

Legal Certainty of Donation of Debt Payment Obligations (PKPU) As a Means of Resolving Non-Load Loans Related to the Banking Relaxation Program during the Covid-19 Pandemic

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Abstract

The Covid-19 pandemic has had an impact on the economy in Indonesia. The government says that Covid-19 is a non-natural national disaster. The application of social distancing is a way to deal with the spread of the covid-19 virus, but with the presence of social distancing this makes the weakening of the economy that has an impact on business actors in Indonesia. Delay of debt payment obligation (PKPU) provides the purpose of the debtor or creditor applying for a delay in debt payment obligations (PKPU). In addition, the government also provides banking relaxation regulations to support companies that are affected by covid-19. The purpose of this research is to find out the implementation of PKPU supported by relaxation of banking issued by the government to overcome bad credit and know legal certainty in the implementation of PKPU with the relaxation of banking. This research is a normative juridical law research. The result of this research is the implementation of PKPU with the relaxation of banking has been running in accordance with Law No. 37 of 2004 and OJK No. 11 / OJK.03 / 2020. But for waivers that apply in accordance with OJK No. 11 /POJK.03/2020 only applies to business actors who have a loan ceiling to Bank Negara only 03 /2020. But for waivers that apply in accordance with OJK No. 11 /POJK.03/2020 only applies to business actors who have a loan ceiling to Bank Negara only 03 / 2020. But for waivers that apply in accordance with OJK No. 11 /POJK.03/2020 only applies to business actors who have a loan ceiling to Bank Negara only.

Keywords

legal certainty; PKPU; banking relaxation; bad credit; covid-19.



I. Introduction

Indonesian based on Constitution the basis of the Republic of Indonesia on 1945 origin 1 paragraph 3 is a state of law. Indonesia, based on this, aspires to provide protection for the entire Indonesian nation and uphold social welfare which has been formulated in the Basic Pancasila of the Republic of Indonesia. Based on these ideals, various kinds of laws have been made and enacted in Indonesia with the aim of protecting interests and creating justice for all human beings. The law that applies in Indonesia basically regulates two main subjects, namely humans and legal entities. In accordance with Pancasila and the 1945 Constitution of the Republic of Indonesia, national economic development must be pursued for the realization of social welfare.

The Regulation on Suspension of Debt Payment Obligations (PKPU) is a procedure that provides an opportunity for debtors to temporarily suspend their obligations in paying debts. Therefore, the postponement of Debt Payment Obligations (PKPU) provides the possibility for debtors to continue their business with assets and assets that will be maintained and become the property of the debtor entirely. Suspension of Debt Payment Obligations (PKPU) also provides an opportunity for debtors to restructure their debts, while for Creditors, Debt Payment Obligations Suspension (PKPU) is intended to provide creditors with certainty about when their debts will be repaid by debtors.

PKPU itself can be submitted voluntarily by the debtor himself or by the creditor who can predict that the debtor will not be able to continue paying debts that are due and collectible. As in Law No. 37 of 2004 on article 222 paragraphs (1), (2), and (3). The PKPU application itself can be made before the bankruptcy application is filed by the debtor, or it can be done while the bankruptcy application is being examined by the State Court. Credit restructuring activities at PKPU which ended peacefully, in line with banking relaxation in accordance with the law in POJK No. 11/POJK.03/2020 concerning National Economic Stimulus which is a countercyclical strategy to control debtors and owners of credit commitments seeking explicit treatment in OJK Where debt holders, including small and medium-sized organizations, have problems fulfilling their commitments to banks.

The Covid-19 pandemic caused everyone to behave beyond normal limits as usual. One of the behaviors that can change is deciding the decision to choose a college. The problem that occurs in private universities during covid 19 is the decrease in the number of prospective students who come to campus to get information or register directly to choose the department they want. (Sihombing, E and Nasib, 2020)

With the OJK being enforced as a banking relaxation, of course, for restructuring all loans and financing for all debtors, including debtors from MSMEs, it is still seen that these debtors must be affected due to the impact of COVID-19. In accordance with the banking relaxation at OJK, credit or financing restructuring consists of reducing borrowing costs, increasing terms, reducing unfulfilled principal obligations, decreasing interest payments, expanding credit or financing, changing credit or financing to non-permanent investments. The period of banking relaxation with this restructuring also varies according to the bank's assessment of its debtors with a maximum period of one year.

