 paragraph (2) of the Bankruptcy Law and PKPU, a debtor who is unable or predicts that he will not be able to continue paying his debts that are due and collectible can request a postponement of debt payments, with the intention of submitting a reconciliation plan which includes: offer to pay all or part of the debt to the creditor.

In addition, making peace between the debtor and his creditors after the debtor is declared bankrupt by the court. The peace indeed cannot avoid bankruptcy, because the bankruptcy has already occurred, but if the peace is reached, the debtor's bankruptcy which has been decided by the court will end.<sup>3</sup> In other words, in this way the debtor can also avoid the liquidation of his assets even though the bankruptcy has been decided by the court. The settlement can end the debtor's bankruptcy only if it is discussed together involving all creditors. If the settlement is only proposed and negotiated with only one or several creditors, the debtor's bankruptcy cannot be terminated.

The purpose of filing a PKPU, according to Article 222 paragraph (2) of the Bankruptcy Law and PKPU, is to propose a reconciliation plan which includes an offer to pay part or all of the debt to creditors. According to the explanation of Article 222 paragraph (2) of the Bankruptcy Law and PKPU, what is meant by creditors are both concurrent creditors and creditors who take precedence. Suspension of Debt Payment Obligations is a legal procedure (or legal remedy) that gives rights to any debtor or creditor who is unable to expect to continue paying their debts, which are due.<sup>4</sup> Suspension of Debt Payment Obligations can be proposed voluntarily by a debtor who has estimated that he will not be able to pay his debts and PKPU is a waiver given to a debtor to delay payment of his debt, the debtor has the hope that in a relatively short time he will get a good income. Will be sufficient to pay off all his debts.

In this thesis research, it is known that PT Graha Megah Tritunggal has submitted an application for Postponement of Debt Payment Obligations (PKPU) which was registered on October 6, 2020 under Number 328/Pdt.Sus-PKPU/2020/Pn, Niaga.Jkt.Pst, then the Panel of Judges issued a decision by granting the application for Suspension of Debt Payment Obligations (PKPU) and stipulating a temporary Suspension of Debt Payment Obligations (PKPU) to PT Mahkota Sentosa Utama as a PKPU respondent no later than the last 40 (forty) days since this decision was pronounced.

Regarding this matter, the Management Team has announced the temporary PKPU decision in the *Republika Daily Newspaper* and the *Published Daily Newspaper* and visited the debtor as well as visited and saw the debtor's efforts with the aim of explaining to the debtor about the ongoing PKPU case, explaining the consequences of the debtor's PKPU situation and coordinating prior to the holding of the first creditors' meeting and requesting all related documents required by the Management Team in the temporary PKPU process.

The Management Team has received the submission of bills starting from the publication of the newspaper announcement on November 12, 2020 until December 4, 2020, the bills that have been received by the Management Team are 15,837 concurrent creditors with a total bill of Rp. 11,088,538,684,398.80 there is 1 (one) separatist creditor with a total bill of Rp. 452,674,428,853. A total of 15,837 concurrent creditors who submitted claims, there were 2 (two) concurrent creditors who revoked their claims, namely creditor No. sort bills 12,037 with a total bill of Rp. 12,871,129,333 was revoked on December 3, 2020 at the time of the pre-verification agenda and creditors on behalf of PT Harmoni Jaya Sejahtera No. sort bills 14,067 with a total bill of Rp. 2,511,109,966.

Furthermore, the Management Team invites the debtor of PT Mahkota Sentosa Utama (in PKPU) to check all incoming invoices with records held by the debtor. Upon this meeting, the Management Team hopes that debtors can carry out initial verification to find out how many creditor bills do not match the debtor's records, so that the Management Team can pre-verify and summon creditors whose invoice amounts do not match the debtor's records for pre-verification. The Management Team has carried out pre-matching of accounts receivable. The Management Team of PT Mahkota Sentosa Utama (in PKPU) held a pre-verification

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<sup>1</sup> Soerjono Soekanto dan Sri Mamudji. *Penelitian Hukum Normatif*, (Jakarta: PT.Raja Grafindo Persada, 2001), hlm.24.

<sup>2</sup> H.Zainuddin Ali, *Metode Penelitian Hukum*, (Jakarta: Sinar Grafika, 2009), hlm.105-106.

<sup>3</sup> *Ibid.*

<sup>4</sup> Adrian Sutedi, *Hukum Kepailitan*, (Jakarta: Ghalia Indonesia, 2009), hlm. 37.

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meeting agenda for 7 (seven) creditors whose invoices were different from the debtor's records. The Management Team in addition to checking and seeing the original evidence of supporting documents from creditors, also provides an opportunity for debtors and creditors to cross-check each other's records. Furthermore, from the results of the pre-verification, the Management Team shall include in the Minutes of Pre-verification signed by the creditor or his proxies, the debtor or his proxies and known by the Management Team.

