

# TERAJU

Jurnal Syariah dan Hukum

Teraju: Jurnal Syariah dan Hukum  
Volume 08 Nomor 01, Maret 2026  
DOI: <https://doi.org/10.35961/teraju.v8i01.2475>

## Dispute Resolution through Homologation in Debt Payment Obligation Suspension (PKPU): A Study of Judgment No. 43/Pdt.Sus-PKPU/2020/PN Niaga Smg

*Andrie Nindy Dwiantari<sup>1</sup>, Sulthan Wahidy<sup>2</sup>, Rizki Amar<sup>3</sup>, & Moh Saifa Abudillah<sup>4</sup>*

<sup>1</sup> Magetan Religious Court, East Java, Indonesia

<sup>2 3</sup> Sunan Kalijaga State Islamic University, Indonesia

<sup>4</sup> Darus Sholihin Tarim Hadhramaut, Yaman

Email: [rizkiamar123456@gmail.com](mailto:rizkiamar123456@gmail.com)

### Abstrak

Permohonan Penundaan Kewajiban Pembayaran Utang (PKPU) dapat diajukan apabila debitur tidak mampu melanjutkan pembayaran utang yang telah jatuh tempo; permohonan ini dapat diajukan oleh debitur yang memiliki lebih dari satu kreditor atau oleh kreditor. Penelitian ini akan membahas pertimbangan hukum yang digunakan hakim dalam mengesahkan perjanjian penyelesaian serta konsekuensi hukum dari homologasi sebagaimana tercantum dalam putusan nomor 43/Pdt.Sus-PKPU/2020/PN Niaga Smg. Penelitian ini merupakan tinjauan pustaka deskriptif dengan menggunakan pendekatan hukum normatif. Hasil penelitian ini adalah, pertama, bahwa pertimbangan hukum yang digunakan hakim dalam mengesahkan perjanjian penyelesaian sesuai dengan Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang (PKPU), yaitu telah memenuhi ketentuan Pasal 281 ayat (1) dan tidak bertentangan dengan Pasal 285 ayat (2), sehingga pengadilan wajib mengesahkan perjanjian penyelesaian sebagaimana diatur dalam Pasal 285 ayat (1). Kedua, akibat hukum dari homologasi tersebut adalah bersifat mengikat bagi seluruh kreditor sebagaimana diatur dalam Pasal 286. Apabila debitur gagal memenuhi ketentuan penyelesaian, kreditor dapat mengajukan pembatalan atas penyelesaian yang telah disahkan sebagaimana diatur dalam Pasal 170 ayat (1).

Kata kunci: *Konsekuensi Hukum, Homologasi, Pertimbangan Hukum*

### Abstract

A Postponement of Debt Payment Obligations (PKPU) may be filed if the debtor is unable to continue paying their debts that are due and

collectible; this may be filed by debtors with more than one creditor or by creditors. This study will discuss the legal considerations used by judges in ratifying settlement agreements and the legal consequences of homologation as in decision number 43/Pdt.Sus-PKPU/2020/PN Niaga Smg. This study is a descriptive literature study using a normative juridical approach. The findings of this study are, firstly, that the legal considerations used by judges in ratifying the settlement agreement are in accordance with Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU), namely that it complies with the provisions of Article 281(1) and does not contravene Article 285(2), so that the court is obliged to ratify the settlement agreement as stipulated in Article 285(1). Second, the legal effect of homologation is to bind all creditors as stipulated in Article 286. If the debtor fails to fulfil the terms of the settlement, the creditor may demand the cancellation of a settlement that has been ratified as stipulated in Article 170(1).

Keywords: *Legal Consequences, Homologation, Legal Considerations*



<https://creativecommons.org/licenses/by/4.0/>  
Copyright (c) 2022 by Rizki Amar. All Right Reserved  
email koresponden: rizkiamar123456@gmail.com

## Introduction

In the course of its business activities, the Islamic Savings, Loan and Financing Cooperative (KSPPS) occasionally faces financial difficulties, such as members' savings or deposits becoming frozen, meaning that members or customers are unable to withdraw their funds on time. Should this occur, customers may make a claim against the Islamic Savings, Loan and Financing Cooperative (KSPPS).<sup>1</sup> However, if the Islamic Savings, Loan and Financing Cooperative (KSPPS) fails to demonstrate good faith over a sufficiently long period, the customer, as the creditor, may file for a Debt Payment Obligation Deferral (PKPU) against the Islamic Savings, Loan and Financing Cooperative (KSPPS) as

the debtor with the Commercial Court within whose jurisdiction the debtor is legally domiciled.<sup>2</sup>

A PKPU may be filed by a debtor with more than one creditor or by a creditor. A creditor who anticipates that the debtor is unable to continue paying debts that have fallen due and are enforceable may request that the debtor be granted a deferral of debt repayment obligations, to enable the debtor to submit a settlement plan involving an offer to pay part or all of the debt to its creditors.<sup>3</sup>

On 10 November 2020, the applicants, namely Drs. Amin Asrori as Applicant I, Hj. Fatimah as Applicant II,

<sup>2</sup> Law of the Republic of Indonesia No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations, Article 3(1)

<sup>3</sup> Irfan Idham, Syahrudin Nawi, and Hamza Baharuddin, "Legal Protection for Unsecured Creditors in Bankruptcy: A Study of Judgment No. 04/Pdt.Sus-Pkpu.Pailit/2018/Pn.Niaga Mks," *Journal of Lex Generalis (JLG)* 1, no. 5 (September 2020): 747–60, <https://doi.org/10.52103/jlg.v1i5.197>.

