LEGAL CERTAINTY OF THE STATUS OF DELAYING OBLIGATIONS FOR PAYMENT OF DEBT IN LAW NO. 37 OF 2004 CONCERNING BANKRUPTCY AND SUSPENSION OF DEBT PAYMENT OBLIGATIONS

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ABSTRACT
After the decision of the Constitutional Court No. 23/PUU-XIX/2021, it is permissible to take an appeal against the PKPU decision submitted by the creditor. This research is a normative juridical research so that what is studied is the legal principles and legal rules that are still in effect derived from the literature and court decisions. The results of the study indicate that the form of legal certainty regarding the status of suspension of debt payment obligations for the permissible legal action of cassation in the decision of the Constitutional Court no. 23/PUU-XIX/2021, which creates a situation of uncertainty, injustice for parties who have good intentions, and distortion of the essence of the PKPU institution itself. So that it has the potential to disrupt the Indonesian national economy. In addition, the consideration of the Constitutional Court which gives room for the appeal by basing it on Article 28D Paragraph (1) of the 1945 Constitution of the Republic of Indonesia is paradoxically counterproductive to the actualization of the principle of equality before the law in that Article. The implementation of the decision could potentially lead to asymmetrical accessibility for the parties in obtaining justice in the PKPU case.

Keywords: Legal Certainty, Legal Efforts, Suspension of Debt Payment Obligations

INTRODUCTION

One of the legal means that forms the basis for the settlement of accounts payable and is closely relevant to bankruptcy in the business world is the regulation on Bankruptcy, including the regulation on Suspension of Debt Payment Obligations (PKPU). PKPU in Dutch is called surseance van betaling and in English it is called suspension of payment. UU no. 37 of 2004 does not define what is meant by PKPU, even though it is the title of Law no. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.

PKPU is a certain period given by law through a commercial judge's decision in which during that period creditors and debtors are given the opportunity to discuss ways to pay their debts by providing a plan to pay all or part of their debts, including if necessary to restructure the debt, (Fuady 2010)

Parties who take the initiative to submit a PKPU application are generally Debtors, namely Debtors who are unable or are not expected to be able to continue paying their debts, PKPU requests can also come from Creditors who have calculated that the Debtor will no longer be able to pay the debt. -the debt. This is in accordance with the provisions of Article 222 paragraphs (1) and (2) of Law no. 37 of 2004 concerning Bankruptcy and PKPU which states that: "(1) Suspension of Debt Payment Obligations is proposed by a Debtor who has more than 1 (one) Creditor or by a Creditor. (2) Debtors who cannot or expect not to be able to continue paying their debts that have matured and are collectible, may request a postponement of the obligation to pay debts, with a view to submitting a reconciliation plan which includes an offer to pay part or all of the debt to the creditor."

The PKPU application submitted by the Debtor according to Article 224 paragraph (2) of Law no. 37 of 2004 concerning Bankruptcy and PKPU, must be accompanied by a list containing the nature, amount of receivables and debts of the Debtor along with sufficient evidence, and a proposal for a peace plan may also be attached. The provisions of Article 224 paragraph (1) of Law no. 37 of 2004 concerning Bankruptcy and PKPU states that the application itself is signed by the applicant together with his advocate, then the PKPU application is submitted to the Commercial Court whose jurisdiction includes the legal domicile of the Debtor.

The PKPU application which has been designated as a temporary PKPU, the Commercial Court provides the opportunity for the Debtor and Creditor to verify the Debtor's debts, discuss and seek reconciliation in accordance with the Debtor reconciliation plan proposal submitted to the Creditor under the supervision of the Supervisory Judge, in accordance with the provisions of Article 224 paragraph (4) of Law no. 37 of 2004 concerning Bankruptcy and PKPU which states that: "At the hearing as referred to in paragraph (3), the Debtor shall submit a list containing the nature, amount of receivables, and debts of the Debtor along with sufficient evidence and, if any, a reconciliation plan."

The Debtor reconciliation plan proposal approved by the Creditor turns into a binding peace agreement for the Debtor and Creditor, in which the Debtor is required to pay his debts in accordance with what was agreed in the peace agreement. Meanwhile, if the proposal for the reconciliation plan is rejected by the Creditor, then by law the Debtor becomes bankrupt based on Article 230 paragraph (1) of Law no. 37 of 2004 concerning Bankruptcy and PKPU, and for a bankrupt company originating from the PKPU application in Article 222 to Article 294 of Law No. 37 of 2004, no legal action can be filed.

This is what happened to PT. Sarana Yeoman Sembada, where PT Sarana applied for PKPU three times and all of them were rejected. However, the fourth PKPU lawsuit was granted by the Medan Commercial Court on December 15, 2020. Based on this decision, PT Sarana tried to file a cassation case on February 18, 2021 and also a judicial review on February 23, 2021. However, it was rejected by the Commercial Court at the Medan District Court. where the Substitute Registrar said the reason for the refusal was based on Article 235 paragraph (1) and Article 293 paragraph (1) of Law Number 37 of 2004. This means that the Petitioner cannot defend himself because the Bankruptcy Law and PKPU do not allow any legal remedies. In fact, PT Sarana considers the company to be healthy and financially very good.