The government provides relaxation related to the pandemic to delay credit installments as President Jokowi has said. However, this guideline does not have sufficient legitimacy so that it can cause chaos described by the local area. The Financial Services Authority (OJK) issued OJK No.11/POJK.03.2020 concerning National Economic Stimulus as a regulation of the impact of the spread of Covid-19. Apart from being a settlement of bad loans experienced during the pandemic, the policies imposed by the government are as regulated in Law No. 37 Year 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU) can be used.

The cases that are considered in this study case PT Bank Rakyat Indonesia (Persero), Tbk with Decision Number 109/Pdt.Sus-PKPU/2020/PN.NIAGA.JKT.PST and the case between PT My Indo Airlines and pt Garuda Indonesia (PERSERO) Tbk, with Decision number 289/Pdt.Sus-PKPU/2021/PN.Niaga.Jkt.Pst.

II. Research Method

This research takes the type of normative juridical research, this is because this research involves normative legal science and aims to determine the relationship between several legal regulations. Normative juridical research also uses the basis of written regulations or based on other legal materials contained in research that are related to the practice to be carried out.

The research approach will be carried out with a legal approach (Statue Approach) and a conceptual approach, which in this case, the researcher will examine the legal certainty of the transfer of shares in a Public Company which is a Joint Asset without the Consent of a Spouse.

III. Result and Discussion

3.1. Implementation of Postponement of Debt Payment Obligations (PKPU) as a Means of Settlement of Bad Loans Related to the Banking Relaxation Program during the COVID-19 Pandemic

The implementation of the postponement of debt payment obligations (PKPU) has two types, namely Pure PKPU applications (Voluntarily) and impure PKPU applications (Involuntary Petition). By making a Pure PKPU application that is submitted as a debtor who becomes an applicant, it can attract another party (creditor) which is the respondent. In PKPU Murni, the initiative was proposed by the debtor. However, the impure PKPU application is an application submitted by the debtor which denies the existence of a bad credit application submitted by the creditor to the debtor in which the initiative is submitted by the creditor. .

By submitting a postponement of the obligation to pay debts if it is granted by the commercial court, the company will avoid difficulties in paying debts. PKPU itself is a plan of peace. With this peace plan, the debtor will ask the creditor to be able to restructure his debts.

The implementation of PKPU must of course be in accordance with applicable laws and regulations law No.37 Year 2004. In rescuing the debtor company, efforts are given to provide a period of time to restructure and reschedule the debts owned by the debtor. Then the debtor needs to understand the steps needed by the management and debtor as an understanding of what obstacles is the urgency of debtors who have experienced insolvency so far. . This is of course to focus on saving debtors' efforts to get out of the financial crisis, especially with the current pandemic.

PKPU itself was proposed as the position of the debtor company unable to carry out its obligations in settling its debts, causing bad loans. So that in the process of submitting peace to PKPU, several important things will be carried out in order to create principles of information disclosure that allow creditors to agree or disagree with the existence of a peace process that will be provided. Then with this information, it is hoped that creditors will take action on the proposed reorganization, this is done to make a bargain if the reorganization plan is accepted, then in the PKPU process, and this reorganization has a broad scope. .

In relation to the Covid-19 pandemic which has an impact on the Indonesian economy in 2020, causing business actors in Indonesia to experience a decline in performance and income, public authorities have issued OJK No. 11/POJK.03/2020 concerning National Economic Stimulus as a Countercyclical strategy which is the impact of the spread of Covid-19. In OJK No. 11/POJK.03/2020 directs the obligation to rebuild to debtors who are certainly affected by Covid-19. The background of the implementation of this regulation is due to the spread of Covid-19 which can have a global impact on the performance and capacity of debtors to fulfill their obligations to pay credit or fees which of course affect

economic growth. On the other hand OJK No. 11/POJK.03/2020 was created to optimize banking intermediation in order to maintain financial system stability and support economic growth.

