

REVIEW ARTICLE

Reducing the Company's Insolvency: How suspension of debt payment obligation and bankruptcy proceedings help the company?

 OPEN ACCESS

Deyola Agasie¹, Rani Apriani²✉

^{1,2} Universitas Singaperbang Karawang, INDONESIA

✉ rani.apriani180488@gmail.com

Citation:

Agasie, D., & Apriani, R. (2022). Reducing the Company's Insolvency: How suspension of debt payment obligation and bankruptcy proceedings help the company?. *Law Research Review Quarterly*, 8(2), 259-274.

<https://doi.org/10.15294/lrrq.v8i2.53813>

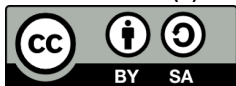
Submitted : January 15, 2022

Revised : March 21, 2022

Accepted : April 18, 2022

Online since: May 31, 2022

© The Author(s)



This work is licensed under a [Creative Commons Attribution-ShareAlike 4.0 International License](https://creativecommons.org/licenses/by-sa/4.0/). All writings published in this journal are personal views of the authors and do not represent the views of this journal and the author's affiliated institutions.

ISSN 2716-3415

Law Research Review Quarterly published by Faculty of Law, Universitas Negeri Semarang, Indonesia. Published quarterly on February, May, August, and November.

Abstract

Corporate insolvency will have an unfavorable effect on the country's economy. Currently many companies are facing the threat of bankruptcy applications in the Commercial Court because difficulty of paying the company's debts to its creditors. In the midst of the situation the number of Covid-19 cases that occurred in Indonesia, it has a negative impact with the decline in the performance of business actors due to the crisis. From that situation, it results in a decrease in the amount of income to the difficulty of paying debts or credit to creditors. To reduce the increase in insolvency, the government seeks the enactment of a moratorium on PKPU and Bankruptcy whose implementation will pay attention to the development of Covid-19 pandemic conditions. This research aims to find out how the implications in implementing a moratorium on PKPU and Bankruptcy in order to reduce the company's insolvency and how its legal protection efforts for creditors and debtors. This research is Normative juridical with a Statute Approach. The results of this study are the implications that will occur in the enactment of the moratorium on PKPU and Bankruptcy and legal protection for the parties under Law No. 37 of 2004 on Bankruptcy and Delay of Debt Payment Obligations. By fulfilling the terms and conditions as intended, the conclusion obtained is that the implementation of the moratorium has a positive and negative impact on the

parties and obtains protection and is justified by applicable law but must be in accordance with the applicable provisions.

Keywords: *Moratorium, Covid-19, Bankruptcy, Legal protection*

1. INTRODUCTION

Currently, the government is reviewing the implementation of the moratorium policy on Delaying Debt and Bankruptcy Payment Obligations (PKPU). In a legal area, a moratorium is a legal authorization to delay the payment of certain debts or liabilities for a specified time limit. The term is also often used to refer to the time of delay of payment itself, while its authorization is referred to as the moratorium law. The moratorium on PKPU and Bankruptcy is suspected at the proposal of employers. This is considering the economic pressures that occur due to the coronavirus pandemic (Covid-19) has an impact on the number of businesses that do not have the ability to pay debts. The government's plan to review the proposal of employers related to the moratorium on the submission of Debt Payment Obligation Delay (PKPU) should be the momentum of revamping the Bankruptcy Law and PKPU.

Based on Law No. 37 of 2004 concerning Insolvency and Delay of Debt Payment Obligations that is meant by bankruptcy is the general liability of all the wealth of Bankruptcy Debtors whose management and application is carried out by curators under the supervision of supervisory judges as stipulated in this Law. Insolvency occurs when the debtor has two or more debts to creditors and does not pay off at least one debt that has fallen in time and can be billed. Debts are basically a loan to borrow money poured in a deed, but now develop from various forms, such as debts arising from business cooperation, where there are parties who are obliged to provide their services to other parties, while on the other hand, there are other parties who are

entitled to receive such services, and are obliged to pay for services that have been received in accordance with the agreements they have made and agreed to. Based on the above conditions, there are two types of positions in the debt-receivable relationship. The position of the lending party is referred to as the creditor while the party receiving the loan is referred to as the debtor. In the debt-receivable system, famously the term money borrowed by the name of the bill, this bill will be returned within a certain period of time in accordance with the promised debtor and creditor (Supramo, 2011).