On this basis, PT. Sarana Yeoman Sembada submitted an application to the Constitutional Court to review the provisions of Article 235 paragraph (1) and Article 293 paragraph (1) of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU) related to the PKPU decision. . In the decision that was read out, the Constitutional Court declared Article 235 paragraph (1) and Article 293 paragraph (1) of Law No. 37 of 2004 conditionally unconstitutional. Meanwhile, the review of Article 295 paragraph (1) of Law 37/2004 was declared rejected.

The Constitutional Court in the register of Case No. 23/PUU-XIX/2021 has handed down a decision on December 15, 2021 (hereinafter the Constitutional Court Decision No. 23) whose verdict is as follows:

1. Granting the Petitioner's application in part;
2. To state that Article 235 paragraph (1) and Article 293 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (State Gazette of the Republic of Indonesia of 2004 Number 131 Supplement to the State Gazette of the Republic of Indonesia Number 4443) are contrary to the Law - the 1945 Constitution of the Republic of Indonesia and does not have binding legal force, as long as it is not interpreted, "the legal action of cassation is allowed against the decision on Suspension of Obligation for Payment of Debt submitted by the Creditor and the rejection of the offer of reconciliation from the Debtor";
3. Ordering this decision to be published in the State Gazette of the Republic of Indonesia as appropriate;
4. Reject the Petitioner's application for other than and the rest.

Based on the Decision, it can be seen that the decision product of the Panel of Judges in a PKPU process may be filed for a Cassation as long as: (i) the PKPU application is submitted by the Creditor; and (ii) The offer or settlement plan submitted by the Debtor is rejected.

The application submitted by PT Sarana Yeoman Sembada focuses on the cancellation and/or correction of the provisions in Article 235 paragraph (1), Article 293 paragraph (1), and Article 295 paragraph (1). However, as stated in the Constitutional Court's Decision No. 23, the Panel of Judges only partially grants and refuses to cancel and/or correct the provisions as referred to in Article 295 paragraph (1). However, the decision raises many views that are pro and contra. Both from businessmen, legal practitioners, government, politicians, academics to associations.

Based on this, the authors are of the view that after the Constitutional Court's decision which corrected the contents of Article 235 paragraph (1) and Article 293 paragraph (1) of the Bankruptcy Law and PKPU, it would at least reduce the number of PKPU applications by creditors at the Commercial Court with reasons and considerations of a specific nature. subjective. In addition, if you look at and observe the overall legal considerations of the Constitutional Court Judges in the Constitutional Court's Decision No. 23, then we can take one further problem in the application of the law, namely the authority of the Creditor in applying for a Suspension of Debt Payment Obligations. The Assembly of the Constitutional Court sees a discrepancy between the objectives of the PKPU and the authority of the creditors to apply for a PKPU.

This is as stated in the decision of the Constitutional Court no. 23/PUU-XIX/2021 which states that Article 235 paragraph (1) and Article 293 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations are contrary to the 1945 Constitution of the Republic of Indonesia and have no binding legal force, as long as it is not interpreted, "the legal action of a cassation is allowed against the decision on the Suspension of Debt Payment Obligations submitted by the Creditor and the rejection of the offer of reconciliation from the Debtor".

Based on the description of the background of the previous problem, the author formulates the problem in this study, namely what is the form of legal certainty for the status of suspension of debt payment obligations for the legal action of cassation to be allowed?

RESEARCH METHOD

The type of research used in this research is normative legal research. In this research, the approach used is the statutory approach, the case approach, the conceptual approach and the analytical approach, (Ibrahim 2007). Types and sources of data in this study only collect secondary data. To obtain objective data, the data collection method is used with a library study aimed at obtaining a theoretical basis in the form of opinions or writings of experts and also obtaining information by reading literature books, printed media and related scientific papers. with this thesis.

The technique of collecting legal materials used in this research is literature study. Literature studies are carried out by reading, studying, taking notes, making reviews of library materials, as well as searching through internet media. The analysis of legal materials used in this research is grammatical interpretation, systematic interpretation, historical interpretation and teleological interpretation, (Salim 2013).

RESEARCH RESULTS

In the PKPU process, debtors or creditors can submit a peace proposal containing an offer either by reorganizing their business or restructuring their debts. Thus, debtors can still continue their business and pay off their debts to creditors. But unfortunately, often the reconciliation proposal submitted by the debtor is rejected by the creditor and in the end the debtor is declared bankrupt. Meanwhile, referring to Article 235 Paragraph (1), Article 290, Article 293 Paragraph (1) of the UUK-PKPU, legal action cannot be taken against a declaration of bankruptcy preceded by a PKPU.