<sup>1</sup> Farid Hidayat, "Alternative Supervisory Systems for Credit Unions and Shariah-Compliant Financing (KSPPs) in Achieving Shariah Compliance," *Jurnal Mahkamah: Studies in Legal Science and Islamic Law*, 15 December 2016, 383–407, <https://doi.org/10.25217/jm.v1i2.47>.

and Sujiati as Applicant III, filed an application for a Declaration of Debt Payment Obligation Deferral (PKPU) against the Sharia Savings, Loan and Financing Cooperative (Kospin Syariah) as the Respondent, as registered with the Commercial Court Registry at the Semarang District Court under case number 43/Pdt.Sus-PKPU/2020/PN Niaga Smg.

The Respondent has debts that have fallen due and remain unpaid to the Petitioners in connection with the Petitioners' deposits with the Islamic Savings, Loan and Financing Cooperative (Kospin Syariah) as the Respondent, with the following details: Plaintiff I has a claim against the Respondent in the amount of Rp144,485,808, with a due date of 18 July 2020. Claimant II has a claim against the Respondent in the amount of Rp136,108,304, with a due date of 21 October 2017. Claimant III has a claim against the Respondent in the amount of Rp73,349,423, with a due date of 13 February 2021.

The Applicants have made several attempts to collect the debt by visiting the Respondent's place of business; however, the Respondent has not promptly fulfilled its obligation to pay and/or repay the debt arising from the Applicants' deposits. As of the filing of the application for a Stay of Debt Payment Obligations against the Respondent, the total amount of the Applicants' claims arising from the principal debt is Rp353,943,535 (three hundred and fifty-three million nine hundred and forty-three thousand five hundred and thirty-five rupiah), and thus, regarding the Respondent's outstanding obligations to the Applicants in the present case, it has been simply established that the Respondent's debt has fallen due and is enforceable.

Based on the grounds of the Petitioners' application, the Panel of Judges issued a ruling in the form of a Temporary Suspension of Debt Payment

Obligations (PKPU) against the Respondent for a maximum period of 45 (forty-five) days from the date *the present* ruling was pronounced. Subsequently, the Respondent, as the debtor, submitted a settlement plan to the Petitioners, as the creditors. Ultimately, the Panel of Judges approved the settlement agreement reached between the Petitioners and the Respondent.

This study examines the legal considerations employed by judges in approving settlement agreements, as well as the legal consequences of homologation, as set out in Judgment No. 43/Pdt.Sus-PKPU/2020/PN Niaga Smg. Previous studies on the Suspension of Debt Payment Obligations (PKPU) have been numerous, focusing on aspects of jurisdiction, mechanisms, and legal implications. Research conducted by Regina Nitami Kasdi and Suyud Margono<sup>4</sup> highlights the importance of legal standing in filing a PKPU application. The study found that PT Srimurni Surabaya lacked the authority to file a PKPU petition against PT Jaya Bersaudara, as under Article 222(1) and Article 223 of Law No. 37 of 2004, only certain parties are entitled to do so. This finding confirms that the court's decision placed the respondent in a state of provisional PKPU without further legal recourse, as provided for in Article 235. Furthermore, the research by Rai Mantili and Putu Eka Trisna Dewi<sup>5</sup>

<sup>4</sup> Regina Nitami Kasdi and Suyud Margono, "Analysis of Commercial Court Decisions Regarding the Legal Consequences of PKPU Applications Filed by Unauthorised Parties (Case Study of the Commercial Court Decision at the Central Jakarta District Court No. 24/PDT.SUS-PKPU/2018/PN.NIAGA.JKT.PST)," *Adigama Law Journal* 2, no. 2 (December 2019): 1399–423, <https://doi.org/10.24912/adigama.v2i2.7124>.

<sup>5</sup> Rai Mantili and Putu Eka Trisna Dewi, "Debt Payment Obligation Suspension (PKPU) in Relation to the Settlement of Debts and Receivables in *Bankruptcy*," 6, no. 1 (June 2021): 1–19, <https://doi.org/10.47329/aktualjustice.v6i1.618>.

examines the effectiveness of PKPU in resolving debt-credit disputes through bankruptcy mechanisms, showing that PKPU functions as a mediation instrument between debtors and creditors for the purpose of restructuring debt obligations.

Meanwhile, another aspect of PKPU is examined by Udin Silalahi and Beatrix Tanjung, who emphasise settlement agreements in repeated PKPU proceedings.<sup>6</sup> Their findings confirm that prior settlement agreements remain valid even if a provisional PKPU is granted, until a new agreement is ratified. In a separate study, Irfan et al. emphasised the compliance of formal and material requirements in PKPU rulings, particularly in Ruling No. 1/Pdt.Sus-PKPU/2020/PN Niaga Mks, which was deemed to be in accordance with the provisions of Law No. 37 of 2004 and to ensure the protection of creditors' interests.<sup>7</sup> Finally, Yusrizal's research highlights PKPU cases involving securities companies, emphasising that the judge prioritised the principle of utility in Decision No. 78/Pdt.Sus-PKPU/2020/PN Niaga Jkt Pst, even though, in normative terms, the authority lies with the Financial Services Authority. This indicates that PKPU practice in Indonesia is not only regulated normatively but is also influenced by practical considerations and the principle of utility in the resolution of debt disputes.<sup>8</sup>

<sup>6</sup> Udin Silalahi and Beatrix Tanjung, "Settlement Agreements in the Process of Repeated Debt Payment Obligation Suspensions: Status and Implications," *Undang: Law Journal* Vol. 4:2 (June 2021).