Center of Economic and Law Studies (CELIOS) Director Bhima Yudhistira suspects the proposed moratorium on Debt Payment Obligations (PKPU) and Insolvency aims to protect some companies that were already in trouble long before the pandemic. Debt Repayment Obligation Delay (PKPU) is a legal procedure (or legal effort) that entitles any debtor who cannot or estimates that he or she will not be able to continue paying his or her debts that have fallen time and can be billed, can request a delay in debt payment obligations, with a general intention to submit a peace plan that includes offering payment of all or part of the debt to concurrent creditors (Dewi, 2016).

In the opinion of Munir Fuady another term of pkpu is suspension of payment or Surseance van Betaling, meaning a time that is raised by law through the decision of a commercial judge where in that time to the creditors and debtors are given the opportunity to negotiate the ways of payment of their debts by providing a payment plan for all or part of the debt, including if necessary to restructure the debt.

In bankruptcy law No. 37 of 2004 on Bankruptcy and Delay of Debt Payment Obligations (Insolvency Law) Article 222 paragraph (2) states: "Debtors who cannot, or estimate can continue to pay their debts that have fallen and can be billed, can request a delay in debt payment

obligations with a view to submitting a peace plan that includes the offer of payment of some or all debts to creditors".

Some debtors have even applied for a delay in debt repayment obligations due to expected to not be able to continue the payment of debts that are due and can be billed. The application is submitted by interested creditors and on the initiative of the debtor voluntarily to apply for himself to be delayed debt payment obligations.

According to a statement from the Chairman of the Indonesian Association of Curators and Administrators, Jimmy Simanjuntak predicts the number of bankruptcy cases and delays in debt payment obligations will continue to increase during the covid-19 pandemic. He stated that the trend of bankruptcy applications, especially the delay in debt payment obligations has increased significantly so far. According to him, the increase in cases occurred due to the wanprestasi carried out by debtors due to economic difficulties during the Covid-19 pandemic. Debtors have difficulty paying their debts due to the company's declining financial situation. The majority of the initial cases were requests for delays in debt payment obligations, but some ended in bankruptcy (HukumOnline, 2022).

According to the Director General of General Legal Administration (AHU) of the Ministry of Law and Human Rights Cahyo Rahadian Muzhar that the bankruptcy ruling can have a major effect on the Indonesian economy. One of them is the bankruptcy ruling will make the termination of employment (layoffs) of employees. This will increase the number of unemployed in Indonesia. The condition of the Covid-19 pandemic is also feared to be used by lenders to make companies bankrupt. Even though the company is still able to do business activities. Cahyo also mentioned that the moratorium plan can be done through the Government Regulation in Lieu of Law (Perppu). However, there are still various things that need to be discussed. The government will also discuss the moratorium period of PKPU and

insolvency. One option is a moratorium period of PKPU and insolvency for 6 months to 1 year. This time period can later be evaluated. So that its implementation will pay attention to the development of Covid-19 pandemic conditions.

In terms of the implementation of policies regarding the moratorium on PKPU and Bankruptcy, of course, must pay attention to the impact for creditors and debtors in the future, as well as legal protection for the parties in accordance with the provisions of applicable laws and regulations. Many things need to be considered in terms of implementing the moratorium on PKPU and Bankruptcy and issuing the moratorium perppu. Based on the background of the above issues, the author is interested in discussing the implications of implementing the PKPU and Bankruptcy moratorium policy in order to reduce the company's insolvency.