Departing from the absence of legal remedies which were deemed to have harmed the position of the debtor, a debtor in a PKPU process, namely PT Sarana Yeoman Sembada, submitted a request for a Constitutional Review in Case Number 23/PUU-XIX/2021. In this case, the Petitioner submitted an application to the Constitutional Court (MK) to examine the constitutionality of Article 253 Paragraph (1), Article 293 Paragraph (1), and Article 295 Paragraph (1) of Law No. 37 of 2004 against Article 28D of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). In fact, if further elaborated, the PKPU institution and bankruptcy also have the potential to become a modus operandi for debtors with bad intentions to commit deception for their own interests. A debtor who has intentionally made debts left and right uses the two debt settlement institutions with the intention of avoiding the obligation to pay all his debts (escape plan).

Interestingly, substantially a similar case was filed by PT Korea World Center Indonesia, which is also a debtor in 2020. However, considering that the Indonesian legal system does not recognize the principle of precedent or stare decisis, the Constitutional Court changed its view 180 degrees and stated that the articles being tested were conditionally unconstitutional. In its injunction, the Court stated that the petition for Bankruptcy which was preceded by a PKPU submitted by the creditor due to the debtor's offer of reconciliation was rejected by the creditor, an appeal could be made. The Constitutional Court wanted the appeal as a corrective measure against possible errors in the application of the law by judges at lower levels in casu in the commercial court.

Some parties view that the decision that was born from the action of the Constitutional Court as positive by the legislator has actually damaged the essence of the PKPU institution as a forum for peace (ishlah) for debtors and creditors. The Indonesian Association of Curators and Administrators (AKPI) even stated that the presence of such legal remedies had caused legal uncertainty and injustice for parties with good intentions, thus distorting the principle of balance between debtors and creditors in the UUK-PKPU.

If the author relates the Theory of Legal Certainty according to Sudikno Mertukusumo, legal certainty is a guarantee that the law must be carried out in a good way. Legal certainty requires legal arrangements in legislation made by competent and authoritative parties, so that these rules have a juridical aspect that can guarantee certainty that the law functions as a regulation that must be obeyed.

According to Gustav Radbruch, legal certainty is "scherkeit des Recht Selbst" (legal certainty about the law itself). There are 4 things related to the meaning of legal certainty, including:

1. That the law is positive, meaning that it is legislation (gesetzliches Recht).
2. That this law is based on facts (tatsachen), not a formulation of an assessment that will later be made by a judge, such as "good will," courtesy".
3. That the facts must be formulated in a clear way so as to avoid mistakes in meaning, while also being easy to implement.
4. The positive law should not be changed frequently, (Radbruch 1961).

Certainty has become part of a law, this is preferred for written legal norms. Law without the value of certainty will lose its meaning because it can no longer be used as a behavioral guide for

everyone. Certainty itself as one of the objectives of the law. Certainty has the meaning of stipulation, while legal certainty means the legal instrument of a country that is able to guarantee the rights and obligations of every citizen.

Legal certainty is the certainty of the rule of law, not the certainty of action against or actions in accordance with the rule of law. Van Kan said that the law aims to protect the interests of every human being so that those interests cannot be disturbed, based on Van Kant's assumption, Utrecht expressed the opinion that the law is tasked with ensuring legal certainty (rechtzekerheid) in human interaction. For him the law guarantees to all parties one against the other.

With the existence of legal certainty, the purpose of the law, namely justice, will be achieved, the main thing from the value of legal certainty is the existence of the regulation itself. Regarding whether the regulation must be fair and useful for the community, it is beyond prioritizing the value of legal certainty. Based on this, Gustav Radbruch also argues that positive law that regulates human interests in society must always be obeyed even though positive law is unfair.

As it is known that the Constitutional Court has a role and responsibility in protecting constitutional rights as an integral part of efforts to institutionalize constitutional supremacy. This is as stated in Article 24C Paragraph (1) of the 1945 Constitution of the Republic of Indonesia in conjunction with Article 10 Paragraph (1) of Law Number 24 of 2003 which has been amended by Law Number 7 of 2020 concerning the Constitutional Court (UU MK), the role of the Constitutional Court in protecting these constitutional rights is manifested through the activity of reviewing laws against the 1945 Constitution of the Republic of Indonesia. As an implication of the only institution that has the authority to interpret and oversee the purity of the constitution or "the sole interpreter of the constitution and the guardian of the constitution", Article 10 Paragraph (1) of the Constitutional Court Law states that the nature of the Constitutional Court's decision is final and binding. In other words, the Constitutional Court's decision immediately gains legal force from the moment it is pronounced and there is no legal remedy that can be taken to annul it even with a new law.

Apart from being final and binding, another main characteristic of the Constitutional Court's decisions is the generally binding norm (erga omnes). This means that the validity of the Constitutional Court's Decision is not only against the parties who become addresses (inter partes) but all state institutions, state administrators and all citizens related to the decision. Consequently, the Constitutional Court's decision in the case of constitutional review which is final, binding (binding), and generally accepted (erga omnes) has a significant impact on the dynamics of the state administration and even the development of law in Indonesia.