<sup>7</sup> Irfan Irfan, Andi Tira, and Juliati M. Jafar, "Legal Analysis of Debtors' Debt in the Debt Payment Obligation Deferral Process: Legal Analysis of Debtors' Debt in the Debt Payment Obligation Deferral *Pro*," 20, no. 1 (April 2022): 70–78.

<sup>8</sup> Yusrizal Yusrizal, "Legal Analysis of the Application for a Stay of Debt Payment Obligations against a Securities Company from the Perspective of the Principle of Utility (Case Study

This study falls under the category of descriptive literature review. The approach used in this study is a normative legal one.<sup>9</sup> The data sources used are primary legal materials in the form of legislation and the decision of the Semarang Commercial Court in case number 43/Pdt.Sus-PKPU/2020/PN Niaga Smg, as well as secondary legal sources in the form of books, research journals, and other literature related to the topic under discussion. The data analysis method used is qualitative.<sup>10</sup>

## Discussion

### The Mechanism of Debt Payment Obligation Deferral (PKPU) and Settlement Agreements

Bankruptcy and the Postponement of Debt Payment Obligations are commonly associated with debt issues between a borrower, known as a debtor, and those holding funds, known as creditors. Debt Payment Obligation Deferral (PKPU) is a period granted by law through a commercial court judge's ruling to the debtor and creditors to negotiate methods of repaying the debtor's debts by proposing a plan to repay all or part of the debt, including, where necessary, restructuring the debt. Consequently, PKPU acts as a form of moratorium on debt repayment.<sup>11</sup>

The purpose of PKPU is to provide the debtor with an opportunity to restructure their debts, either in full or in part, with their unsecured creditors. In other words, PKPU aims to prevent a

of Judgment No. (78/PDT.SUS-PKPU/2020/PN.Niaga.Jkt.Pst)," *Jurnal Ilmiah Wahana Pendidikan* 9, no. 10 (May 2023): 689–702, <https://doi.org/10.5281/zenodo.7991115>.

<sup>9</sup> Soerjono Soekanto and Sri Mamudji, *Normative Legal Research: A Brief Review*, 19th ed. (Depok: Rajawali Pers, 2019), p. 11.

<sup>10</sup> Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana, 2011), p. 32.

<sup>11</sup> Man S Sastrawidjaja, *Bankruptcy Law and the Suspension of Debt Repayment Obligations* (Bandung: PT Alumnus, 2006), p. 1.

debtor, who might otherwise be declared bankrupt due to certain circumstances, from being declared bankrupt, whilst providing them with time, as there is a strong likelihood they could settle their debts.<sup>12</sup> Therefore, by granting the debtor time and opportunity, it is hoped that the debtor, through the reorganisation of their business and/or the restructuring of their debts, can continue their business and thereby be able to settle their debts in full.<sup>13</sup>

A PKPU application may be filed by a debtor with more than one creditor or by a creditor.<sup>14</sup> A creditor who anticipates that the debtor is unable to continue paying debts that have fallen due and are enforceable may request that the debtor be granted a deferral of debt repayment obligations, to enable the debtor to submit a settlement plan involving an offer to pay part or all of the debt to their creditors.<sup>15</sup> In this case, the applicants, acting as creditors—namely Drs. Amin Asrori, Hj. Fatimah, and Sujiati—filed a PKPU application against Kospin Syariah as the debtor due to outstanding and enforceable debts amounting to Rp353,943,535.00 (three hundred and fifty-three million nine hundred and forty-three thousand five hundred and thirty-five rupiah). Therefore, it was simply established that Kospin Syariah, as the respondent, had debts that were due and payable.

The deferral of debt repayment obligations requested by the debtor through its legal counsel to the

commercial court is generally intended to propose a settlement plan covering the payment of all or part of its debts to unsecured creditors, so as to avoid bankruptcy.<sup>16</sup> Therefore, considering that preventing bankruptcy can benefit many parties—including employees, *the business chain*, shareholders, and creditors whose debts will be repaid—the deferral of debt payment obligations is given top priority in the ruling when multiple cases are filed jointly. This means that the court is imperatively required to grant a “temporary” stay of debt repayment obligations.<sup>17</sup>

On 30 November 2020, the panel of judges in case number 43/Pdt.Sus-PKPU/2020/PN Niaga Smg issued a judgment, the operative part of which is as follows: a) Granting the Application for a Stay of Debt Payment Obligations (PKPU) filed by the PKPU applicants against the PKPU respondent; b) To impose a Temporary Debt Payment Obligation Deferral (PKPU) on the respondent, namely the Sharia Savings, Loan and Financing Cooperative (Kospin Syariah) with its registered office in Karanganyar Regency, for a maximum period of 45 (forty-five) days from the date *this* judgment is pronounced; c) To schedule a Judicial Panel Hearing regarding the Suspension of Debt Payment Obligations (PKPU) on Monday, 14 January 2021 at 10.00 am in the Commercial Courtroom at the Semarang District Court, Jalan Siliwangi No. 512, Krapyak, Semarang.

Where a PKPU application is filed by a creditor, within a maximum period of 20 (twenty) days from the registration of

<sup>12</sup> Munir Fuady, *Bankruptcy Law in Theory and Practice* (Bandung: PT Citra Aditya Bakti, 2014), p. 177.