There are 7 (seven) creditors that have been pre-verified including,

- a. Creditor No. Sort bills 12037 Rp. 12,871,129,333,-
- b. Creditor No. Sort bills 12989 Rp. 28,219,986.333,-
- c. Creditor No. Sort bills 14216 Rp. 1,756,920,000,-
- d. Creditor No. Sort bills 13062 Rp. 29,746,112,731,-
- e. Creditor No. Sort bills 14231 Rp. 43,693,149,783,-
- f. Creditor No. Sort bills 14311 Rp. 63375,816,035,-
- g. Creditor No. Sort bills 14278 Rp. 3,583,635,538,151,-

After the pre-verification is completed, the Management Team again calls the debtor to provide input related to the results of the pre-verification that has been carried out. In the discovery, it explains to the debtor regarding the position of the rejected creditor's claim or the claim whose value is partially recognized by the debtor. As a result, claims on behalf of creditors of Bank Muamalat Indonesia tbk, which were initially recognized in part, were later fully recognized by the debtor.

The Management Team has made a temporary list of recognized receivables as many as 15,722 creditors with a total amount of Rp. 7,014,844,076,196.97, with details of 15721 concurrent creditors with a total amount of Rp. 6,562,169,647,343.97 and 1 creditor separatist with total receivables of Rp. 452,674,428,853.00. In addition to the list of recognized receivables, the Management Team also denied 4 (four) as follows:

- a. Creditors on behalf of CSCEC-SAJR
- b. Creditors on behalf of PT Visionet Data Internasional
- c. Creditors on behalf of PT Multi Dimensi Kreasindo
- d. Creditors on behalf of PT Warna Warni Media

The Management Team also made a list of bills that were late until the Accounts Receivable Matching Meeting, which amounted to 112 creditors. Against the disputed claims, 2 (two) creditors filed an objection to the Supervisory Judge, namely Creditors on behalf of CSCEC-SAJR JO and Creditors on behalf of PT Warna Warni Media. Regarding this matter, the Management Team asked the debtor of PT Mahkota Sentosa Utama (in PKPU) to provide an opportunity for all creditors to pre-discuss the peace proposal that will be discussed. Then PT Mahkota Sentosa Utama (in PKPU) was willing to hold a pre-discussion on the peace proposal which was carried out with the number of creditors and attorneys present representing more than 14,000 creditors.

On the day of implementation of the discussion on the peace plan, there were a total of 156 creditors that were late submitted 2 (two) days prior to the meeting discussing the peace plan with a total bill of Rp. 62,887,269,223.53. All late bills are included in the list of receivables because the management and all creditors present at the Peace Discussion Meeting have no objections. Furthermore, the Management Team then invited all creditors to provide responses or questions, opened 4 (four) sessions and there were 12 responses or questions on the peace proposal from creditors and their attorneys who were present.

The results of the voting on the peace proposal were 15,920 concurrent creditors or 99.2% agreed to the peace proposal offered by the debtor and represented as many as 692,266 votes or 97.72% of the concurrent creditors or their proxies who were present. The results of the vote on the peace proposal for separatist creditors were 45,267 votes or 100% approved the peace proposal offered by the debtor.

The contents of the peace plan may be that the debt will be paid in part, the debt will be repaid, or the debt will be paid in part and the rest in installments. In the peace plan there must be an alternative to peace, so that creditors are prepared to consider them in a decision-making meeting.<sup>5</sup> Provisions regarding homologation:

- a. Homologation is carried out no later than 8 days and no later than 14 days after the receipt of the peace plan at the voting meeting.
- b. The court hearing to discuss the ratification of the peace was held open to the public.
- c. Homologation must be given at the hearing or no later than 7 days after the trial in question.

In the event that previously the decision to ratify the peace has permanent legal force, there is a court decision stating that the suspension of the obligation to pay debts ends, the peace plan is invalid. In Article 268 paragraph (2) the grace period between the days as referred to in paragraph (1) letters a and b is a minimum of 14 (fourteen) days. Article 269 paragraph (1), which reads that the Management is obliged to announce the determination of the time as referred to in Article 268 paragraph (1) which reads

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<sup>5</sup> Ishak, "Perdamaian Antara Debitor dan Kreditor Konkuren Dalam Kepailitan", *Kanun Jurnal Ilmu Hukum*, Vol. 18 No.1 April 2016.