In this context, the Constitutional Court Decision Number 23/PUU-XI/2021 on cases of constitutionality review of Article 253 Paragraph (1), Article 293 Paragraph (1), and Article 295 Paragraph (1) of Law No. 37/2004 on Article 28D of the 1945 Constitution of the Republic of Indonesia has revolutionaryly changed the normative order and implementation of the PKPU institution in Indonesia. The verdict is pragmatically quite populist and progressive in reflecting respect for human rights. However, on the other hand, the decision caused a distortion to the essentiality of the PKPU institution itself and legal certainty in resolving business disputes in Indonesia.

Bankruptcy and PKPU are one of the legal instruments regulated in the law in order to resolve the debt problems that are entangled between debtors and creditors. Basically, bankruptcy and PKPU are a follow-up to the principle of parity creditorium (equality of position of creditors) and the principle of pari passu pro rata parte (proportional justice for creditors) in the property law system as regulated in the provisions of Article 1131 and Article 1332 of the Indonesian Law. -Civil Law Law (KUHPerdata). Article 1131 of the Civil Code states that: "All movable and immovable property belonging to the debtor, both existing and future ones, become collateral for the debtor's individual engagements". Meanwhile, Article 1332 of the Civil Code stipulates that: "Only goods that can be traded can be the subject of agreement".

Article 2 Paragraph (1) UUK-PKPU stipulates that a debtor who has two or more creditors and does not pay off at least one debt that has matured and is collectible, is declared bankrupt by a court decision, either at his own request or at the request of one or more creditors. . From the provisions of the article, it can be concluded that there are two conditions that must be met in filing a bankruptcy petition. First, there are two or more creditors and second is the existence of debts that are due and can be collected. If these two requirements are met cumulatively, the debtor can be declared bankrupt, either at his own request or at the request of one or more creditors. However, in order not to be declared bankrupt, the debtor can file a PKPU. In addition, for creditors who do not want the debtor to go bankrupt due to several reasons, creditors can also apply for PKPU, (Mertokusumo 2010).

In principle, the institution for the Suspension of Debt Payment Obligations itself is different from bankruptcy. Bankruptcy aims to make a settlement of the assets of the bankrupt debtor who is in a state of being unable to pay his debts (insolvent). While PKPU aims to keep debtors from going bankrupt.15 PKPU is a way so that debtors can avoid threats to their assets to be liquidated by restructuring their debts due to bankruptcy. In this case, the PKPU is intended so that between the

debtor and his creditors can reach peace, so that the debtor can continue his business even though there are difficulties in payment, either through partial or full payment of his debts in order to avoid bankruptcy.

The regulation on PKPU is regulated in Chapter Three in Articles 222 to 294 of the UUK-PKPU. In commercial law, PKPU is known as serseance van betailing or suspension of payment. Prior to the issuance of Law no. 37 of 2004, PKPU which was previously referred to as postponement of payments is regulated in the Staatsblad 1905 Bankruptcy Regulation (Faillissements verondening) Number 217 juncto Staatsblad 1906 Number 348 in title 2 Article 212 to Article 279. When the monetary crisis occurred, the Indonesian government issued a Government Regulation in Lieu of Law -Law No. 1 of 1998 concerning Amendments to the Law on Bankruptcy which was later enacted into Law no. 4 of 1998 concerning Bankruptcy (hereinafter abbreviated as UUK).

Explicitly, the UUK-PKPU does not provide a definition of what is called PKPU, both in the body and in the explanation. Article 222 Paragraph (2) and Paragraph (3) of the UUK-PKPU only stipulates that:

(1) Debtors who cannot or expect not to be able to continue paying their debts that have matured and are collectible, may apply for PKPU, with a view to submitting a reconciliation plan which includes an offer to pay part or all of the debt to creditors;
(2) A creditor who estimates that the debtor is unable to continue paying his debts that are due and collectible may request that the debtor be given a PKPU, to enable the debtor to submit a reconciliation plan which includes an offer of partial or full payment to his creditor.

Referring to the provisions of the article above, it can be stated that a PKPU application can be submitted by a debtor or creditor against a debtor who is unable to continue paying his debts that are due and collectible. PKPU submissions by debtors are motivated by several factors, namely as an effort to prevent bankruptcy, debtors can still carry out business activities, are more efficient in terms of time, economy, and juridical. As for creditors, the PKPU application is intended to obtain certainty about when they can receive payment of their receivables in full so as not to inflict losses on them.