<sup>13</sup> Sutan Remy Sjahdeini, *Bankruptcy Law: Understanding Law No. 37 of 2004 on Bankruptcy and the Suspension of Debt Repayment Obligations* (Jakarta: Pustaka Utama Grafiti, 2010), p. 33.

<sup>14</sup> Law of the Republic of Indonesia No. 37 of 2004 on Bankruptcy and the Suspension of Debt Payment Obligations, Article 222(1).

<sup>15</sup> S. A Nugroho, *Bankruptcy Law in Indonesia: Theory, Practice and Legal Application* (Jakarta: Prenadamedia Group, 2018), p. 253.

<sup>16</sup> Sulthan Wahidy and Rizki Amar, “Legal Consequences of Defective Contracts (Agreements) (A Perspective from Islamic Law and Positive Law),” *YUSTISI* 11, no. 3 (October 2024): 194–204, <https://doi.org/10.32832/yustisi.v11i3.17886>.

<sup>17</sup> R. Anton Suyatno, *The Use of Deferral of Debt Payment Obligations*. (Jakarta: Kencana Prenada Media Group, 2012), p. 5.

the application, the court must grant a Provisional PKPU and must appoint a Supervising Judge from among the court's judges, as well as appoint one (1) or more administrators to manage the debtor's assets.<sup>18</sup> In this case, the application for PKPU was filed on 10 November 2020, and the decision on the Interim PKPU was pronounced on 30 November 2020, exactly 20 (twenty) days after the application was filed. Kospin Syariah, as the respondent, was placed under provisional PKPU for a maximum period of 45 (forty-five) days, namely from 30 November 2020 until 14 January 2021 at 10.00 am.

The administrators are required to immediately publish the decision on the temporary suspension of debt repayment obligations in the State Gazette of the Republic of Indonesia and in at least 2 (two) daily newspapers designated by the Supervising Judge; such publication must also include an invitation to attend the hearing, which constitutes a meeting of the panel of judges, specifying the date, venue and time of the hearing, the name of the Supervising Judge, and the names and addresses of the administrators.<sup>19</sup> In this case, on 3 December 2020, the Administrators published the PKPU decision in the daily newspaper "SINDO (Seputar Indonesia)" and the newspaper "Tribun Jateng" on 4 December 2020, and registered the announcement of the PKPU decision in the State Gazette of the Republic of Indonesia under number BN: 100/2020 dated 8 December 2020. Subsequently, on 3 December 2020, the Management Team sent a letter directly to the debtor via their legal representative, reference number 002/Kospin-PKPU/XII/2020, regarding notification

of the provisional PKPU ruling for the Sharia Savings, Loan and Financing Cooperative (Kospin Syariah) and the proposed schedule for the PKPU proceedings.

Claims must be submitted to the Administrators by submitting a claim letter or other written evidence stating the nature and amount of the claim, accompanied by supporting evidence or copies thereof.<sup>20</sup> From 4 December 2020 to 17 December 2020, the Administration Team has opened the opportunity for creditors to submit claims online and in person, delivered to the Administration Secretariat Office located at Jl. KH. Samanhudi No. 44A Purwosari, Laweyan, Surakarta 57148. A total of 266 creditors submitted claims, amounting to Rp33,827,055,375.00.

Once the Interim PKPU ruling has been pronounced, the Court, through the administrator, is obliged to summon the debtor and creditors to appear at a hearing to be held no later than the 45th (forty-fifth) day from the date the Interim PKPU ruling was pronounced.<sup>21</sup> On the day of the hearing, the Court must hear the debtor, the supervising judge, the administrator, and the creditors present, their representatives or their authorised agents.<sup>22</sup> The debtor is entitled, at the time of filing an application for a stay of debt repayment obligations or thereafter, to offer a settlement to the creditors.<sup>23</sup> In this case, on 11 December 2020, the first creditors' meeting was held at the Commercial Court of the Semarang District Court. At that meeting, the debtor explained that they would submit a settlement proposal.

All calculations submitted by the administrator must be reconciled with the debtor's records and reports.<sup>24</sup> The

<sup>18</sup> Law of the Republic of Indonesia No. 37 of 2004 on Bankruptcy and the Suspension of Debt Repayment Obligations, Article 225(3).

<sup>19</sup> Law of the Republic of Indonesia No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations, Article 226(1).

<sup>20</sup> *Ibid.*, Article 270(1).

<sup>21</sup> *Ibid.*, Article 225(4).

<sup>22</sup> *Ibid.*, Article 228(1).

<sup>23</sup> *Ibid.*, Article 265.

<sup>24</sup> *Ibid.*, Article 271.

administrator must prepare a list of claims containing the creditor's name, address, the amount of each claim, a description of the claim, and whether the claim is acknowledged or contested by the administrator.<sup>25</sup> On 4 January 2021, a meeting was held at the Commercial Court of the Semarang District Court to reconcile claims and verify tax liabilities. Several creditors were late in submitting their claims. With the permission of the Supervising Judge and the consent of the creditors, the Administration Team has accepted the claims submitted late by these creditors, bringing the total recognised claims to Rp40,347,597,265, involving 295 creditors comprising 2 preferential creditors, 4 separate creditors, and 289 concurrent creditors. These claims have been recorded by the Administration Team in the fixed claims register dated 4 January 2021.