Based on the background of the above problem, the following problem formulation was obtained *How are the implications of implementing the PKPU and Bankruptcy moratorium policy in order to reduce corporate insolvency both for creditors and for debtors? And What is the legal protection of creditors and debtors in implementing the pkpu moratorium policy and bankruptcy based on Law No. 37 on Bankruptcy and Delay of Debt Payment Obligations?*

2. METHOD

This paper is research on legal arguments by focusing the main characteristics of reviewing the policy implementation plan accompanied by legal arguments / considerations made by law enforcement, experts, and related agencies and the interpretation behind the implementation plan. This research is conducted with normative juridical research methods. Normati juridical research is where the law is conceptualized as what is written in the laws and regulations (law in books) or law is conceptualized as a rule or norm that is a benchmark for human behavior that is considered appropriate. This

normative research is conducted by reviewing and analyzing laws and regulations or other legal materials related to Law No. 37 of 2004 concerning Insolvency and Delay of Debt Payment Obligations.

This research uses a statute approach, a library approach, and a conceptual approach. The statutory approach is carried out by reviewing all laws and regulations related to legal issues handled, so that it can be known legic ratio, ontological basis and philosophical basis of arrangements related to Insolvency and Delay of Debt Payment Obligations, such as Law No. 37 of 2004 on Insolvency and Delay of Debt Payment Obligations.

The library approach is done by collecting data and information relevant to the topic or problem that is the object of research. Such information can be obtained from books, scientific papers, theses, dissertations, encyclopedias, the internet, and other sources. So, the analysis of legal materials is done by using content analysis methods (content analysis method) which is done by describing the material of legal events or legal products in detail to facilitate interpretation in the discussion.

Conceptual approach is a conceptual approach moving from the views and doctrines that develop in the legal sciences. This approach is carried out with an understanding of the concepts put forward by experts in various literatures.

3. RESULT AND DISCUSSION

A. Implication of the Implementation of the PKPU Moratorium Policy and Bankruptcy in order to Reduce the Company's Insolvency both for Creditors and for Debtors

The plan to implement the moratorium policy on requests for Delay of Debt Payment Obligations (PKPU) and bankruptcy is still rolling. Forms of support and rejection of the plan emerged from various circles ranging from entrepreneurs, practitioners and academics. If the plan is realized, of course, it will have a positive or negative impact on creditors or debtors. Many things must be considered for

the government before deciding to issue a moratorium on PKPU and bankruptcy.

Where this moratorium is carried out by termination or repeal of Law No. 37 of 2004 on Bankruptcy and Delay of Debt Payment Obligations as a whole. The overall moratorium on the bankruptcy law is considered not to give a sense of justice. Because the condition of the Covid-19 pandemic not only suppresses the debtor but also has an impact on creditors. Temporary termination of PKPU and insolvency can be done in part. Temporary suspension for some matters related to insolvency was also carried out by a number of countries. Although these countries have now completed the moratorium period because it has begun to move the economy back in the midst of the Covid-19 pandemic.

This moratorium has a positive impact on debtors, because creditors can make room for customers or debtors who still have business prospects but need longer to be able to return to normal but still be able to fulfill their obligations to creditors.

In the case of a delay in debt repayment obligations, the debtor is in a difficult state to be able to pay his debt in full. But that difficulty has not been an indication of bankruptcy or bankruptcy. If the debtor is given enough additional time, it is likely that he will be able to pay off the payment of his debt in full. The debtor can apply for a delay in debt payment obligations with the aim that the debtor can immediately fix the economic difficulties (Usman, 2004).

The concept of delaying debt repayment obligations itself is different from insolvency. Although insolvency is also known as peace, but basically the bankruptcy is intended to carry out the enforcement of bankruptcy property by selling the entire bankruptcy boedel and distributing the proceeds of the sale to creditors who are entitled according to the order specified in the law. In this case it is seen that insolvency leads to the act of liquidation of the debtor's property. While in the delay of debt payment

obligations, debtors are given the opportunity to negotiate with creditors regarding receivable debts between them so that in the end there is no liquidation or settlement of the debtor's property. During the process of delaying debt payment obligations takes place in this case the debtor remains entitled to control of his property, unlike in the case of bankruptcy the authority turns to the curator (Sunarmi, 2010).