PKPU submissions can be made either before or at the same time as filing a bankruptcy statement. If the PKPU is filed before filing a bankruptcy statement, then the petition for a bankruptcy statement cannot be filed. Normatively, the PKPU mechanism is divided into 2 (two) stages, namely:

1. Temporary PKPU

Before the commercial court decides to grant PKPU grants permanently, both debtors and creditors can apply for temporary PKPU decisions in accordance with the provisions of Articles 225 (2), (3) and (4) UUK-PKPU. If the PKPU application is submitted by the debtor, the court must approve it no later than 3 days from the date of registration of the application. In the event that the PKPU application is submitted by a creditor, the court must immediately approve the PKPU application within 20 days after the application is submitted. After that, the court at that time also appointed a supervisory judge and appointed an administrator to take care of the debtor's assets. The PKPU commercial court must decide whether PKPU can be continued as PKPU permanently after a maximum of 45 days. This temporary PKPU will end if:

a. the creditor does not approve the provision of a permanent PKPU;
b. when the time limit for the extension of the PKPU has expired, it turns out that between the debtor and creditor there has not been an agreement on the reconciliation plan proposed earlier by the debtor.

2. Fixed PKPU

The Permanent PKPU must be determined by the Commercial Court within 45 days from the promulgation of the Temporary PKPU. Article 228 Paragraph (6) of the UUK-PKPU confirms that this Permanent KPU will occur if the following conditions are met during the examination at trial:

a. It is agreed that more than 1/2 of the number of concurrent creditors whose rights are recognized or temporarily recognized are present and represent at least 2/3 of all claims that are recognized or temporarily recognized from the concurrent creditors or their proxies who are present at the hearing.
b. It is approved that more than 1/2 of the number of creditors whose receivables are guaranteed by a lien, fiduciary guarantee, mortgage, mortgage, or other collateral rights to material goods are present and represent at least 2/3 part of all claims by creditors or their proxies who are present at the hearing.

If the above conditions have been met, then the PKPU and its extension through the commercial court may not exceed 270 days after the provisional PKPU decision is announced. The decision to postpone the postponement takes into account the agreement of the creditors in determining the postponement of the creditor agreement, especially concurrent creditors. Then, the PKPU agreement was determined by the commercial court.

When the parties agree on a suspension of payments and reconciliation, both debtors and creditors can submit a reconciliation proposal. Sometimes the reconciliation proposal submitted by the

debtor is rejected by the creditor, which ultimately results in the bankruptcy of the debtor. Expressis vebis as regulated in Article 290 of the UUK-PKPU and Article 293 paragraph (1) of the UUK-PKPU, against the bankruptcy decision preceded by the PKPU, no legal action can be submitted. Article 290 of the UUK-PKPU stipulates that if the Court has declared the debtor bankrupt, the provisions concerning bankruptcy as referred to in Chapter II shall apply to the decision regarding bankruptcy, except for Article 11, Article 12, Article 13, and Article 14. The excluded articles are regulates the mechanism of legal remedies. Meanwhile, Article 293 Paragraph (1) of the UUK-PKPU stipulates that there are no legal remedies for court decisions based on the provisions in Chapter III, unless otherwise stipulated in the UUK-PKPU.

In addition, the Supreme Court has also issued a Circular Letter of the Supreme Court Number 3 of 2015 concerning the Enforcement of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber of 2015 as Guidelines for the Implementation of Duties for Courts in Judicial Practice. The Supreme Court Circular confirms that there is no legal action against:

1. Provisional PKPU Decision (Article 235);
2. Permanent PKPU Decision (Article 235);
3. The PKPU decision is still not approved by the creditor, then the debtor is declared bankrupt (Article 290);
4. The decision on the rejection of peace in the PKPU (Article 285 paragraph (4);
5. Decision on the request for Rehabilitation of the Debtor (heirs) after the end of the bankruptcy (Article 220).

If the bankruptcy/PKPU decisions mentioned above are still submitted to the Supreme Court, then the contents of the decision are "Unacceptable". At the implementation level, the absence of legal remedies against the PKPU Decision and the bankruptcy preceded by PKPU in the existing UUK-PKPU, is perceived by some debtors as an injustice or discriminatory treatment.

Therefore, in 2021 through Case Number 23/PUU-XIX/2021, a private legal entity, namely PT Sarana Yeoman Sembada, submitted a request for a Constitutional Review of Article 235 Paragraph (1), Article 293 Paragraph (1), and Article 295 Paragraph (1) UUK-PKPU against Article 28D Paragraph (1) of the 1945 Constitution of the Republic of Indonesia. The Petitioner considers that the PKPU institution is often misused by creditors to engineer an unfair business competition with the aim of bringing down and stopping the debtor's business "legally" to bankrupt the debtor. According to the applicant, for creditors with bad intentions, filing for PKPU will be a much more effective and faster bankruptcy mechanism, because there is no legal action against bankruptcy that was preceded by PKPU. Therefore, the Petitioners feel that the absence of such legal remedies has violated the constitutional rights of equal treatment before the law (equality before the law) as guaranteed in Article 28D Paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

In the ruling, the Constitutional Court partially granted the Petitioner's request and stated that Article 235 Paragraph (1) and Article 293 Paragraph (1) of the UUK-PKPU did not have the power to bind conditionally or were conditionally contradictory to the constitution. Meanwhile, Article 235 Paragraph (1) of the UUK-PKPU stipulates that no legal action can be filed against the decision to postpone the obligation to pay debts. Meanwhile, Article 293 (1) of the UUK-PKPU stipulates that the court's decision based on the provisions in Chapter III is not open to legal remedies, unless otherwise stipulated in this Law. With the decision of the Constitutional Court, in short, against the bankruptcy decision which was preceded by a PKPU application submitted by creditors due to the rejection of the reconciliation proposal by creditors, an appeal can be made.