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together with the inclusion of the reconciliation plan, unless this has been announced in accordance with the provisions as referred to in Article 226. Paragraph (2) which reads that the management is also obliged to notify the matters as referred to in paragraph (1) by registered mail or by courier to all known Creditors, and this notification must state the provisions as referred to in Article 270 paragraph (2). Paragraph (3) which reads that creditors can appear alone or be represented by a proxy based on a power of attorney. Paragraph 4 which reads that the management may require the Debtor to give them an advance in the amount determined by the management to cover the costs for the announcement and notification.<sup>6</sup>

In the peace meeting, those who have the right to vote in the meeting, namely the concurrent creditors who are present at the meeting. Creditors who are not present at the meeting have no effect on whether the settlement is accepted or not, even though the amount is significant. The legal ratio of this provision is that creditors who are not present are considered to have waived their rights (*rechtsverwerking*) so that they will accept whatever decision is taken and to avoid minority tyranny in the peace process by boycotting their presence in the peace process. In this peace meeting there is no known minimum quorum for the validity of a peace meeting, this is a form of protection for bankrupt debtors, especially those with good intentions who intend to resolve their bankruptcy through reconciliation.<sup>7</sup>

In the peace meeting, those who have the right to vote in the meeting, namely the concurrent creditors who are present at the meeting. Creditors who are not present at the meeting have no effect on whether the settlement is accepted or not, even though the amount is significant. The legal ratio of this provision is that creditors who are not present are considered to have waived their rights (*rechtsverwerking*) so that they will accept whatever decision is taken and to avoid minority tyranny in the peace process by boycotting their presence in the peace process. In this peace meeting there is no known minimum quorum for the validity of a peace meeting, this is a form of protection for bankrupt debtors, especially those with good intentions who intend to resolve their bankruptcy through peace. but still not optimal, this is caused by several factors. According to the results of interviews with bankruptcy law practitioners who practice outside the Commercial Court at the Central Jakarta District Court, the dominating factor is the misunderstanding of debtors and creditors in the PKPU process with all its consequences. The results of Manahan Sitompul's research show that peace in bankruptcy and PKPU was not optimal in the 1998-2006 era. After 2006, there has been a paradigm shift, leading to an increase in the awareness of debtors and creditors towards the use of PKPU as a solution to debt problems.

The application of homologation as an effort to prevent bankruptcy can not be separated from the existence of good faith and a sense of cooperation (*cooperative sense*) from both the debtor and creditors so that the peace plan can be negotiated, determined, and implemented properly until the fulfillment of all debts is achieved before the bankruptcy declaration decision is pronounced. The application of homologation so far has been effective in the commercial court environment, if it is not effective in preventing bankruptcy, there have been more and more companies that have gone bankrupt. Of the many cases of bankrupt debtors, the majority of debtors have succeeded in resuming their business when the peace has been homologated. Meanwhile, in the case of a debtor going bankrupt without homologation, other than due to good faith and a sense of cooperation is the inability to pay his debts which is caused by the debtor's debt being greater than his assets.<sup>8</sup>

It is known that in the final part of its report, the Management Team recommends the following matters in essence:

- a. Requesting the Supervisory Judge to recommend to the Decision Judge to ratify the reconciliation proposal submitted by the debtor in the Deliberation Meeting of the Panel of Judges
- b. Declare the Suspension of Debt Payment Obligations (PKPU) Number 328/Pdt.Sus-PKPU/2020/PN. Niaga.Jkt.Pst by law ends

Regarding the report from the Management Team, the Supervisory Judge has submitted a recommendation to the Panel of Judges and Examiners of the Postponement of Debt Payment Obligations Number 328/Pdt.Sus-PKPU/2020/PN. Niaga.Jkt.Pst for consideration of the Decision as follows:

- a. Stating valid and legally binding, PT Mahkota Sentosa Utama's peace proposal (in temporary PKPU)
- b. Sentencing PKPU Respondent PT Mahkota Sentosa Utama (in Temporary PKPU) and all its creditors to submit to and comply with and implement the contents of the peace proposal
- c. Declare the Suspension of Debt Payment Obligations (PKPU) Number 328/Pdt.Sus-PKPU/2020/PN. Niaga.Jkt.Pst by law ends
- d. Declaring that the Respondent for PKPU PT Mahkota Sentosa Utama (in a temporary PKPU) to pay the fee for the management services, the amount of which will be determined in a separate stipulation.

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<sup>6</sup> Indonesia, *Undang-Undang Republik Indonesia tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang*, UU No. 37 Tahun 2004, Pasal

<sup>7</sup> Hadi Shubhan, *Op.Cit.*, hlm. 141.

<sup>8</sup> Yudi Kornelis, "Harmonisasi Hukum Terhadap Penundaan Kewajiban Pembayaran Utang Dengan Perspektif Budaya Hukum Indonesia", *Jurnal Selat*, Vol.4 No.1 Oktober 2016.