Creditors and debtors must work together to realize the peace plan and the management can act independently by looking at the interests of the debtor and creditors. With the acceptance of the PKPU requested by the debtor, it means that there is a peace agreement from the creditor so that the debtor avoids the threat of bankruptcy. Companies that experience bad loans with this restructuring can certainly take a breather, because of debt scheduling.

In accordance with the origin of 239 paragraph (1) ndang – ndang No. 37 of 2004, the management is required to report every 3 months the debtor company and its assets. The report will then be made available at the clerk's office of the commercial court for public review at no charge. However, if the public wants to get a report then it will be free of charge. Reporting in accordance with article 239 paragraphs (1) has a less stringent nature, but if the situation requires an extension of time, it can still be justified in accordance with article 239 paragraphs 2 where the financial consequences are complicated, the reporting can be extended. However, this must be notified by the supervisory judge first. The implementation of PKPU during this pandemic is supported by government regulations issued OJK No. 11/POJK.03/2020, is expected to have a good impact on the company.

The implementation of restructuring provisions at the Bank without a credit limit limit does not mean that it is mandatory, but provides a choice whether or not to settle the responsibilities. Then give concessions to debtors as applicable POJK. This is because in reality the Coronavirus outbreak affects all areas of the economy, debt holders as well as for banks. Then on the orders of OJK 11/2020, it is clarified in origin 2 paragraph (1) and paragraph (2) that Banks can carry out strategies that help increase monetary development for debtors affected by Covid-19 by using relaxation methods and restructuring of credit.

Regarding this issue, public authorities have made other strategies to manage economic problems during the Covid-19 pandemic that are relied on by providing clear guidelines and thinking about financial capabilities. Debtors are expected not to take advantage of the situation by not paying the part that has become their commitment to the bank. The debtor must then be careful in paying the parts that have become his commitments assuming he feels he can and does not experience difficulties in fulfilling his commitments to the Bank. Then the stipulation of this regulation is only valid for state banks that enforce it and does not apply to private banks. This is because the government only injects funds to state banks in the application for banking relaxation and is prioritized for business actors.

Based on the description above regarding PKPU and banking relaxation on bad loans due to the COVID-19 implementation of PKPU in cases experienced by PT Garuda Indonesia Persero Tbk as PKPU Respondent Number 289/Pdt.Sus-PKPU/2021/PN Niaga Jkt Pst has the result of the Panel of Judges decision rejecting the PKPU application submitted by PT My Indo Airlines. This is because PT Garuda Indonesia Persero Tbk provides the attached evidence regarding the regulations for implementing large-scale social restrictions that apply in Indonesia, as pay attention to origin 222 paragraphs (1) and (3) in conjunction with origin 8 paragraph (4), Article 224 paragraphs (1) and (3), Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, Circular Letter of the Supreme Court of the Republic of Indonesia Number 1 of 2020 concerning Guidelines for Working within the Supreme Court and Judicial Bodies under the Covid 19 Period, along with the changes thereof. Then PT Garuda Indonesia Persero Tbk provided evidence that the value of the lawsuit filed by PT My Indo Airlines as the PKPU applicant was different from that of PT Garuda Indonesia Persero Tbk. But basically the banking relaxation provided by the

government does not apply in this case this is because PT My Indo Airlines is not a state bank, because banking relaxation rules can only be implemented in state banks.

Then in the case of PT Bank Rakyat Indonesia as a PKPU applicant against PKPU Respondent CV Manunggal with Case Number 109/Pdt.Sus-PKPU/2020/PN.NIAGA.JKT.PST. The result of the decision by the Panel of Judges granted the application submitted by the PKPU applicant PT Bank Rakyat Indonesia which was submitted to the Respondent CV Manunggal by providing a temporary suspension of debt payment obligations (PKPU) for CV Manunggal no later than 45 days from the PKPU decision was pronounced. However, the application of banking relaxation in this case does not apply to CV Manunggal, this is because CV Manunggal's payment history stopped paying in the August 2018 period so this bad credit occurred before the coronavirus disease (COVID-19) pandemic.