Interestingly, if it is elaborated further, substantially a similar petition has been submitted by PT. Korea World Center Indonesia in 2020. At that time, through Decision Number 17/PUU-XVIII/2020, the Constitutional Court stated that the petition for judicial review of Article 235 Paragraph (1) and Article 293 Paragraph (1) of the UUK-PKPU had no legal basis. In its decision, the Constitutional Court rejected the applicant's application in its entirety and emphasized that the articles being tested were constitutional.

Unlike the case with the Constitutional Court Decision Number 23/PUU-XI/2021, which pragmatically, the decision is indeed a manifestation of the protection of human rights. However, the issuance of the Constitutional Court Decision which is final and binding and binding on the general public (erga omnes), invites skepticism from some parties to the existence and essence of the PKPU institution in Indonesia itself. Because historically, referring to the final opinion of the Crescent Star Party of Mawardi Abdullah, it is known that basically bankruptcy and suspension of debt repayment obligations are two insolvency processes that have different objectives. On the one hand, bankruptcy relates to the assets of the debtor being liquidated to pay the creditors' demands. On the other hand, the postponement of payment provides the debtor with a temporary settlement of the creditor's demands to reorganize and continue business activities which will ultimately satisfy the creditor's demands.

Meanwhile, when referring to Article 212 of the UUK, basically a PKPU application can only be submitted by the debtor. The ratio legis of the concept is because basically the debtor is the only party

who knows best when he or she needs to restructure debt or not to creditors. If the PKPU application is submitted by a creditor, it is the same as the creditor asking for a delay in paying the bill. In fact, creditors will have a risk if their receivables can be discounted or rescheduled by the debtor in their reconciliation proposal.

As previously explained, PKPU applications can be submitted by either creditors or debtors. If the application is submitted by a creditor, the debtor is not necessarily obliged to approve the debt restructuring application submitted by the creditor. In this context, the debtor can refute the PKPU application through the evidentiary process before the PKPU application is decided by the judge. This objection or rebuttal can be based on various things, including:

1. The debt has not yet matured;
2. Proof of debt and receivables is not simple as required in Article 8 UUK-PKPU, but requires comprehensive proof.
3. Creditors do not have good intentions. If the debtor's objection is accepted by the judge, the PKPU application is rejected.

On the other hand, if the debtor does not object and accepts the PKPU application submitted by the creditor, then both the creditor and the debtor can submit a reconciliation proposal containing various debt settlement schemes. Thus, a PKPU can only occur if both parties have reached an agreement to settle their debt payments, regardless of the creditor or debtor applying for the PKPU. However, despite these reasons, the debtor can still be declared bankrupt if he does not submit a peace proposal, or the judge refuses to ratify the peace proposal he submitted in the PKPU process (Article 178 and Article 285 of the UUK-PKPU). Therefore, the Constitutional Court's legal considerations stating that these articles are conditionally unconstitutional, have no legal reason. This is because the PKPU process that ended in bankruptcy was not only caused by the rejection of the reconciliation proposal by creditors as argued by the applicant.

Ontologically, PKPU is a legal remedy that can be chosen by debtors or creditors given by UUK-PKPU through a commercial court judge's decision which ratifies the peace of the parties. As for the material for peace, it is determined by the parties concerned. If the parties, both debtors and creditors, consider that there are irregularities in the peace agreement that has been agreed, then the party who feels aggrieved can apply for the cancellation of the peace. Efforts to cancel this peace are not included in the legal remedies referred to in the provisions of Article 23 and Article 26 of Law no. 48 of 2009 concerning Judicial Power (Law on Judicial Power). This is because the legal remedies referred to in the two articles can only be submitted against a court decision, while once again PKPU is not a court decision.

PKPU is basically closely related to the state of insolvency (insolvency) of debtors on their debts to creditors (Article 2 Paragraph (1) of the UUK-PKPU). Therefore, PKPU proposed by both debtors and creditors should ideally be implemented in good faith to prevent bankruptcy and maintain the business continuity of the debtor. Regarding the Petitioner's argument which states that the PKPU institution is often misused by creditors as an effective and efficient instrument to stop business and bankrupt debtors, in fact this can be mitigated by referring to Article 259 (1) of the Bankruptcy Law-PKPU. The provisions of the article emphasize that at any time the debtor may request the Court to revoke the PKPU status, on the grounds that the debtor's assets allow the start of repayment provided that the management and creditors must be properly summoned and heard before the decision is pronounced.