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Based on the results of the author's research, PT Mahkota Sentosa Utama (PT MSU) through a Decision with Case Number 328/Pdt.Sus-PKPU/2020/PN Niaga Jkt.Pst on December 18, 2020. This peace proposal relates to PT Mahkota Sentosa Utama which has a pending status obligation to pay debts (PKPU) since November 9, 2020. With the ratification of the peace proposal, the PKPU status of PT Mahkota Sentosa Utama ends and PT Mahkota Sentosa Utama is confirmed to be free from bankruptcy. In the decision, there are five main points in the verdict of the Panel of Judges,

First, state that it is legal and legally binding on the Peace Proposal of PT Mahkota Sentosa Utama (in PKPU) dated December 15, 2020 along with its attachments which have been signed by the President Director and Director of PT Mahkota Sentosa Utama.

Second, stating that the suspension of the PKPU Respondent's Debt Payment Obligation (PT Mahkota Sentosa Utama) has ended by law. Third, punish the PKPU Respondent (PT. Mahkota Sentosa Utama) and all of its creditors to submit to and comply with and implement the contents of the peace proposal dated December 15, 2020 and its attachments.

Fourth, punish PKPU Respondent (PT. Mahkota Sentosa Utama) to pay management fees and management fees, the amount of which will be determined in a separate stipulation.

Fifth, to punish PKPU Respondent (PT Mahkota Sentosa Utama) to pay court fees of Rp. 5,297,000.- (Five million two hundred ninety-seven thousand rupiah).

A peace agreement that has been ratified (homologation) by the court, then the peace has binding legal force for the parties, as for the legal consequences of a peace that has been ratified (homologation) by the court against the parties, one of which is the creditor. In this thesis research, regarding the position of creditors who are not registered in the Homologation Decision after the Decision on Suspension of Debt Payment Obligations (PKPU), namely:

a. The creditor is still bound by the peace agreement that has been ratified

During the PKPU process, the debtor is given the right to prepare a proposal for a peace plan. The settlement plan proposed by the debtor must be structured in such a way that the creditors will be willing to accept the settlement plan.<sup>9</sup> Based on Article 281 of the Bankruptcy Law and PKPU, acceptance or rejection of a peace plan is carried out using a voting mechanism, namely those who have the right to decide whether to accept or reject the peace plan are those who have voting rights at the meeting, namely concurrent creditors and separatist creditors who are present at the meeting. meeting.<sup>10</sup>

With regard to voting for the proposal for reconciliation partners, creditors who are not present at the meeting have no effect on the acceptance or rejection of the settlement, although the amount is significant. The legal ratio of this provision is that creditors who are not present are considered to have relinquished their rights (*rechtsverwerking*) so that they will accept whatever decision is taken. This means that the creditor is still bound by the peace agreement that has been ratified and will still receive payment of his receivables from the debtor whose peace agreement has been ratified.

b. The loss of the creditor's right to negotiate with the management and the debtor on the procedure for settling his receivables. When the debtor is decided in a Temporary PKPU, the Court through the management is obliged to do 2 (two) things, namely to summon the debtor and creditor by registered mail or by courier to appear in the trial and announce the decision of the Temporary PKPU in the State Gazette of the Republic of Indonesia and in 2 (two) letters. daily newspaper appointed by the supervisory judge.

The letter and announcement contains an invitation for the debtor and his creditors to be present at the trial to discuss the reconciliation proposal that has been or will be submitted by the debtor. On the other hand, if there are creditors who do not receive the summons to attend the hearing to be held, then based on Article 228 paragraph (2) of the Bankruptcy Law and PKPU, the creditor concerned has the right to come to the hearing to obtain his rights. This is in line with the purpose of establishing regulations regarding PKPU, namely that PKPU can not only be submitted to certain creditors, but to all creditors.

With regard to voting for the proposal for reconciliation partners, creditors who are not present at the meeting have no effect on the acceptance or rejection of the settlement, although the amount is significant. The legal ratio of this provision is that creditors who are not present are considered to have relinquished their rights (*rechtsverwerking*) so that they will accept whatever decision is taken.<sup>11</sup> This means that the creditor is still bound by the peace agreement that has been ratified and will still receive payment of his receivables from the debtor whose peace agreement has been ratified.<sup>12</sup>

c. Still has the right to get payment of his receivables from the debtor

Based on the provisions of Article 232 paragraphs (1) and (3) of the Bankruptcy Law and PKPU, the clerk is obliged to make a general list for each PKPU containing the date of the decision on the temporary suspension of obligation for payment of debt and the date of the decision on the suspension of the obligation for payment of permanent debt and its extension; a quote from the Court's

<sup>9</sup> Sutan Remy Sjahdeini, *Op. Cit.*, hlm. 457.

<sup>10</sup> *Ibid.*

<sup>11</sup> M. Hadi Shubhan, *Op. Cit.*, hlm. 141.

<sup>12</sup> Alfin Sulaiman, 'Jika Nama Kreditor Tak Terdaftar Dalam Putusan Perdamaian PKPU' <https://www.hukumonline.com/klinik/detail/ulasan/lt57d110ea03f49/jika-nama-kreditor-takterdaftar-dalam-putusan-perdamaian-pkpu>, diakses pada 2 Februari 2020.