3.2. Legal Certainty on Suspension of Debt Payment Obligations (PKPU) Related to the Implementation of the Banking Relaxation Program in Handling Bad Loans During the COVID-19 Pandemic In Indonesia

Bankruptcy and Postponement of Debt Payment Obligations (PKPU) has an important role in the business world. The law itself has a function in providing protection in every aspect of life and legal relations. Bankruptcy and Postponement of Debt Payment Obligations itself is useful in providing assurance of certainty in the settlement of debt and credit disputes that occur between debtors and creditors. As is well known, early 2020 was the beginning of the Covid-19 pandemic. The national economy has been affected by this pandemic. The government through the Financial Services Authority takes action in issuing policies for relaxation, providing restructuring for debtors.

PKPU alone has set in law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. With the existence of Law 37/2004, it is hoped that it will become a solution for business actors to solve debt problems by avoiding the determination of bankruptcy. This is because during PKPU the debtor cannot file an application for bankruptcy on origin 222 paragraph (2) on law 37/2004, debtor which no could continue. In paying debts that have matured, they can be collected and carry out PKPU. By carrying out PKPU, it is hoped that a reconciliation plan will occur in accordance with the offer of payment of part of the debt or all of the debt to the creditor. The creditors referred to in this origin are concurrent creditors or creditors who take precedence.

The law also has a goal by providing a balance to debtors and creditors in dealing with liquidation issues, for example working with the settlement of obligations - receivables quickly, fairly, straightforwardly and adequately. By providing legal certainty related to the time process, responsibility for managing bankruptcy assets and procedures. The existence of this law also aims to overcome the bad credit experienced due to the Covid-19 pandemic which has caused many business actors to experience difficulties. So that the existence of Laws on Bankruptcy and Postponement of Debt Payment Obligations is useful to prevent business actors from going bankrupt and can restructure their debt payments to creditors.

PKPU provides legal certainty in managing business activities without the possibility of being sued for paying debts during the PKPU period. The right of the creditor to collect his receivables, this is legally suspended (suspension of payment). In addition to PKPU providing legal certainty, because PKPU itself will certainly be granted, PKPU also provides legal certainty because the Panel of Judges cannot take legal remedies, either ordinary legal remedies or extraordinary legal remedies chapter 235 paragraph (1) UU no 37 Year 2004 state decision postponement of debt payment obligations cannot be submitted for any legal action. This is born from this origin to show the alignment of the legislators to the interests of

the debtor by reducing or eliminating the rights of the creditor. Engagements that are born from freedom of contract or from laws, are intervened by a state that is instrumented by laws and regulations. The goal is actually to be digested from the perspective of economic interests that can have a micro or macro impact.

Seeing from certainty law as enforcement relaxation banking as OJK No. 11/POJK.03/2020 regarding the National Economic Stimulus as a Countercyclical Policy the Impact of the Spread of Coronavirus Diseases can be an option OJK No. 11/POJK.03/2020 concerning National Economic Stimulus as a Countercyclical Policy The Impact of the Spread of Coronavirus Diseases encourages increased banking intermediation capacity, maintains the strength of the monetary framework and supports financial development. One of the causes is the spread of the Covid disease which universally has an impact on bank credit which has reduced execution and limits on debtors in fulfilling their commitments to repay credit.

Debtors affected by COVID-19 are business debtors in micro, small and medium enterprises. This is a debtor who has difficulty fulfilling his obligations to the Bank due to COVID-19 directly or indirectly in the economic sector which is the tourism, transportation, hotel, trade, processing, agriculture and mining sectors. OJK itself has limitations that apply, OJK is only valid for Conventional Commercial Banks (BUK), Sharia Commercial Banks (BUS), Sharia Business Units (UUS), Rural Banks (BPR), and Sharia Rural Banks (BPRS). Then the POJK can be used as a basis for financial rebuilding.