Debtors who are actually still able to pay their debts (solvents) can request the Court to revoke the PKPU status against them to avoid a declaration of bankruptcy due to potential agreements with creditors not being reached. Thus, the argument that the Petitioners feel that their constitutional rights have been impaired when the Law allows a debtor with a healthy cash flow to be bankrupt is only the result of inconsistencies or mistakes at the implementation level. In other words, the Petitioner's argument in the Constitutional Review is only the loss caused by the implementation of the judicial process (in concreto) which is basically determined by the judicial process, not the argument for constitutional loss caused by the mistake of the law maker (in abstracto).

The Constitutional Court's decision that presents legal remedies in the midst of the peace process being pursued at PKPU has the potential to negate all efforts that have been taken. What if the parties succeed in achieving peace, but because there are still legal remedies against the PKPU decision and ultimately cancel the PKPU decision. It is almost certain that efforts and goals to achieve peace will never succeed. This is because the party (debtor) who did not want PKPU from the start will definitely ask to wait for the final decision. In addition to creating an insecure process, the existence of legal remedies in the PKPU process will eventually create injustice for parties with good intentions.

In the context of the decision, the Constitutional Court through its actions as a positive legislator seems to generalize that all creditors always abuse the PKPU institution to shut down businesses and bankrupt debtors. In fact, bad faith can be owned by both parties, both the creditor and the debtor. If so, what is the point of having a legal standing arrangement for creditors to apply for a PKPU in Article 222 Paragraph (3) of the UUK-PKPU. In fact, in the PKPU mechanism in the existing

UUK-PKPU, in line with the principle of balance, if the PKPU application is granted, creditors who do not approve it will also no longer be able to file legal remedies.

Scientifically, the PKPU and bankruptcy institutions have the potential to also be a modus operandi for debtors with bad intentions to commit deception for their own interests. Former Supreme Court Justice Retno Wulan Sutantio once said that there is a possibility that a petition for a declaration of bankruptcy was filed by a debtor who intentionally made debts left and right with the intention of avoiding the obligation to pay all his debts (an escape plan).

Although Retno Wulan Sutantio did not explicitly mention PKPU institutions, it is still possible for debtors to use PKPU institutions to use this legal loophole. With limitations due to simple evidentiary arrangements and the juridical consequences of the absence of legal remedies for bankruptcy originating from PKPU in the UUK-PKPU, such deviations are very likely to occur. This is quite reasonable, considering that debtors who have bad intentions to escape from their debt payment obligations may take PKPU first with the aim of closing the way for legal remedies, both cassation and review from creditors. So, in the end, the debtor with bad intentions can legally be free from the obligation to pay all his debts in full.

Starting from the arguments outlined above, it provides space for the opening of legal resistance mechanisms against PKPU and the bankruptcy preceded by PKPU has the potential to create a situation of uncertainty and injustice for parties who have succeeded in good faith in making peace. In addition, the ratio decidendi of the Constitutional Court in presenting a legal remedy for cassation is not legally grounded. Because as emphasized in Articles 178 and 285 of the UUK-PKPU above, a PKPU application can also result in bankruptcy if the debtor does not submit a proposal for reconciliation or the panel of judges refuses to ratify the peace (homologation).

Questioning the authority of the Constitutional Court in protecting the constitutional rights of citizens, the existence of a cassation legal remedy that is exclusively reserved for debtors against the PKPU application submitted by the creditor in question is a paradoxical matter. Instead of guaranteeing the principle of equality before the law as stated in Article 28D Paragraph (1) of the 1945 Constitution of the Republic of Indonesia, vice versa, the decision is clearly counterproductive to the actualization of Article 28D Paragraph (1) of the 1945 Constitution of the Republic of Indonesia itself. Article 28D Paragraph (1) of the 1945 Constitution of the Republic of Indonesia affirms that: "Everyone has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law". The article which is the embodiment of the guarantee of the principle of equality before the law in the state of Pancasila law, places an obligation on the state to actualize it consistently.

As for the PKPU arrangements in the UUK-PKPU which do not provide legal remedies for bankruptcy that are preceded by PKPU requests, both those submitted by debtors and creditors, actually reflect state guarantees on the principle of equality before the law for debtors and creditors. The implementation of the decision could potentially lead to asymmetrical accessibility for creditors and debtors in obtaining justice in PKPU cases.

Logically, how can we expect the achievement of substantive justice in the PKPU institution, if there is discriminatory treatment in obtaining formal or procedural justice. Because as stated by John Rawls that "... where we find formal justice, the rule of law and honoring of legitimate expectations, we are likely to find substantive justice as well". That is, a fair law is reflected both in terms of the guarantee of procedural justice and substantive justice. Therefore, by law (ipso jure) the Ratio Decidendi The Constitutional Court's decision which states that the opening of a cassation lawsuit for bankruptcy preceded by a PKPU proposed by creditors is a guarantee of the principle of equality before the law in Article 28D Paragraph (1) of the 1945 Constitution of the Republic of Indonesia cannot be justified.