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decision that stipulates the suspension of the obligation to pay debts temporarily or permanently and its extension; the names of the appointed Supervisory Judges and Management; summary of the contents of the peace and the ratification of the peace in the Court; and the termination of the peace, which then the public register is open to the public and can be examined by anyone free of charge.<sup>13</sup>

In connection with the above provisions, the Bankruptcy Law and PKPU have provided information to everyone free of charge and provided an opportunity for interested parties, especially creditors from debtors who have been terminated in a Temporary PKPU situation to be able to participate in the process of settling debtors' debts in PKPU. . However, if until the reconciliation plan is approved and ratified by the court, the creditor concerned does not participate in the settlement of the debtor's debts, then the creditor is considered to have waived his right in determining whether the reconciliation plan proposed by the debtor is acceptable or not. However, even though the creditor has lost his voice in voting on the peace plan, the creditor still has the right to get payment of his receivables from the debtor in accordance with his creditor status in the peace agreement.

d. The creditor's legal actions in the previous agreement are broken

The peace plan that has been approved cannot be implemented immediately, the next step is needed, namely ratification by the Court. Based on Article 286 of the Bankruptcy Law and PKPU, the reconciliation plan that has been ratified is binding on all creditors except creditors guaranteed with material rights who reject the reconciliation plan. All creditors in question are both concurrent and preferred creditors, both creditors, both creditors who approve or reject the reconciliation plan.<sup>14</sup> It is even binding on creditors who are present and who are not present at the meeting discussing the reconciliation.<sup>15</sup>

Consequently, with the existence of a peace agreement, the relationship between debtors and creditors is no longer regulated by the provisions of each of the previous bilateral agreements, but is regulated by the terms and conditions of the peace agreement. The previous bilateral agreement between the parties became invalid after the peace agreement was ratified by the commercial court.<sup>16</sup>

### 2. Legal Efforts for Unregistered Creditors with Reasons for Rejecting the Homologation Decision After the Decision on Suspension of Debt Payment Obligations (PKPU)

Homologation is a stage where the Commercial Court ratifies the peace that has been approved by the creditor.<sup>17</sup> The existence of homologation of the peace agreement that has been ratified is an important thing in the PKPU process. This is because debtors can restructure their debts so that they can continue to work and can pay off their debts and avoid bankruptcy.<sup>18</sup> With the homologation of the peace agreement, all creditors are bound by the peace agreement.

This is in accordance with the provisions of Article 286 of the Bankruptcy Law and PKPU which states that "A peace that has been ratified is binding on all creditors, except for creditors who do not agree with the peace plan as referred to in Article 281 paragraph (2)". As a result, rights and obligations arise that must be fulfilled by debtors and creditors in accordance with the contents of the peace agreement that has been agreed upon by the majority of creditors. All creditors referred to in the article are, of course, all creditors without exception, both concurrent creditors and preferred creditors, both creditors who approve or reject the reconciliation plan, both creditors who are present and who are not present at the meeting discussing the reconciliation.

However, in practice it is not uncommon to find creditors who feel disadvantaged due to their absence from the PKPU process until the PKPU Peace Agreement is approved by the Commercial Court, so that creditors' claims are not included regarding how much and when the debt is paid in the reconciliation plan. One of the reasons is that the creditor does not know that the debtor is in the PKPU process. This makes creditors feel not bound by the peace agreement that has been approved and then ratified by the Court.

As is known in this thesis research, that based on Decision Number 328/Pdt.Sus-PKPU/2020/PN Niaga Jkt.Pst, First, state that it is legal and legally binding on the Peace Proposal of PT Mahkota Sentosa Utama (in PKPU) dated December 15, 2020 along with its attachments which have been signed by the President Director and Director of PT Mahkota Sentosa Utama. Second, stating that the suspension of the PKPU Respondent's Debt Payment Obligation (PT Mahkota Sentosa Utama) has

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<sup>13</sup> Indonesia, UU No. 37 Tahun 2004, *Op. Cit.*, Pasal 232 ayat (1) dan (3).

<sup>14</sup> Rudy A Lontoh, Kailimang, Denny & Ponto, *Penyelesaian Utang Piutang: Melalui Pailit atau Penundaan Kewajiban Pembayaran Utang*, (Penerbit Alumni 2001); Setiawan, *Ordonasi Kepailitan Serta Aplikasi Kini, Dalam Lontoh, Rudy A., dkk, Penyelesaian Utang piutang: Melalui Pailit atau Penundaan Kewajiban Pembayaran Utang* (Penerbit Alumni 2001)

<sup>15</sup> Teukoe Hermanshah, "Penundaan Kewajiban Pembayaran Utang Dalam Rangka Mencegah Kepailitan", (2018) XVII Law Review, hlm. 222.