A Permanent Debt Repayment Moratorium (PKPU Tetap) is granted in the following circumstances: the debtor has not yet submitted a settlement plan; discussions on the settlement plan have not yet been concluded; or upon the debtor's application and approval by the creditors through a vote.<sup>26</sup> If the suspension of debt repayment obligations is approved, such suspension and any extension thereof must not exceed 270 (two hundred and seventy) days from the date the decision on the temporary suspension of debt repayment obligations is pronounced.<sup>27</sup> On 6 January 2021, a meeting was held to discuss the settlement proposal; during the meeting, the debtor explained the settlement proposal, but there were still some shortcomings, so the debtor needed to make revisions and therefore requested an extension of the PKPU process. In response to this request, a vote was held to approve the extension of the PKPU, resulting in the

consent of all creditors to extend the PKPU process for 31 (thirty-one) days, and it was confirmed by the decision of the Council Deliberation Meeting at the Commercial Court of the Semarang District Court on 14 January 2021 that the Panel of Judges had decided to grant the application for a Permanent PKPU against the debtor for 31 (thirty-one) days from the date the decision was pronounced, namely 14 January 2021, until 15 February 2021.

On 8 February 2021, a meeting to discuss the settlement proposal and a vote were held at the Commercial Court of the Semarang District Court; however, there were still technical matters that needed to be addressed, so the debtor requested that the hearing be postponed and rescheduled for 10 February 2021. On 10 February 2021, revisions were required as the creditors were not satisfied. Consequently, the debtor submitted a request for an extension of the PKPU process for 30 (thirty) days. Subsequently, in the decision of the Panel Deliberation Meeting at the Commercial Court of the Semarang District Court on 15 February 2021, the panel of judges granted the second application for a permanent PKPU against the debtor for a period of 30 (thirty) days, effective from 15 February 2021 until 15 March 2021.

On 10 March 2021, a meeting to discuss the settlement proposal and a vote (*voting*) took place at the Commercial Court of the Semarang District Court; during which the debtor presented the contents of the revised settlement proposal, which accommodated the debtor's interests in accordance with the agreement reached between the unsecured creditors and the debtor at a closed-door meeting held prior to the meeting to discuss the settlement proposal and *conduct the vote*. A vote was then *taken*, and the creditors present unanimously approved the settlement proposal submitted by the debtor, thereby, based on the creditors

<sup>25</sup> *Ibid.*, Section 272.

<sup>26</sup> *Ibid.*, Section 228(4).

<sup>27</sup> *Ibid.*, Section 228(6).

present and the results of the vote on the Kospin Syariah settlement plan, the requirement of one-half of the creditors present—including both separate and concurrent creditors—was met, and the creditors who agreed to the settlement plan exceeded two-thirds, as stipulated in Article 281(1) of Law No. 37 of 2004, therefore the peace plan of the Sharia Savings, Loan and Financing Cooperative has been declared approved by the creditors.

A settlement or settlement agreement within the PKPU process plays a vital role in assisting the debtor's business recovery to ensure its continued operation. Consequently, the terms of the settlement plan agreed upon by the debtor and its creditors must at least include, firstly, a *grace period* granted to facilitate the debtor's business rescue. Secondly, the creditors' willingness to *reschedule* debt repayments. Thirdly, the creditors no longer focus solely on business profits, as the debtor's financial position at the time of debt restructuring is insolvent or is expected to become insolvent.<sup>28</sup>

Section 281(1) provides that a composition plan may be accepted on the basis of: *First*, the approval of more than ½ (one-half) of the number of unsecured creditors whose claims are recognised or provisionally recognised and who are present at the creditors' meeting as referred to in Article 268, including creditors as referred to in Article 280, who together represent at least two-thirds of the total recognised or provisionally recognised claims of the unsecured creditors or their representatives present at the meeting; and *Second*, the approval of more than half (one-half) of the creditors whose claims are secured by a pledge, fiduciary guarantee, lien, mortgage, or security interest in other property, who are

<sup>28</sup> Silalahi and Tanjung, "Settlement Agreements in the Process of Deferral of Recurring Debt Payment Obligations: Status and Implications."

present and represent at least two-thirds (2/3) of the total claims of such creditors or their representatives present at the meeting.<sup>29</sup>

A composition plan that meets these requirements, or in other words, one agreed upon by the debtor and the majority of creditors, cannot be implemented immediately, but must be ratified by the court, which is subsequently set out in a homologation decision.

### **The judge's legal considerations in approving the settlement agreement No. 43/Pdt.Sus-PKPU/2020/PN Niaga Smg**

In approving the settlement agreement, the Panel of Judges applied the following legal considerations: That, in essence, with the granting of the application for a Stay of Debt Payment Obligations (PKPU), the applicant/debtor intends to submit a settlement plan, which may take the form of an offer to pay all or part of their debts to their creditors, accompanied by a schedule and timeframe for payment. The applicant/debtor has submitted a settlement plan to its creditors for approval. Consequently, a vote was conducted under the supervision of the Supervising Judge.

Based on the report of the Administrator and the Supervising Judge at the hearing on 10 March 2021, from the results of the vote, the calculation of which was carried out in accordance with the provisions of Article 281(1), (2) and (3) of Law No. 37 of 2004 on Bankruptcy and PKPU, the Administrators and the Supervising Judge, in accordance with their respective authorities, concluded that the creditors accepted/approved by acclamation the composition plan submitted by the applicant/debtor.

<sup>29</sup> Law of the Republic of Indonesia No. 37 of 2004 on Bankruptcy and the Suspension of Debt Payment Obligations, Article 281(1).