In Article 2 paragraph (1) of the Law of the Republic of Indonesia Number 37 of 2004 on Bankruptcy and Delay of Debt Payment Obligations, it has been explained that in the case of filing for bankruptcy, the debtor has at least two or more creditors and does not pay at least one debt. Meanwhile, the reason in the case of the submission of a delay in debt repayment obligations is because the debtor in a state of unable or expected will not be able to continue the payment of his debts that are due and can be billed, with the general intention of submitting a peace plan that includes the offer of payment of all or part of his debt to creditors (Fuady, 2005). Thus it can be said that efforts to delay debt payment obligations are generally aimed at achieving a peace and providing opportunities for debtors to continue their business activities.

While the impact for creditors is precisely the negative impact. Because in this case the moratorium on PKPU and Bankruptcy can have an impact on the national economy if the creditors have difficulty carrying out their business due to the many bills / debts that have not been paid by debtors, so they do not have the capital to continue the business. The moratorium on PKPU is very likely to result in the number of bills held by creditors to debtors, whether it can be categorized as part of the crime of corruption because it has caused state financial losses. In this case, the government has not thought about how the government accommodates interests and provides protection for entrepreneurs, especially creditors, if in terms of billing done many times not responded by debtors. So, in this case, the moratorium

on PKPU and Bankruptcy has not been able to ensure that the moratorium is not used by debtors avoiding payment of their debts. However, that in the Bankruptcy Law provides an opportunity for debtors to submit a peace plan both in the PKPU phase and in the Bankruptcy phase, even in the circumstances after insolvency there are still rehabilitation institutions if there are third parties / investors who can and are willing to settle debtor obligations to their creditors, as well as the existence of institutions for going concern (continuing the continuity of the debtor's business).

B. Legal Protection of Creditors and Debtors in Implementing the PKPU Moratorium Policy and Bankruptcy based on Law No. 37 on Insolvency and Delay of Debt Payment Obligations

The concept of this moratorium must have a legal umbrella and of course must look at all aspects including creditors and debtors. The moratorium and the process of preparing legal institutions during the moratorium period must also have a specified period of time so that there is no legal vacuum.

Related to legal protection for debtors who are in good faith want to carry out a moratorium on their debt, so that they can re-organize business continuity. Insolvency Law also seeks to protect its debtors, by preventing fraud committed by debtors by making a balanced distribution of the debtor's wealth and guaranteeing the debtor's wealth among other creditors on the basis of *pari passu pro rata parte*, as stated in article 1132 *Burgelijk Wetboek*. The principle meaning of *pari passu pro rata parte* is all the debtor's property, by law it is a mutual guarantee for the creditors and the proceeds must be distributed proportionally between them, unless between the creditors there is one who by law must take precedence in receiving the payment of his bill. This principle is one of the foundations on which the instrument of bankruptcy law is needed, and also as one of the foundations in the process of distributing the bankruptcy property. This is in accordance

with the purpose of individual insolvency, namely the fair distribution of debtor assets that cannot be paid debts to be free from all burdensome debts, as long as the debtor does not commit other dishonest or improper acts.

The request for delay in debt repayment obligations has the goal that debtors who are companies have sufficient time for companies that enter into peace with creditors in resolving their debts. Delay of Debt Payment Obligation provides an opportunity for debtors to reorganize the company's business and management to restructure its debts within the grace period of delay of debt payment obligations, which eventually the debtor will be able to continue his business activities.

The tendency to use PKPU becomes an option by creditors because debtors who do not pay their debts can also be connected with the principle of business continuity under Law No. 37 of 2004 to prioritize PKPU which has a spirit of peace and bankruptcy is *ultimum remedium* if peaceful efforts cannot be implemented. But on the contrary, if PKPU is used as an instrument to have bad intentions then this PKPU will accelerate the bankruptcy of debtors because PKPU period has been exceeded (Rihwanto, 2016).