<sup>16</sup> Hary Azhari, 'Akibat Hukum Kelalaian Debitor Untuk Memenuhi Perjanjian Perdamaian Dalam PKPU (Studi Putusan Mahkamah Agung Nomor 376/K/Pdt.Sus-Pailit/2017)' Skripsi, (Universitas Sumatera Utara), hlm. 65.

<sup>17</sup> Ivan Harsono, "Paramita Prananingtyas, 'Analisis Terhadap Perdamaian Dalam PKPU Dan Pembatalan Perdamaian Pada Kasus Kepailitan PT Njoja Meneer'", (2019) 12, hlm. 1067.

<sup>18</sup> Cholifatun Nisa, "Akibat Hukum Pengesahan Perdamaian (Homologasi) Terhadap Penundaan Kewajiban Pembayaran Utang Dalam Hal Debitornya Perseroan Terbatas", *Jurnal Juri-Diction*, 2019, hlm. 426.

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ended by law. Third, punish the PKPU Respondent (PT. Mahkota Sentosa Utama) and all of its creditors to submit to and comply with and implement the contents of the peace proposal dated December 15, 2020 and its attachments.

Fourth, punish PKPU Respondent (PT. Mahkota Sentosa Utama) to pay management fees and management fees, the amount of which will be determined in a separate stipulation.

Fifth, to punish PKPU Respondent (PT Mahkota Sentosa Utama) to pay court fees of Rp. 5,297,000.- (Five million two hundred ninety-seven thousand rupiah).

As described above, basically the ratified peace agreement binds all creditors, both concurrent creditors and preferred creditors, both creditors who approve or reject the reconciliation plan, both creditors who are present and who are not present at the peace meeting. Therefore, if there are creditors who do not participate in the PKPU process until the reconciliation is ratified, in casu the creditors from PT Mahkota Sentosa Utama, are considered to have waived their voting rights as creditors who will determine whether the peace plan is acceptable or not.

This is also in line with the provisions of Article 281 of the Bankruptcy Law and PKPU which reads:

- a. Approval of more than 1/2 (one half) of the number of concurrent creditors whose rights are recognized or temporarily recognized who are present at the creditors' meeting, which together represent at least 2/3 (two thirds) of all claims recognized or temporarily recognized from concurrent creditors or proxies who are present at the meeting of creditors; and
- b. Approval of more than 1/2 (one half) of the number of creditors whose receivables are guaranteed by pledge, fiduciary guarantee, mortgage, mortgage or other collateral rights in attendance and represent at least 2/3 (two thirds) of all claims from creditors or their proxies who are present at the meeting.

The existence of a voting mechanism on the peace plan, shows that for creditors who are not present in the peace process and/or voting on the peace plan offered by PKPU debtors, so that later creditors are not registered in the peace plan, regardless of the amount or how big their receivables are, it is the same does not affect the validity of decision making. However, the creditors must still accept the results of the voting decision on the peace plan and remain bound to the peace plan. The reason is, in the PKPU case, the interest seen is not only against one creditor, but many other creditors are also involved.

With the approval of the peace agreement by the majority of creditors, creditors who are not registered in the peace agreement will remain bound to the peace agreement. The legal ratio of this provision is that if not all creditors are bound by a ratified peace agreement, the position of the debtor and other creditors will be jeopardized or harmed if one of the creditors submits an application for bankruptcy declaration.<sup>19</sup>

Furthermore, when the reconciliation plan has been approved and then agreed upon by the majority of creditors, the supervisory judge is obliged to submit a written report to the Commercial Court on a predetermined date to carry out the ratification of the reconciliation. Regarding the ratification of the reconciliation plan by the Court, the judge is free to accept or approve or refuse to give approval to the re-organization plan without having to pay attention to whether the plan has been approved or has been rejected by creditors in negotiating an agreement between the debtor and his creditors.

The reasons that the judge can use to reject the peace plan include:<sup>20</sup>

- a. The debtor's assets, including objects used by the right to hold an object, are far greater than the amount agreed in the peace agreement;
- b. The implementation of peace is not sufficiently secure;
- c. Reconciliation is achieved due to fraud or conspiracy with one or more creditors or other dishonest efforts and regardless of whether the debtor or other parties cooperate to achieve reconciliation.

Apart from that, the decision of the Commercial Court to refuse or ratify the peace agreement is taken after having first held a hearing with the parties concerned and the results of this hearing will later provide an opportunity for creditors and debtors to file objections if there are still objections encountered.<sup>21</sup> This is done so that the peace plan that has been decided by the Commercial Court will be truly solid to bind and be implemented by the parties.<sup>22</sup>

Thus, the KPKPU Law has actually provided an opportunity for debtors and creditors to negotiate the reconciliation plan proposed by the debtor until the settlement is approved. Then the Bankruptcy Law and PKPU have also provided space for Commercial Court Judges to assess whether the contents of the peace agreement are balanced between the interests of debtors and creditors.