The Constitutional Court's ruling stating that the articles proposed in the case are conditionally unconstitutional by considering the errors in the law in concreto, not because of the mistakes of the legislators (in abstracto) are inaccurate. Because as emphasized by the Constitutional Court in Decision Number 17/PUU-XVIII/2020 which states that "In the PKPU decision no legal action is allowed as specified in Article 235 paragraph (1) and Article 293 paragraph (1) of Law 37/2004, because The PKPU process itself has given sufficient time to both parties, namely debtors and creditors, to conduct deliberations in order to reach peace in terms of settling their debts which are mediated by the judiciary. Thus, if the results of the PKPU decision are disputed by one of the parties by taking legal action, then this will create a deliberations between the two parties that have been taken through the courts, namely PKPU and have taken quite a long time, it will create uncertainty. the law for the PKPU application itself, because the issue of debt and receivables between creditors and debtors has not been resolved so it cannot be ascertained when it will end. This confirms that in addition to the PKPU case that cannot be filed a second time because it will create legal uncertainty for the peace efforts that have been achieved, this is also clearly contrary to the nature of the PKPU case itself and the principles of justice, namely fast, simple, and low cost. "

Based on this description, it can be concluded that for the sake of law (ipso jure), the Court's considerations in Decision Number 23/PUU-XIX/2021 have the potential to create legal uncertainty

for parties with good intentions and distort the essentiality of the PKPU institution in the UUK-PKPU. Considering the nature of the Constitutional Court's decision which is erga omnes, it is appropriate that in deciding the case, the Court should not only look at the interests of the Petitioner in a casuistic manner. This is because, as previously stated, the power of the Court's decision is not only for the litigants (inter partes), but also for the entire community and other institutions in Indonesia.

In fact, the fundamental problem that may be instrumented in the PKPU institution as well as bankruptcy by parties with bad intentions is the unregulated Insolvency Test in the PKPU and Bankruptcy institutions in Indonesia. The Constitutional Court has affirmed a similar argument in its Decisions Number 071/PUU-II/2004 and 001-002/PUU-III/2005. The Constitutional Court stated that the legislators had been negligent in regulating the very lax requirements in filing applications for PKPU and Bankruptcy. In this context, the Constitutional Court actually understands very well that the basic problem in PKPU and bankruptcy in Indonesia is the regulation of PKPU and Bankruptcy requirements which are too simplistic. The absence of insolvency requirements in the PKPU and Bankruptcy institutions has created loopholes that allow parties with bad intentions to abuse the Bankruptcy and PKPU institutions.

Normatively, insolvency according to the explanation of Article 57 Paragraph (1) UUK-PKPU is a condition of being unable to pay. However, in its application, insolvency is carried out after the judge accepts the petition for bankruptcy and PKPU. This is also often ignored by judges, because judges are trapped in the principle of simple proof as regulated in Article 8 of the UUK-PKPU. The presence of the Insolvency Test mechanism can at least ensure that in deciding on a PKPU or bankruptcy application, the judge will first consider the debtor's solvency level. In the end, only debtors who are truly insolvent can be imposed by PKPU and bankrupt. This is in line with the Legisl Ratio of the existence of PKPU and Bankruptcy and the principle of continuing business (going concern) which is expressively adopted in the UUK-PKPU.

The regulation of the legal standing of creditors in the PKPU application on the existing UUK-PKPU does not mean that it is not problematic. However, opening up space for legal remedies for bankruptcy preceded by PKPU due to the rejection of the peace proposal by creditors is not the best alternative. The fundamental change that should be made is by institutionalizing the Insolvency Test through national legislation policies in the upcoming revision of the UUK-PKPU.

CONCLUSION

Based on the description and discussion in the previous chapter, the authors conclude that the form of legal certainty of the status of suspension of debt payment obligations is the legal action of cassation in the decision of the Constitutional Court no. 23/PUU-XIX/2021, which creates a situation of uncertainty, injustice for parties who have good intentions, and distortion of the essence of the PKPU institution itself. So that it has the potential to disrupt the Indonesian national economy. In addition, the consideration of the Constitutional Court which gives room for the appeal by basing it on Article 28D Paragraph (1) of the 1945 Constitution of the Republic of Indonesia is paradoxically counterproductive to the actualization of the principle of equality before the law in that article. The implementation of the decision could potentially lead to asymmetrical accessibility for the parties in obtaining justice in the PKPU case.

Referring to the results of the research and the conclusions above, the suggestions that the writer can convey are that in order to create legal certainty, the Constitutional Court is expected to not only look at the interests of the Petitioners in a casuistic manner. This is because the validity of the Constitutional Court's decision is not only against the litigants, but also the entire community and other institutions in Indonesia. In fact, the fundamental problem that may be instrumented in the PKPU institution as well as bankruptcy by parties with bad intentions is the unregulated Insolvency Test in the PKPU and Bankruptcy institutions in Indonesia. The absence of insolvency requirements in the PKPU and Bankruptcy institutions has created loopholes that allow parties with bad intentions to abuse the Bankruptcy and PKPU institutions. For this reason, the fundamental change that should be made is by institutionalizing the Insolvency Test through the national legislation policy in the upcoming revision of the UUK-PKPU.

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