Basically, the provision of PKPU according to Law No. 37 of 2004 is intended so that debtors who are in an insolvency state have the opportunity to submit a peace plan, either in the form of an offer for the payment of debt in whole or in part (Jono, 2008).

Request for Delay of Debt Payment Obligation is an effort that can be made by the debtor to avoid bankruptcy. In essence, PKPU is different from insolvency. PKPU is not intended for the benefit of debtors only, but rather the interests of its creditors, in particular, concurrent creditors. As stipulated in Chapter III of the Bankruptcy and Delay of Debt Payment Obligations Act.

In PKPU, the debtor still has the authority to carry out legal acts to divert and take care of the trust as long as this is

done with the approval of the board specially appointed by the Court in favor of the PKPU.

The provision of credit by creditors to debtors will always be accompanied by the provision of guarantees by debtors to creditors, the creditor will ask for guarantees and prioritize guarantees in the form of fixed assets in the form of land and buildings. This is also done as a form of prudence of creditors in securing their receivables.

Creditors will place dependent rights to fixed asset guarantees provided by debtors who are expected to have these dependent rights in the event of bad credit then these separatist creditors can immediately sell the guarantee both under hand and through auction.

Currently, there is often a sale of collateral through the auction house or under the hand can not be done easily and quickly as expected by creditors due to efforts to delay debt payment obligations (PKPU) from the Debtor or third parties to avoid the sale of assets that the Debtor has guaranteed to the Bank and buys time on the debtor's debt payment.

Based on the above, there needs to be a more detailed and comprehensive arrangement to protect creditors who have been guaranteed with the granting of dependent rights in exercising their rights to get back payments / repayments on their receivables in the event of default on the provision of credit / debt from debtors as a form of legal certainty and legal protection, with the analysis of the regulations on Delay of Liabilities. Debt Repayment (PKPU) as stipulated in Law No. 37 of 2004 on Insolvency and Delay of Debt Payment Obligations (Susanto, Malonda, Rosadi, & Rizki, 2019).

Delay of Debt Payment Obligation (PKPU) is an alternative debt settlement to avoid bankruptcy. According to Munir Fuady, this Delay in Debt Payment Obligations (PKPU) is a certain period of time given by law through a commercial court ruling, where in that period of time to creditors and debtors are given an agreement to negotiate

the means of payment of their debts by providing a peace plan (composition plan) for all or part of the debt, including if necessary to restructure the debt. Thus, the Delay of Debt Payment Obligations (PKPU) is a kind of moratorium in this case legal moratorium (Fuady, 2001).

According to Law No. 37 of 2004 on Bankruptcy and PKPU Article 222 paragraph (2) it says: "The debtor who cannot or expects to be able to continue paying his debts that have fallen time and can be billed, can request a delay in debt payment obligations with a view to submitting a peace plan that includes the offer of payment of some or all of the debt to creditors".

The Bankruptcy Law and PKPU provide an effort to creditors to demand their rights to debtors through *actio pauliana* conducted by curators. This is a logical result of the position of the Curator as a party in charge of protecting and managing bankruptcy property for the benefit of all parties concerned with bankruptcy property (Sukirno, 2001).v

To protect the rights of creditors in good faith, in Article 170 paragraph (1) UUK is given the opportunity for each creditor to cancel the peace. If the cancellation of this peace is granted by the Commercial Court, the debtor in the same ruling must be declared bankrupt. (Article 291 paragraph (2) UUK and PKPU). So, the consequences due to the cancellation of peace in the PKPU, namely PKPU also ended (Article 255 paragraph (6) UUK and PKPU).

The implementation of the moratorium certainly does not eliminate the right of creditors to demand payment / repayment of debtor debt, of course after the lifting of the moratorium or the enactment of the new Bankruptcy Law the creditors will massively re-collect the fulfillment of their debts. And the most important thing is that the Bankruptcy Law is a legal institution that provides certainty of trying / doing business in Indonesia both for domestic entrepreneurs, especially for foreign entrepreneurs / investors.