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<sup>19</sup> Sutan Remy Sjahdeini, Op. Cit., hlm. 417.

<sup>20</sup> Indonesia, UU No. 37 Tahun 2004, Op. Cit., Pasal 159 ayat (2).

<sup>21</sup> Kemala Atika Hayati, 'Hak Suara Kreditor Separatis Dalam Proses Pengajuan Upaya Perdamaian Menurut Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang' (2016) 4 USU Law Journal, hlm. 120.

<sup>22</sup> Sriwijastuti, 'Lembaga PKPU Sebagai Sarana Restrukturisasi Utang Bagi Debitor Terhadap Para Kreditor (Studi Kasus Pada PT. Anugerah Tiara Sejahtera)' Tesis (Universitas Diponegoro 2010), hlm. 54.

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This means that, given the opportunity for debtors and creditors to express their opinions prior to the ratification of the peace agreement and the authority given to the Commercial Court Judge to re-examine whether the contents of the peace agreement have been beneficial for each party or not, then of course the peace agreement that has been ratified has legal force. binding to be implemented for the debtor and all of his creditors, both concurrent creditors and preferred creditors, both creditors who approve or reject the reconciliation plan, both creditors who are present and who are not present at the meeting discussing the reconciliation.

As for the discussion regarding the legal position of unregistered creditors in the homologation decision, there are rights and obligations of unregistered creditors, namely:<sup>23</sup>

a. Creditors are entitled to payment of their receivables

Although the name of the creditor is not listed in the homologation decision, the settlement procedure is determined in the reconciliation plan, so it can refer to the settlement procedure regarding the debtor's obligations based on the classification of creditors in the homologation decision. Creditors and debtors cannot negotiate the procedure for settlement of receivables because it has been agreed by the majority of creditors in the process of delaying debt payment obligations.

b. Creditors are bound by homologation decisions

Peace that has been ratified (homologation) binds all creditors except creditors who do not agree to the peace plan. Bind all creditors, both those who apply in the process of delaying debt payment obligations and those who do not apply. The decision on ratification of peace (homologation) which has obtained permanent legal force is the basis of rights that can be exercised (binding and enforced) on the debtor and all creditors whose claims are not disputed or accepted by the debtor against all parties who have bound themselves)

c. Creditors have the right to file legal remedies against the homologation decision.

The creditor has the right to the homologation decision and Mansur has filed a legal action, namely a request for the cancellation of the homologation, but to submit the application it must be based on the right reasons.

In this thesis research, legal remedies for unregistered creditors on the grounds of rejecting the Homologation Decision after the Decision on Suspension of Debt Payment Obligations (PKPU), include:

### **a. Lawsuit for Cancellation of Homologation Decision in Commercial Court**

The settlement agreed by debtors and creditors in the process of Postponing Debt Payment Obligations (PKPU) is a solution to save the debtor from bankruptcy. On the other hand, it is also to provide time for debtors to fulfill obligations to debtors. The peace process between Debtors and Creditors is also marked by differences of opinion between Debtors and Creditors as well as between Creditors and Creditors because of course each party has their own interests, especially the levels of Preferred, Separatist and Concurrent Creditors. The voting power of the creditors will determine whether there will be peace or not. If the majority vote to make peace, it will be poured into a peace decision or often called homologation.

Peace has legal consequences as stated in Article 26 of Law Number 37 of 2004 concerning Bankruptcy and PKPU which reads, "A peace that has been ratified is binding on all Creditors, except for Creditors who do not agree to the reconciliation plan as referred to in Article 281 paragraph (2)"

The Homologation Decision will contain the contents of the reconciliation proposal from the Debtor which has been agreed with the Creditor which generally contains payment guarantees, objects as payment guarantees, personal guarantees, corporate guarantees, payment methods, payment terms, maturity and others.

The Homologation Decision at least gives a breath to the Debtor to re-manage his company and strives to make timely payments as stated in the homologation decision. However, a Debtor who defaults/breaks a promise to fulfill obligations as stated in the homologation decision has legal consequences, namely:

Article 170 paragraph (1) of the Bankruptcy Law and PKPU:

- (1) Creditors may demand the cancellation of an agreement that has been ratified if the Debtor fails to fulfill the contents of the settlement."
- (2) The debtor is obliged to prove that the settlement has been fulfilled;
- (3) The Court has the authority to grant concessions to the Debtor to fulfill his obligations no later than 30 (thirty) days after the decision on granting the concession is pronounced."