That on the basis of the creditors' unanimous acceptance of the composition plan, the status of the composition plan has been converted into a composition agreement. The settlement agreement accepted by the creditors, and which has been signed by the creditors, the debtor and acknowledged by the Supervising Judge and the Administrator, is the settlement agreement dated 10 March 2021, the contents of which are as stated above and attached, and form an integral part of the grounds for this judgment.

Upon the acceptance of the aforementioned peace plan by the creditors, and its subsequent conversion into a peace agreement, the Supervising Judge reported this to the Panel of Judges to determine whether the peace agreement could be ratified in accordance with the provisions of Article 285(1) and (2) of Law No. 37 of 2004 on Bankruptcy and PKPU.

In accordance with the provisions of Article 285(1) of Law No. 37 of 2004 on Bankruptcy and PKPU, since the majority of creditors have accepted the settlement plan submitted by the applicant/debtor, the court is obliged to grant approval accompanied by the reasons therefor as referred to in Article 284(3).

However, pursuant to the provisions of Article 285(2) of Law No. 37 of 2004 on Bankruptcy and PKPU, the Court is obliged to refuse to approve the settlement if: (a) The debtor's assets, including property subject to a right of retention, are significantly greater than the amount agreed in the settlement. (b) The implementation of the settlement is not sufficiently guaranteed. (c) The settlement was reached through fraud, or collusion with one or more creditors, or through the use of other dishonest means, regardless of whether the debtor or another party cooperated to achieve this. (d) The fees and expenses incurred by the experts and administrators have not been paid or no

guarantee has been provided for their payment.

The legal facts indicate the existence of the grounds set out in subparagraphs (a), (b), (c) and (d), and consequently there are legal grounds for the court to refuse to approve the settlement in question, as considered as set out below:

That in order to determine whether the matters set out in points (a), (b), (c) and (d) as referred to in Article 285(2) of Law No. 37 of 2004 on Bankruptcy and PKPU apply, a party must first allege them accompanied by sufficient evidence, for the court to subsequently consider them. Pursuant to Article 281(1)(a) and (b) of Law No. 37 of 2004 on Bankruptcy and PKPU, the court held that the acceptance or rejection of the composition plan depends on the result of the vote, and not on the creditors' considerations or reasons for rejecting the composition plan.

It transpired that at the hearing on 8 February 2010, no creditor objected to the results of the vote reported by the Supervising Judge and the Administrator. With reference to the provisions of Article 285(2)(a), (b), (c) and (d) of Law No. 37 of 2004, it appears that during the hearing no parties raised such arguments, even though they were given sufficient opportunity to do so; moreover, it appears that no parties submitted sufficient evidence to that effect.

Since there are no compelling grounds to refuse to ratify the settlement agreement as provided for in Article 285(2)(a), (b), (c) and (d) of Law No. 37 of 2004, and in accordance with Article 285(1) of Law No. 37 of 2004, the court is obliged to issue a ruling on the ratification of the settlement in question.

With the court's decision ratifying the peace agreement in question, the Debt Payment Obligation Deferral (PKPU) shall, *mutatis mutandis*, come to an end. The Panel will now consider whether there are grounds to refuse ratification of the settlement as required under Article

285(2) of Law No. 37 of 2004 on Bankruptcy and the Suspension of Debt Payment Obligations (PKPU).

Having heard and examined the reports of the Supervising Judge, the Administrators, the debtor and the creditors, it appears that no grounds have been found to refuse to approve the settlement as required under Article 285(2) of Law No. 37 of 2004 on Bankruptcy and the Suspension of Debt Payment Obligations (PKPU).

As the Court has found no grounds to refuse to approve the composition as required under Article 285(2) of Law No. 37 of 2004 on Bankruptcy and the Suspension of Debt Repayment Obligations (PKPU), the Court is obliged to approve the composition.

In the author's view, the legal considerations employed by the judge in approving the settlement agreement are consistent with Law No. 37 of 2004 on Bankruptcy and the Suspension of Debt Payment Obligations (PKPU), namely that the settlement agreement has fulfilled the provisions of Article 281(1), namely that it has been agreed upon by at least half of the creditors present, including both separate and concurrent creditors, and that the creditors agreeing to the settlement plan have exceeded two-thirds. Furthermore, the settlement agreement does not contravene the provisions of Article 285(2), which sets out the grounds on which the court may refuse to ratify a settlement; for during the meeting to discuss the settlement proposal and the vote held at the Commercial Court of the Semarang District Court on 10 March 2021, no party raised or proved grounds for rejecting the ratification of the settlement, despite being given sufficient opportunity to do so. Therefore, in accordance with Article 285(1), the court is obliged to issue a ruling on the ratification of the settlement accompanied by its reasons, this is set out in the first operative part of the judgment, namely:

Declaring valid the settlement reached between the applicant for PKPU, Drs. H. Amin Asrori et al., and the respondent, the Islamic Savings, Loan and Financing Cooperative (Kospin Syariah), and with its creditors, as mutually agreed on Wednesday, 10 March 2021.