The court itself is indeed prohibited from rejecting cases, especially PKPU cases that are registered to be examined and decided. However, the judge who examines the case must be careful and thorough to examine the case that comes. Then the judge must also decide a case in accordance with the regulations of lawLaws - laws and legal norms that apply. As the legal certainty that applies in the case of PT Garuda Indonesia Persero Tbk as a PKPU Respondent with: Number 289/Pdt.Sus-PKPU/2021/PN Niaga Jkt Pst has the result of the panel of judges rejecting the PKPU application submitted by PT My Indo Airlines. This is because PT Garuda Indonesia Persero Tbk provides the attached evidence regarding the regulations for implementing large-scale social restrictions in force in Indonesia, taking into account Article 222 paragraphs (1) and (3) in conjunction with Article 8 paragraph (4), Article 224 paragraphs (1) and (3), Law No. 37 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, Circular Letter of the Supreme Court of the Republic of Indonesia Number 1 of 2020 concerning Guidelines for Working within the Supreme Court and Judicial Bodies under it During the Covid 19 Period, along with its amendments.

Then in the case of PT Bank Rakyat Indonesia as a PKPU applicant against PKPU Respondent CV Manunggal with Case Number 109/Pdt.Sus-PKPU/2020/PN.NIAGA.JKT.PST. The result of the decision by the Panel of Judges granted the application submitted by the PKPU applicant PT Bank Rakyat Indonesia which was submitted to the Respondent CV Manunggal by providing a temporary suspension of debt payment obligations (PKPU) for CV Manunggal no later than 45 days from the PKPU decision was pronounced. However, the application of banking relaxation in this case does not apply to CV Manunggal, this is because CV Manunggal's payment history stopped paying in the August 2018 period so this bad credit occurred before the coronavirus disease (COVID-19) pandemic. In accordance with legal certainty in this case, it has been applied in accordance with Law No. 37 of 2004, and OJK Regulations issued by the Financial Services Authority.

IV. Conclusion

Based on the results of research and discussion, it can be concluded that:

1. PKPU is a means to restructure debt for debtors to creditors who experience bad credit during the current Covid-19 pandemic in connection with government regulations. with the Financial Services Authority on OJK 11/POJK.03/2020 and in accordance with the rules law No.37 of 2004.
2. Banking Relaxation issued by Financial Services Authority at OJK 11/POJK.03/2020 is expected to be able to help business actors to be given waivers, but must comply with the existing rules at the Financial Services Authority in OJK 11/POJK.03/2020 which only provides relief to business actors who have a loan ceiling at Bank Negara.
3. Implementation of the implementation of PKPU cases that occurred in PT Garuda Indonesia Persero Tbk as PKPU Respondent with Number 289/Pdt.Sus-PKPU/2021/PN Niaga Jkt Pst has the result of the Panel of Judges' decision to reject the PKPU application submitted by PT My Indo Airlines. This is because PT Garuda Indonesia Persero Tbk provides the attached evidence regarding the regulations for implementing large-scale social restrictions that apply in Indonesia, as pay attention to Law Number 37 of 2004 concerning Bankruptcy and Postponement of Obligation to Pay Debt, Circular Letter of the Supreme Court of the Republic of Indonesia Number 1 of 2020 concerning Guidelines for Working within the Supreme Court and OJK.
4. At PT Bank Rakyat Indonesia as a PKPU applicant against PKPU Respondent CV Manunggal with Case Number 109/Pdt.Sus-PKPU/2020/PN.NIAGA.JKT.PST. The result of the decision by the Panel of Judges granted the application submitted by the PKPU applicant PT Bank Rakyat Indonesia which was submitted to the Respondent CV Manunggal by providing a temporary suspension of debt payment obligations (PKPU) for CV Manunggal.
5. In accordance with legal certainty in both cases, it has been applied in accordance with Law No. 37 of 2004, and OJK Regulation No. 11/POJK.03/2020.

Suggestion

Based on the discussion and the existing conclusions, the author has several suggestions as follows:

1. Law No.37 of 2004, of course, it remains to be seen what are the shortcomings of this Law, which then need to be improved or added according to the experience of PKPU cases that have occurred so far.
2. As for legal certainty in applying Law - Law No. 37 of 2004 concerning Bankruptcy and PKPU, and OJK No. 11/POJK.03/2020 is running as it should in accordance with these rules

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