Article 291 paragraph (2) of the Bankruptcy Law and PKPU:

- (1) The provisions as referred to in Article 170 and Article 171 shall apply mutatis mutandis to the cancellation of the peace.
- (2) In a court decision which annuls the reconciliation, the Debtor must also be declared bankrupt."

One of the cases of annulment of peace in the postponement of obligation to pay debts requested by creditors is the case in the Decision of the Central Jakarta Commercial Court Number 2/Pdt.Sus-Cancellation of Peace/2016/PN.Niaga.Jkt.Pst. It is known that the Petitioner Bank Jturst Indonesia Tbk (formerly PT. Bank Mutiara, Tbk) is a creditor who has submitted a PKPU application against the respondent PT. Suharli Malaya Lestari, Indra Lesmana Suharli, Herawan Suharli, and Indriyani Suharli at the

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<sup>23</sup> Sutan Remy Sjahdeni, Op. Cit., hlm. 405.



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Commercial Court at the Central Jakarta District Court, the panel of judges granted the applicant's request in decision Number 8/Pdt.SusPKPU/2015/PN.Niaga.Jkt.Pst and determined the circumstances of PKPU while for the respondent for 45 (forty five) days from the date the verdict is pronounced. At the request of the respondent, the Panel of Judges stipulates the extension of the Permanent PKPU for the respondent for 45 (forty five) days. Then the Panel of Judges again stipulates the extension of the PKPU condition to remain for 21 (twenty one). It turned out that what then happened was that the respondent neglected to submit and obey the contents of the peace contained in the peace agreement as ratified in the decision ratifying the peace.

For the actions of the respondent who did not obey and obey the contents of the peace, the applicant filed for the cancellation of the peace at the Commercial Court at the Central Jakarta District Court. Then the panel of judges who examined and decided the case of cancellation of the peace decision Number 2/ Pdt.Sus-Cancellation of Peace/2016/PN.Niaga.Jkt.Pst and granted the request for cancellation of the peace submitted by the applicant.

### **b. Efforts to Apply for Bankruptcy**

Based on the provisions in the KPKPU Law, the reconciliation plan that has been ratified binds all creditors except for creditors whose receivables are guaranteed by a lien, fiduciary guarantee, mortgage, mortgage, or other collateral rights on property, compensation will be given at the lowest value between the collateral value or the actual value. loans that are directly guaranteed by collateral rights to the material.

In its implementation, it is not uncommon to find creditors who feel disadvantaged due to the homologation decision. One of the reasons is that the creditor is not scheduled for payment of his receivables in the list of receivables that has been prepared by the debtor in his reconciliation plan proposal, which is then ratified by the Court. This, of course, creates a situation, namely, creditors who feel aggrieved as a result of the homologation decision then apply for a bankruptcy statement and the Judge grants it.

The legal incident occurred in the Supreme Court Decision Number 708 K/Pdt.Sus-Pailit/2015., between PT Siak Raya Timber and PT Nusantara Sentosa Raya and the Central Jakarta Commercial Court Decision Number 20/Pailit/2009/PN. Niaga Jkt. Pst. between PT Rasico Industry and PT Panda Trading Indonesia. Both cases prove that there are circumstances where the petition for a declaration of bankruptcy submitted by one of the creditors against the debtor in the PKPU can be accepted, even though previously the reconciliation plan proposed by the debtor has been homologated.

The Supreme Court and the Judges of the Central Jakarta Commercial Court accepted the petition for a declaration of bankruptcy with the consideration that the petition had met the requirements for the debtor to be declared bankrupt. In addition, the judge also considered that the creditor who submitted the petition for the declaration of bankruptcy was not a party included in and/or contained in the ratified peace plan, therefore the creditor was not bound by the ratified peace agreement.

## **D. CONCLUSION**

1. The position of creditors who are not registered in the homologation decision after the decision to postpone the debt payment obligation, namely there is no legal certainty in the concept of a peace agreement where creditors who are not registered are not bound by the peace agreement but are bound by the homologation decision which still gives the right to the payment of their receivables in this regard, the creditor has the right to file a legal action against the homologation decision.
2. Legal remedies that can be taken by unregistered creditors on the grounds of refusing the homologation decision after the decision to postpone the obligation to pay debts due to an unfair position with the registered creditors are to file a lawsuit for the cancellation of homologation to the commercial court and file a bankruptcy application as a legal fact based on the decision of the commercial court previously as in the Supreme Court Decision Number 708 K/Pdt.Sus-Pailit/2015., between PT Siak Raya Timber and PT Nusantara Sentosa Raya and the Central Jakarta Commercial Court Decision Number 20/Pailit/2009/PN. Niaga Jkt. Pst. between PT Rasico Industry and PT Panda Trading Indonesia. Both cases prove that there are circumstances where the petition for a declaration of bankruptcy submitted by one of the creditors against the debtor in the PKPU can be accepted, even though previously the reconciliation plan proposed by the debtor has been homologated.

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