The PKPU proceedings concluded upon the ruling ratifying the settlement acquiring the force of law. The settlement agreement was ratified by the Panel of Judges on 15 March 2021, thereby resulting in the termination of the debtor's permanent PKPU status, which was previously subject to a second extension of the permanent PKPU for a period of 30 (thirty) days, namely from 15 February 2021 to 15 March 2021. Consequently, with the ratification of the settlement agreement, Kospin Syariah's PKPU status has ended. A settlement plan that meets these requirements—or, in other words, one agreed upon by the debtor and the majority of creditors—cannot be implemented immediately but must first be ratified by the court, which is subsequently set out in a homologation ruling.<sup>30</sup>

### Legal Consequences of Homologation

A homologated settlement is binding on all creditors, except secured creditors who do not approve the settlement plan.<sup>31</sup> This is in accordance with the wording of the second ruling, namely: Ordering the debtor and the creditors to comply with the terms of the settlement.

Pursuant to Article 286 of the Bankruptcy Act, creditors bound by the settlement agreement include all creditors, whether unsecured or secured, whether they approved or rejected the settlement plan, and whether they were present or absent at the meeting discussing the

<sup>30</sup> M. Hadi Shubhan, *Bankruptcy Law: Principles, Norms, and Practice in the Courts* (Jakarta: Kencana, 2008), p. 142.

<sup>31</sup> *Ibid.*, p. 142.

settlement plan. Regarding the attendance of creditors, this is clearly regulated in Law No. 37 of 2004. Firstly, pursuant to Article 225(4), immediately after the provisional PKPU decision is issued, the commercial court, through the administrator, must summon the creditors to appear at the hearing. Secondly, according to the provisions of Article 228(2), every creditor has the right to attend the court hearing even if they have not received a summons to do so. Thirdly, pursuant to Article 232(1), the clerk of the commercial court is obliged to draw up a general register for every PKPU, whether a Provisional PKPU or a Permanent PKPU, and pursuant to Article 232(3), this general register is open to the public and may be viewed by any person free of charge. Based on these provisions, creditors should attend the hearing, as the administrator will issue a proper summons and, even if they have not received a court summons, the UUKPKPU grants the right to attend the court hearing. Furthermore, the court clerk provides a general register of PKPU cases which any creditor may view free of charge.

A final and binding judgment approving the settlement, for all creditors not contested by the debtor, constitutes a legal title enforceable against the debtor and all persons who have bound themselves as guarantors for that settlement.<sup>32</sup> The Islamic Savings, Loan and Financing Cooperative (Kospin Syariah), as the debtor, is obliged to repay the funds belonging to the creditors as agreed in the homologation. Meanwhile, the creditors are entitled to receive repayment of their funds in accordance with the timeframe agreed in the homologation.

Kospin Syariah, as the debtor, owes a total of Rp40,347,597,265 (forty billion three hundred and forty-seven million five hundred and ninety-seven thousand two

hundred and sixty-five rupiah) to 295 creditors, comprising 2 preferential creditors, 4 separate creditors, and 289 unsecured creditors, with the following repayment terms:

*Firstly*, for unsecured creditors, repayment is made periodically every 6 (six) months, namely in June and December, commencing in December 2021 and divided into 10 instalments, with priority given to Instalment 1 and Instalment 2 for unsecured creditors holding claims of up to Rp1,000,000.00. Only the principal amount of members' funds will be repaid; no profit-sharing will be applied to members' savings and/or term deposits.

*Secondly*, regarding preferential creditors (BPJS), payments will commence 2 (two) months after the settlement proposal is signed, to be paid over 2 (two) consecutive months. Thirdly, regarding separate creditors (tax authorities), payments will be made during the 2021 tax year. Fourthly, regarding separate creditors (Banks), as follows: (1) Regarding PT Bank Jateng Syariah, in principle, a proposal will be submitted to the Board of Directors regarding the granting of interest and penalty relief to Kospin Syariah (under the PKPU), and the Bank has no objection to the collateral being sold first by Kospin Syariah within 90 (ninety) days from the signing of the homologation, and if it has not been sold, the authority to sell the collateral shall pass to the Bank and the remaining proceeds from the HT execution shall be handed over to Kospin Syariah (under PKPU). (2) With regard to PT BNI Syariah (Persero) Tbk, Kospin Syariah (under PKPU) is not subject to penalties, whilst a written request regarding interest reduction was submitted on 26 January 2021, whilst regarding the interest reduction, a written request dated 26 January 2021 has been submitted, and regarding the sale of assets under the HT, the sale is conducted jointly with the bank

<sup>32</sup> *Ibid.*, Article 287.

and mutually confirmed. (3) With regard to PT BTN (Persero) Syariah (the Bank), Kospin Syariah (under PKPU) grants the right and authorises the Bank to sell Kospin Syariah's (under PKPU) collateral by auction, with the proceeds used to settle all principal obligations and profit-sharing at the bank, whilst penalty relief is granted in accordance with the bank's applicable regulations. The remaining proceeds from the sale are returned to Kospin Syariah (under PKPU) via the current account held at the bank's Solo Sharia branch. (4) Payments to the creditor Bahana Arta Ventura commenced in the fourth month following the signing of the settlement proposal, in accordance with the restructuring agreement reached in September 2020, with the stipulation that the deposit used as collateral would be released immediately after the homologation was signed to reduce the instalment obligations.