4. CONCLUSION

Based on the above exposure it can be concluded that the plan to impose a moratorium on PKPU and Bankruptcy has a positive impact on debtors and a negative impact on creditors. Where the debtor is given space by the creditor in terms of debt repayment obligations, in this case the debtor who still has business prospects but takes longer to be able to return to normal but still be able to fulfill his obligations to creditors. However, this does not guarantee that the debtor has good faith. As for creditors, if many debtors who apply for a moratorium on PKPU and Bankruptcy can have the effect on the national economy if the creditors have difficulty running their business due to the many bills / debts that have not been paid by debtors, so they do not have the capital to continue the business. The moratorium on PKPU is very likely to result in the number of bills held by creditors to debtors, whether it can be categorized as part of the crime of corruption because it has caused state financial losses. Because the government itself has not studied more deeply about the implementation of the PKPU and Bankruptcy moratorium policy.

If the moratorium on PKPU and Bankruptcy is imposed, of course, it must pay attention to legal protection efforts for debtors and creditors. If the debtor does not have good faith in the payment of his debt obligations then the creditor has the right to claim his rights to the Commercial Court. And if the debtor is in good faith in terms of debt repayment obligations, then the debtor is entitled to an attempt to cancel bankruptcy and is entitled to be given additional time for the payment of his debt, in case the debtor still has opportunities in his business.

5. DECLARATION OF CONFLICTING INTERESTS

The Authors declare that there is no potential conflict of interest in the research, authorship, and/or publication of this article.

6. FUNDING

None

7. ACKNOWLEDGEMENT

None

8. REFERENCES

- Dewi, Putu Eka Trisna. (2016). Tinjauan Hukum Bisnis: Urgensi Penundaan Kewajiban Pembayaran Utang (Pkpu) Dalam Kepailitan. Diakses dari https://www.academia.edu/37572961/TINJAUAN_HUKUM_BISNIS_URGENSI_PENUNDAAN_KE_WAJIBAN_PEMBAYARAN_UTANG_PKPU_DALAM_KEPAILITAN.
- Fuady, Munir. (2001). *Pengantar Hukum Bisnis*. Bandung : Citra Aditya Bakti.
- Fuady, Munir. (2005). *Hukum Kepailitan Dalam Teori Dan Praktik (Edisi Revisi disesuaikan Dengan Undang-Undang Nomor 37 Tahun 2004)*. Bandung : Citra Aditya Bakti.
- Hukum Online. Kepailitan Momok Menakutkan Di Masa Pandemi. Diakses pada November, 02, 2022, dari <https://www.hukumonline.com/berita/baca/lt5f572d24a2238/kepailitan--momok-menakutkan-dimasa-pandemi?page=3>
- Jono. (2008). *Hukum Kepailitan*. Jakarta : Sinar Grafika.
- Rihwanto, Y. (2016). *Kedudukan Debitor Pasca Penetapan PKPU Oleh Pengadilan Niaga (Studi Kasus Pada Koperasi Serba Usaha Persada Madani)* (Doctoral dissertation, Universitas Islam Indonesia).
- Sukirno, Timur. (2001). *Tanggung Jawab Kurator Terhadap Harta Pailit dan Penerapan Actio Pauliana*. Bandung : Alumni.
- Sunarmi. (2010). *Hukum Kepailitan Edisi 2*. Jakarta : Softmedia.
- Supramono, Gatot. (2013). *Perjanjian Utang Piutang*. Jakarta : Kencana.
- Susanto, A. M., Malonda, E., Rosadi, I., & Rizki, M. (2019). Perlindungan Hukum Bagi Bank atas Upaya PKPU (Penundaan Kewajiban Pembayaran Utang) dari

Pihak Ke-3 (Tiga). *JUSTITIA JURNAL HUKUM*, 3(1).

Usman, Rachmadi. (2004). *Dimensi Hukum Kepailitan Di Indonesia*. Jakarta : Gramedia Pustaka Utama.

When a company relies on future income to pay off existing debts, it's in a risky situation. That's a gamble that often results in bankruptcy.

Hendrith Vanlon Smith Jr,
CEO of Mayflower-Plymouth