Since the settlement agreement was signed, Kospin Syariah's operations have returned to normal. The implementation of the homologation is reviewed every 1 (one) year, conducted by the Kospin Syariah Management in conjunction with the Annual General Meeting (AGM). Creditors are also entitled to remind and demand payment from the debtor if the debtor is late in fulfilling their obligations, and creditors are also entitled to request the cancellation of the homologation if the debtor fails to fulfil their obligations, as stipulated in Article 170(1) of Law No. 37 of 2004, which states: "Creditors may seek the annulment of a settlement that has been approved if the debtor fails to fulfil the terms of the settlement."<sup>33</sup> In a court ruling annulling the settlement, the debtor must also be declared bankrupt.<sup>34</sup>

### Conclusion

The legal considerations applied by the judge in approving the settlement

agreement were in accordance with No. 37 of 2004 on Bankruptcy and the Suspension of Debt Payment Obligations (PKPU), namely that the settlement agreement has fulfilled the provisions of Article 281(1), namely that it has been agreed upon by at least half of the creditors present, including both separate and concurrent creditors, and that the creditors agreeing to the settlement plan have exceeded two-thirds. Furthermore, the composition agreement does not contravene the provisions of Article 285(2). Consequently, the court is obliged to issue a ruling on the approval of the composition, accompanied by the reasons therefor, as provided for in Article 285(1).

The legal effect of such homologation is that it is binding on all creditors, except secured creditors who do not approve the settlement plan as provided for in Article 286. If the debtor fails to fulfil the terms of the settlement, creditors may seek the annulment of a settlement that has been ratified, as provided for in Article 170(1) of Law No. 37 of 2004 on Bankruptcy and the Suspension of Debt Payment Obligations.

### References

- Fuady, Munir. *Bankruptcy Law in Theory and Practice*. Bandung: PT Citra Aditya Bakti, 2014.
- Hidayat, Farid. "Alternative Supervision Systems for Credit Unions and Sharia Financing (KSPPs) in Achieving Sharia Compliance." : *Studies in Legal Science and Islamic Law*, 15 December 2016, 383–407. <https://doi.org/10.25217/jm.v1i2.47>
- Idham, Irfan, Syahrudin Nawi, and Hamza Baharuddin. "Legal Protection for Concurrent Creditors in Bankruptcy: A Study of Judgment No. 04/Pdt.Sus-Pkpu.Pailit/2018/Pn.Niaga Mks." *Journal of Lex Generalis (JLG)* 1, no. 5 (September 2020): 747–60.

<sup>33</sup> *Ibid.*, Article 170(1).

<sup>34</sup> *Ibid.*, Section 291(2).

- <https://doi.org/10.52103/jlg.v1i5.197>
- Irfan, Irfan, Andi Tira, and Juliati M. Jafar. "Legal Analysis of Debtors' Debts in Debt Payment Obligation Delay." *Clavia* 20, no. 1 (April 2022): 70–78.
- Kasdi, Regina Nitami, and Suyud Margono. "Analysis of Commercial Court Rulings Regarding the Legal Consequences of PKPU Applications Filed by Unauthorised Parties (Case Study of the Commercial Court Ruling at the Central Jakarta District Court No. 24/PDT.SUS-PKPU/2018/PN.NIAGA.JKT.PST)." *Adigama Law Journal* 2, no. 2 (December 2019): 1399–423. <https://doi.org/10.24912/adigama.v2i2.7124>.
- Mantili, Rai, and Putu Eka Trisna Dewi. "Debt Payment Obligation Suspension (PKPU) in Relation to the Settlement of Debts and Receivables in *Bankruptcy*." 6, no. 1 (June 2021): 1–19. <https://doi.org/10.47329/aktualjustice.v6i1.618>
- Nugroho, S. A. *Bankruptcy Law in Indonesia: Theory, Practice and Legal Application*. Jakarta: Prenadamedia Group, 2018.
- Peter Mahmud Marzuki. *Legal Research*. Jakarta: Kencana, 2011.
- Judgment No. 43/Pdt.Sus-PKPU/2020/PN Niaga Smg
- Sastrawidjaja, Man S. *Bankruptcy Law and the Suspension of Debt Payment Obligations*. Bandung: PT Alumni, 2006.
- Shubhan, M. Hadi. *Bankruptcy Law: Principles, Norms, and Practice in the Courts*. Jakarta: Kencana, 2008.
- Silalahi, Udin, and Beatrix Tanjung. "Settlement Agreements in the Process of Repeated Debt Payment Moratoriums: Status and Implications." *Undang: Law Journal* Vol. 4:2 (June 2021).
- Sjahdeini, Sutan Remy. *Bankruptcy Law: Understanding Law No. 37 of 2004 on Bankruptcy and the Suspension of Debt Repayment Obligations*. Jakarta: Pustaka Utama Grafiti, 2010.
- Soekanto, Soerjono, and Sri Mamudji. *Normative Legal Research: A Brief Review*. 19th
- Suyatno, R. Anton. *The Utilisation of Debt Payment Moratoriums*. Jakarta: Kencana Prenada Media Group, 2012.
- Law of the Republic of Indonesia No. 37 of 2004 on Bankruptcy and the Deferral of Debt Payment Obligations
- Wahidy, Sulthan, and Rizki Amar. "Legal Consequences of Defective Contracts (Akad) (Perspectives of Islamic Law and Positive Law)." *YUSTISI* 11, no. 3 (October 2024): 194–204. <https://doi.org/10.32832/yustisi.v11i3.17886>
- Yusrizal, Yusrizal. "A Legal Analysis of the Application for a Stay of Debt Repayment Obligations against a Securities Company from the Perspective of the Principle of Utility (Case Study of Judgment No. (78/PDT.SUS-PKPU/2020/PN.Niaga.Jkt.Pst)." *Wahana Pendidikan Scientific Journal* 9, no. 10 (May 2023): 689–702. <https://doi.org/10.5281/zenodo.7991115>.